ERO 013-5033 **10th Year Review of Ontario’s Endangered Species Act: Proposed changes**

**1. Assessing species at risk and listing them on the Species at Risk in Ontario List**

Species are classified by the Committee on the Status of Species at Risk in Ontario (COSSARO) as endangered, threatened, special concern, extirpated or extinct and are required to be added to the Species at Risk in Ontario (SARO) List by regulation. Currently, COSSARO may submit a report to the Minister at any time and a species must be added to the SARO List three months from the time a report is submitted to the Minister. Once the species is added to the list, the *Endangered Species Act* immediately prohibits the killing, harming, harassing, etc. of species that are endangered or threatened and also prohibits the damage and destruction of their habitat.

**The proposed changes would:**

1. Provide the public earlier notice of COSSARO's species’ assessment and classification results by making its report available to the public no later than three months after it is received by the Minister. Also, extend the time from when a COSSARO report is received by the Minister to when listing is to occur from three to twelve months (i.e., when a species must be added to the SARO List).

Comment: this is too long a delay. Action within 6 months may be more workable, and there must be emergency circumstances when action must be taken immediately.

1. Provide that the twelve-month period for amending the SARO List will apply to any COSSARO report received in 2019, to address the possibility of such a report being received before the changes, if passed, come into effect.
2. Improve certainty of the timing of species list changes by requiring COSSARO to submit an annual report to the Minister between January 1 and January 31 of each year.
3. Allow the Minister to require COSSARO to reconsider the classification of a species where the Minister forms the opinion based on scientific information that the classification may not no longer be appropriate. For species that are not yet on the list or are listed as special concern, the proposed changes provide that the species would not be added to the SAROList or listed to a more endangered status during COSSARO's re-assessment.

Comment: if the Minister believes that the classification must be made less restrictive, this direction, and its rationale, must be made public in Ontario Gazette.

1. Require COSSARO to consider a species’ condition around its broader biologically relevant geographic area, inside and outside Ontario, before classifying a species as endangered or threatened. If the overall condition of risk to the species in the broader biologically relevant geographic area is lower, COSSARO would be required to adjust the species’ classification to reflect its overall condition.

Comment: This proposal is a very risky suggestion. It could result in lowering the classification of species if they were thriving anywhere in the world. There would have to be a better definition of “biologically relevant geographic area”. Also COSSARO should not “be required to adjust the species’ classification” but rather, to “take this information into account in their decision-making process”.

1. Broaden COSSARO member qualifications to include members who have relevant expertise in ecology, wildlife management, as well as those with community knowledge.

Comment: Community knowledge should not be included except to allow for Indigenous participation. Otherwise the committee is open to members who have vested interest in development projects going ahead without due concern for scientific data.

**2. Defining and implementing species and habitat protections**

For species that are listed as endangered or threatened, protections come into force immediately upon listing. The prohibitions currently apply broadly, unless an activity is exempted from the prohibitions, or the area of habitat that is protected is defined more precisely (i.e., scoped) in regulation. In addition, when a species is listed as endangered or threatened, its general habitat is automatically protected, but the Act requires that a habitat regulation be developed and approved by LGIC to replace the habitat protection that is already in place.

**The proposed changes would:**

1. De-couple the listing process from automatic protections and provide greater Minister’s discretion on protections, while keeping the assessment as a science-based process at arm’s length. While the role of classifying species would remain with COSSARO and listing of classified species would continue to be required, the proposed changes would provide the Minister with authority to temporarily suspend species and habitat protections for up to three years for some newly-listed species when the following specified criteria are met:
   1. applying the prohibitions to the species would likely have significant social or economic implications for all or parts of Ontario so additional time is required to determine the best approach to protect the species and its habitat;
   2. the temporary suspension will not jeopardize the survival of the species in Ontario; and
   3. one of the following further criteria is met:
      1. the species has a broad distribution in the wild in Ontario;
      2. habitat availability is not a limiting factor for the species;
      3. additional time is needed to address the primary threats to the species, or co-operation with other jurisdictions is necessary to reduce the primary threats to the species,
      4. other criteria that may be specified by regulation.
2. Enable scoping of species protections, where appropriate, via new Minister’s regulations. This proposed new authority would enable species protections to apply to specific geographies or in specific circumstances (e.g., to species that are not affected by disease).
3. Remove the mandatory legislative requirement and timeline to develop a habitat regulation proposal for each newly-listed threatened or endangered species and retain the option to develop a habitat regulation when needed.
4. Enable the Minister, rather than LGIC, to make species-specific habitat regulations.

