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Subject: Niagara Region Comments – 10th Year Review of Ontario’s Endangered Species Act (ERO 013-5033)

Date: May 17, 2019

**To: Public Input Coordinator, Species Conservation Policy Branch
Ministry of the Environment, Conservation and Parks**

**From: Diana Morreale, MCIP, RPP
Director, Development Approvals, Niagara Region**

Thank you for the opportunity to comment on the proposed changes to the *Endangered Species Act* (ESA). Please accept this submission in response to Environmental Registry of Ontario (ERO) posting #013-5033. This submission contains two parts:

- 1) This cover letter highlighting key comments provided by Niagara Region Environmental Planning staff; and
- 2) A table containing staff’s policy-specific comments and/or recommendations.

Staff suggest that updates to the legislation could include a robust analysis of staffing and resourcing requirements. Currently, one of the most frequently received complaints is the time it takes for developers or their agents to receive feedback from the Ministry of Environment, Conservation and Parks (MECP), and formerly the Ministry of Natural Resources and Forestry (MNRF), on information requests submitted to local district offices. This is especially problematic for those species requiring further study within specific timing windows.

The proposed establishment of a “Species at Risk Conservation Fund” should require a mitigation hierarchy. Staff caution that providing proponents with the option to pay into a fund in lieu of fulfilling species protection requirements may reduce accountability and make it easier to proceed with activities that harm vulnerable species. A mitigation hierarchy, based in science, is recommended if a “conservation fund” is established.

Additional comments are provided for your consideration in the attached table. Regional staff appreciate the opportunity to provide these comments. Please contact me if you have any questions or require additional information.

Respectfully submitted and signed by



Diana, MCIP, RPP
Director of Development Approvals
Niagara Region

Attachments: Comment Table (ERO 013-5033)

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CLASSIFICATION OF SPECIES		
3 Committee of the Status of Species at Risk in Ontario		
3(4)	Qualifications A person may be appointed to COSSARO only if the Minister considers that the person has relevant expertise that is drawn from, a) a scientific discipline such as conservation biology, <u>ecology, genetics, population dynamics, taxonomy, systematics or genetics wildlife management</u> ; or b) <u>community knowledge or</u> aboriginal traditional knowledge. 2007, c. 6, s. 3 (4).	A member of the Committee on the Status of Species at Risk in Ontario (COSSARO) to include individuals with "community knowledge" could open COSSARO to those that do not have adequate scientific expertise. Species protections should be informed by science and/or aboriginal traditional knowledge alone.
5 Rules for Classification		
5(4)	<u>Criteria for classification</u> <u>The criteria for assessing and classifying species as endangered, threatened or special concern species under paragraph 1 of subsection 4 (1) shall include considerations of,</u> a) <u>the species' geographic range in Ontario; and</u> b) <u>the condition of the species across the broader biologically relevant geographic range in which it exists both inside and outside of Ontario.</u>	Consideration of climate change on species habitat should also be incorporated into the <i>Endangered Species Act</i> update, as should consideration of cumulative impacts.
5(5)	<u>Same</u> <u>If consideration of the condition of the species both inside and outside of Ontario under clause (4) (b) would result in a species classification indicating a lower level of risk to the survival of the species than would result if COSSARO considered the condition of the species inside Ontario only, COSSARO's classification of a species shall reflect the lower level of risk to the survival of the species.</u>	Many of the species listed on the Species at Risk in Ontario (SARO) list are at the northern extent of their range, especially species identified in the Niagara Region. This proposed change may lessen their protection or provide them no protection moving forward. This is especially problematic in the face of climate change because healthy populations at the northern extent of their range will help species adapt.
7 Species at Risk in Ontario List		
7(4.1)	<u>Same</u> <u>The 12-month period referred to in subsection (4) applies with respect to any report from COSSARO received by the Minister in 2019 before the day</u>	The Act currently provides that a regulation must be made under section 7 to list species on the SARO list within three months of the Minister receiving a report from COSSARO classifying the species. The changes as

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	<p>subsection 5 (1) of Schedule 5 of the <i>More Homes, More Choice Act, 2019</i> comes into force.</p>	<p>proposed will extend this timeframe from three to 12 months. There is concern that this delay could cause negative impacts to the species and the habitat it requires to fulfill its life processes. Staff caution that three months, as opposed to 12 months, is an appropriate timeframe for creation of the required protection regulation(s) and should continue to be implemented as-is.</p>
8 Risk of Imminent Extinction or Extirpation		
8(3)	<p>Same</p> <p>If COSSARO has reported to the Minister its classification of a species as an extirpated, endangered, threatened or special concern species but the Species at Risk in Ontario List has not yet been amended in accordance with section 7 to reflect the classification, the Minister, if of the opinion that credible scientific information indicates that the classification may not be appropriate, may require COSSARO to,</p> <ul style="list-style-type: none"> a) reconsider the classification; and b) not later than the date specified by the Minister, submit a second report to the Minister under section 6 which shall either confirm the classification of the species in the first report or reclassify the species. <p>Subsection (2) applies, with necessary modifications, if COSSARO has reported to the Minister its classification of a species as an extirpated, endangered, threatened or special concern species but the Species at Risk in Ontario List has not yet been amended in accordance with subsection 7 (4) to reflect the classification. 2007, c. 6, s. 8 (3).</p>	<p>Decisions about species protections should be supported by adequate science.</p>
8(4.2)	<p><u>Timing of amendments to regulation</u></p> <p>If the Minister requires under subsection (3) that COSSARO reconsider its classification of a species set out in a first report made under section 6,</p> <ul style="list-style-type: none"> a) the requirement under subsection 7 (4) for the Ministry official to make and file an amendment to the Species at Risk in Ontario List within 12 months after the day the first report is received no longer applies with respect to the species; and b) the Ministry official shall, not later than 12 months after the day the second report is received from COSSARO in accordance with clause (3) (b), make and file an amendment to the Species at Risk in Ontario 	<p>For species that are not yet on the SARO list, or are listed as special concern, the proposed changes provide that the species would not be added to the SARO list, or listed to a more sensitive status, during COSSARO's reassessment. This could potentially suspend all or some of the species-specific prohibitions in section 9 (individual species protections) and section 10 (habitat protections) for a period of up to three years. Meanwhile, negative impacts to the species and its habitat could occur. Three months, as opposed to 12 months, is an appropriate timeframe for</p>

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	<p>List so that it accurately reflects information relating to the species contained in the second report.</p>	<p>creation of the required protection regulation(s) and should continue to be implemented as-is.</p> <p>Staff further opine that maintaining a consistent approach provides a level of certainty to stakeholders and such long, open-ended timeframes may also create tension for municipal planning staff and other stakeholders.</p>
8.1 Temporary Suspension of Protections Upon Initial Listing		
8.1(1)	<p>Subject to subsections (2) and (3), the Minister may, by regulation, order that, as of the day a species is listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time, the application to the species of all or some of the prohibitions in subsections 9 (1) and 10 (1) shall be temporarily suspended.</p>	<p>The proposed changes give the Minister the power to make regulations limiting the application of protections to a species. Staff recommend leaving this function with COSSARO. At a minimum, the requirement to post any proposals on the Environmental Bill of Rights (EBR), or alternative government website as noted in section 11(5), for public consultation should be maintained.</p>
8.1(3)	<p><u>Criteria</u></p> <p>The Minister may make an order under subsection (1) only if,</p> <ul style="list-style-type: none"> a) before the report was submitted by COSSARO under section 6, the species was not listed as an endangered or threatened species on the Species at Risk in Ontario List; b) the Minister is of the opinion that, <ul style="list-style-type: none"> i. the application of the prohibitions would likely have significant social or economic implications for all or parts of Ontario and, as a result, additional time is required to determine the best approach to protecting the species and its habitat, and ii. the temporary suspension will not jeopardize the survival of the species in Ontario; and c) the Minister is of the opinion that the species meets at least one of the following criteria: <ul style="list-style-type: none"> i. the species is broadly distributed in the wild in Ontario, ii. the amount, quality and availability of the species' habitat in Ontario is not currently limiting its survival or recovery in Ontario, iii. addressing the primary threats to the species is not currently possible or feasible and additional time is needed to assess the best approach to addressing those threats, 	<p>What constitutes "social or economic implications" should be defined, perhaps within the codes of practice, standards or guidelines referred to in Section 48.1.</p>