**3. Developing species at risk recovery policies**

The ESA currently requires the government to ensure a species-specific Recovery Strategy containing scientific advice is developed once a species is listed as endangered or threatened. After the Recovery Strategy is published, a species-specific policy (Government Response Statement) is required to be prepared within 9 months of publication of the recovery strategy. The ESA requires a report on progress towards protection and recovery to be published within 5 years of the Government Response Statement.

**The proposed changes would:**

1. Give the Minister discretion to extend the nine-month Government Response Statement development timeline, for some species.

Comment: This time line should not exceed 12 months. If final Statement is not complete, an interim one must be issued. This cannot be allow to drag on for long times.

1. Clarify that recovery strategies are advice to government, and that Government Response Statements are the government’s policy direction for species at risk.
2. Allow the Minister to extend timelines for conducting the review of progress towards protection and recovery based on individual species’ needs.
3. Remove duplicative requirements by removing specific reference to posting under the *Environmental Bill of Rights, 1993* and instead requiring that certain products under the Act be made available publicly on a government website.

**4. Issuing *Endangered Species Act* permits and agreements and developing regulatory exemptions**

The *Endangered Species Act* contains a number of tools, including permits, agreements and regulatory exemptions, that may authorize activities that would impact species and/or their habitat so long as certain conditions are met.

The proposed changes to these aspects of the ESA include the following:

**Creation of Regulatory Charge and Agency**

Ontario is also proposing to create Canada’s first independent Crown agency proposed to be called the Species at Risk Conservation Trust, to allow municipalities or other infrastructure developers the option to pay a charge in lieu of completing certain on-the-ground activities required by the act. The funds would support strategic, coordinated and large-scale actions that assist in the protection and recovery of species at risk.

The proposed changes would authorize the creation of a regulatory charge that could be paid by persons who are permitted to carry out otherwise prohibited activities under certain permits, agreements, and regulations. The charge would be paid in lieu of fulfilling certain potential conditions that could otherwise have been imposed under the permit, agreement, or regulation. The proposed charges would only be available in respect of species prescribed by regulation. The price for the payment-in-lieu (i.e. regulatory charge) will be within the range of costs that a client would have otherwise incurred through meeting the species-based conditions of an authorization. Clients would still need to fulfill some on-the-ground requirements, including considering reasonable alternatives for their activity and taking steps to minimize the adverse effects of the activity on the species at risk.

Comment: The price for the payment-in-lieu (i.e. regulatory charge) **should exceed** costs that a client would have otherwise incurred. Otherwise there is an incentive to look for alternatives that are cheaper and faster.

The proposed changes would provide for the ability to make a regulation to prescribe a subset of the species prescribed under the listing regulations as eligible for the payment-in-lieu charge.

The proposed changes would also authorize the creation of a new board-governed provincial agency. The agency would receive the funds and ensure informed, unbiased and expert decisions are made to disburse the funds to third parties that will undertake the activities in accordance with the purposes proposed to be set out in the statute. The proposed amendment would restrict the funds to fund only those activities that are reasonably likely to support the protection and recovery of prescribed species. The Minister would have the ability to establish guidelines (e.g. objectives and priorities) for funding and set standards for activities that receive funding.

Comments: This looks like additional expensive bureaucracy. What are the qualifications required and how much will board members be paid?