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	<p><u>iv. successfully reducing the primary threats to the species requires the cooperation of other jurisdictions and additional</u></p> <p><u>v. any other criteria prescribed by the regulations made by the Lieutenant Governor in Council.</u></p>	
8.1(5)	<p><u>Period of suspension</u></p> <p><u>An order under subsection (1) shall provide that the period of suspension,</u></p> <p><u>a) begins immediately upon the species being listed on the Species at Risk in Ontario List as endangered or threatened, as the case may be;</u> <u>and</u></p> <p><u>b) ends on the date set out in the order which shall be no later than three years after the day on which the species....</u> policy to insert missing piece</p>	It is staff's opinion that suspension of all or some of the species-specific prohibitions for a period of up to three years not acceptable. Staff opine that the required protection regulation(s) should continue to be implemented as-is.
PROTECTION AND RECOVERY OF SPECIES		
11 Recovery Strategies		
11(5)	<p>Same</p> <p>Subsection (4) does not apply to a strategy if, before the time limit set out in subsection (4) expires, the Minister publishes a notice on the environmental registry established under the Environmental Bill of Rights, 1993 <u>a website maintained by the Government of Ontario</u> that,</p> <p>a) states that the Minister is of the opinion that additional time is required to prepare the strategy because of,</p> <p style="margin-left: 20px;">i. the complexity of the issues,</p> <p style="margin-left: 20px;">ii. the desire to prepare the strategy in co-operation with one or more other jurisdictions, or</p> <p style="margin-left: 20px;">iii. the desire to give priority to the preparation of recovery strategies for other species;</p> <p>b) sets out the Minister's reasons for the opinion referred to in clause (a); and</p> <p>c) provides an estimate of when the preparation of the strategy will be completed. 2007, c. 6, s. 11 (5).</p>	Staff are concerned that the important function of public consultation will be removed if the Minister will no longer be required to notify the public on the environmental registry established under the Environmental Bill of Rights. It is important that the public is given the ability to provide comments. Staff recommend reverting back to the original process.
11(11)	Five-year review of progress	Five year review us a best practice for a variety of Acts. The five-year review process is essential to ensure the