The proposed changes would also provide various oversight mechanisms such as regular Ministry reviews of the agency and reporting and auditing requirements for the agency.

The proposed changes would include regulation making authority in respect of the composition, operation, governance and management of the agency (for example, composition of the board of directors for the agency).

This new approach will give greater certainty to business and better enable positive outcomes for species at risk compared to the current piece-meal industry-led approach.

**Additional Changes relating to Issuing Permits, and to Agreements and Regulatory Exemptions**

1. Remove the requirement for the Minister to consult with an independent expert in the ‘D’ permit process and replace the requirement for LGIC approval with Minister approval.
2. Broaden the approach to minimizing adverse effects for permits and agreements (e.g., ‘C’ permit, ‘D’ permit, landscape agreements, section 18 harmonization) by shifting the focus from ‘individual members’ of the species to the ‘species’ more generally.
3. Provide a new transition provision for existing *Endangered Species Act* permit- and agreement-holders to continue to operate for twelve months following the application of new species or habitat protections while they seek amendments to their permit or agreement to address newly listed species. Currently, existing holders would, upon the species being listed and protected, need to stop their activity that impact the species or its habitat and wait for their permit or agreement to be amended.
4. Enable the Minister to establish codes of practice, standards or guidelines with respect to species at risk or their habitat, and enable regulations made under the Act to incorporate documents to supplement requirements or conditions related to species at risk;
5. Create a new landscape agreement that takes a strategic, coordinated and consolidated approach to authorizing clients undertaking multiple activities, and which could allow for limited conservation banking to achieve positive outcomes for species. The issuance of a landscape agreement would be dependent on conditions, including:
   * the agreement requires reasonable steps to minimize adverse effects of the authorized activities on the impacted species under the agreement,
   * the agreement requires actions to benefit one or more species,
   * reasonable alternatives have been considered, including those that would not adversely affect the species specified in the agreement, and
   * the beneficial actions required by the agreement outweigh the adverse effects to the impacted species under the agreement.
6. Replace s.18 with a new provision that would include a more flexible test and would allow the Minister to prescribe activities by regulation, to allow them to be carried out without requiring any additional authorizations under the ESA. An activity could be prescribed for this purpose, where it,
   * is approved or required under another piece of legislation,
   * would not jeopardize the survival of a prescribed species or have any other significant adverse effects,
   * would provide a benefit to the prescribed species, where reasonable to do so,
   * requires reasonable steps to minimize adverse effects on prescribed species, and
   * involves the consideration of reasonable alternatives, including those that would not adversely affect the prescribed species.
7. Remove the requirement for the Minister to consult with an expert if the Minister forms the opinion that a proposed regulation is likely to jeopardize the survival of the species in Ontario or to have any other significant adverse effect on the species

**5. Enforcing the *Endangered Species Act***

The *Endangered Species Act* contains modern enforcement provisions, but there are a few areas that could be enhanced and/or need updating to reflect the transition of the file from the Ministry of Natural Resources and Forestry to MECP

**The proposed changes would:**

1. Enhance and streamline enforcement powers by:
   * Applying inspection powers and offence provisions that already exist in the ESA to also include activities conducted under the regulations.
   * Extending current protection order powers that can be used with the Minister’s discretion to protect habitat during the intervening period before a species is listed, or where a regulation has been made so that the prohibition is not applicable, to also include the discretion to similarly protect species.
2. Update provisions related to enforcement officers by removing identification of specific classes of persons (e.g. conservation officers) as enforcement officers and retain the Minister’s authority to designate officers

If the proposal for the change to allow the Minister to order by regulation a pause of the protections for listed species passes: we are also proposing a change to the EBR General Regulation (*O.Reg. 73/94*) to exempt the regulations containing Minister’s orders made for the purpose of pausing protections from EBR posting and consultation requirements. This is being proposed in to preserve the ability of the Minister to act swiftly and minimize associated social or economic impacts.