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	<p>Not later than five years after a statement is published under subsection (8), the Minister shall ensure that a review is conducted of progress towards the protection and recovery of the species. 2007, c. 6, s. 11 (11).</p>	<p>action plan established by the government is effectively making progress towards the protection and recovery of listed species. Staff recommend maintaining this requirement. The five-year review should be consistent with other Ontario legislation (i.e Planning Act requires 5 year review of OP).</p>
12.1 Government Response Statements		
12.1(3)	<p><u>Time limit</u></p> <p><u>A government response statement shall be published within nine months after the recovery strategy or management plan is made available to the public, subject to subsection (4).</u></p>	<p>The current time requirements prescribed by the <i>Endangered Species Act</i> related to developing Government Response Statements is reasonable. Any further delay could create uncertainty for stakeholders. If additional time is authorized, the process for doing so should be well documented, transparent and based in science.</p>
12.1(6)	<p><u>Priorities</u></p> <p><u>If government response statements have been published under this section in respect of more than one species, the Minister may, in implementing actions under subsection (5), determine the relative priority to be given to the implementation of actions referred to in those statements.</u></p>	<p>Staff recommend that criteria be set out in regulation as to how priorities will be determined.</p>
AGREEMENTS, PERMITS AND OTHER INSTRUMENTS		
16.1 Landscape Agreements		
16.1(1)	<p><u>Landscape Agreements</u></p> <p><u>An agreement entered into under this section shall meet the following requirements:</u></p> <ol style="list-style-type: none"> <u>1. The agreement authorizes a party to the agreement to carry out multiple activities throughout a geographic area of the Province identified in the agreement.</u> <u>2. The authorized activities would otherwise be prohibited under section 9 or 10 with respect to one or more species specified in the agreement (the impacted species) and listed on the Species at Risk in Ontario List as an endangered or threatened species.</u> 	<p>From our understanding the proposed changes will allow the Minister to enter into landscape agreements with persons undertaking multiple activities. Such an approach does not lend itself to addressing site-specific concerns and therefore, staff recommend omitting this proposed change from the updated Act.</p> <p>It is unclear how these landscape agreements will impact or work with the Municipalities current development approval process.</p>

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	<p><u>3. The agreement requires that the authorized party execute specified beneficial actions that will assist with the protection or recovery of one or more species specified in the agreement (the benefiting species) that exist within the identified geographic area and are listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species.</u></p>	
FUND		
20.1 Species at Risk Conservation Fund		
20.1(1)	<p><u>Species at Risk Conservation Fund</u> <u>A fund is hereby established under the name Species at Risk Conservation Fund in English and Fonds pour la conservation des espèces en péril in French, subject to any conditions that may be prescribed by the regulations.</u></p>	Staff caution creating a Risk Conservation Fund will be problematic without a “mitigation hierarchy”. A mitigation hierarchy based in science, is recommended if a “conservation fund” is put in place.
20.1(3)	<p><u>Designation of conservation fund species</u> <u>The Minister may by regulation designate species that are listed on the Species at Risk in Ontario List as conservation fund species for the purpose of the Fund.</u></p>	The process for determining which species are eligible to be designated as conservation fund species should be transparent and based in science.
ENFORCEMENT		
21 Enforcement Officers		
21(1)	<p>Enforcement officers <u>The Minister may appoint persons or classes of persons as enforcement officers for the purposes of this Act.</u> The following persons are enforcement officers for the purposes of this Act: <ol style="list-style-type: none"> 1.—Every person who is a conservation officer for the purposes of the Fish and Wildlife Conservation Act, 1997. 2.—Every person designated by the Minister as a park warden for a provincial park. 3.—Such other persons or classes of persons as may be appointed or designated by the Minister as enforcement officers for the purposes of this Act. 2007, c. 6, s. 21 (1). </p>	Staff recommend clarifying who will be given responsibility for enforcing the <i>Endangered Species Act</i> .

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MISCELLANEOUS		
55 Exemption by Regulation		
55(3)	<p><u>Transitional regulations</u> Description of habitat</p> <p><u>The Lieutenant Governor in Council may make regulations with respect to any transitional matters resulting from the enactment of Schedule 5 to the <i>More Homes, More Choice Act, 2019</i>.</u></p> <p>Without limiting the generality of clause (1) (a), a regulation under that clause prescribing an area as the habitat of a species,</p> <ul style="list-style-type: none"> a) may describe the area by, <ul style="list-style-type: none"> i. describing specific boundaries for the area, ii. describing features of the area, or iii. describing the area in any other manner; b) may prescribe areas where the species lives, used to live or is believed to be capable of living; and c) may prescribe an area that is larger or smaller than the area described by clause (b) of the definition of "habitat" in subsection 2 (1), 2007, c. 6, s. 55 (3). 	<p>Consideration of applications currently underway through the <i>Endangered Species Act</i> process is recommended. Training of municipal planning staff with respect to the changes should also be prioritized.</p>