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**Comments and Responses on the Ministry of Natural Resources and Forestry consultation on “**[**10th**](https://ero.ontario.ca/notice/013-4992) **Year Review of Ontario’s Endangered Species Act: Proposed Changes (Endangered Species Act, 2007)”**

***Posted by Ministry of Natural Resources and Forestry to the Environmental Registry on April 18, 2019 #013-5033***

On January 18, 2019, the Ontario government gave notice on the Environmental Registry that that they were conducting a ten-year review of the Endangered Species Act, which came into effect on June 30, 2008.

A discussion paper, 10th Year Review of Ontario’s Endangered Species Act: Discussion Paper (ERO number: 013-4143), was posted on January 18, 2019. The comment period was 45 days from January 18 to March 4, 2019. SCRCA staff prepared comments on the discussion paper which were presented to the SCRCA Executive Committee at the February 2019 meeting, and subsequently submitted to the Environmental Registry. The decision was posted April 18, 2019.

The government received 14,964 comments through the Environmental Registry, email and mail, and 10 comments through public consultation. Generally, respondents supported:

• Improving the implementation of the current legislation, including improved enforcement

• Stringent protections for species at risk and their habitat and clear requirements and conditions for authorizations

• Maintaining a science-based process for species to the Species at Risk in Ontario list

• Allowing the Minister the ability to seek re-assessment of species’ classifications by the Committee on the Status of Species at Risk in Ontario (COSSARO)

• Greater Indigenous representation on the COSSARO and consideration for Traditional Ecological Knowledge

• Increased discretion, transparency and certainty, transparency about when and where protections for species at risk and/or their habitat will apply

• Greater consideration of community knowledge and on-the-ground realities

• Reducing burden, shortening timelines, and increasing clarity for obtaining approvals under ESA, including by establishing new tools such as the ability to make a payment in-lieu of some requirements

• Enabling positive outcomes for species at risk

• Enhancing stakeholder and Indigenous community engagement in recovery planning

Concerns were expressed regarding:

• Any changes that would lower protections to species at risk and their habitat

• Any re-assessment of species’ classifications by the COSSARO that would lower protections

• Any negative impacts to species if it takes too long to develop the Government Response Statement or complete a review of progress towards the protection and recovery of the species

• Any landscape approaches that may be interpreted too broadly, depending on the circumstance and the species impacted

• Any changes that reduce requirements and conditions of authorizations

• Any payment-in-lieu approach that is not stringent and would result in reduced outcomes for species at risk

• Ensuring appropriate transparency, accountability and effectiveness monitoring for any payment-in-lieu approach

• Allowing activities that will have an adverse impact to species at risk to proceed under exemption regulations

As a result of the review, the government is proceeding with proposing amendments to the Endangered Species Act. These are outlined in 10th Year Review of Ontario’s Endangered Species Act: Proposed Changes (ERO: 013-5033). The proposal was posted April 18, 2019, with the comment period open for 45 days from April 18 to May 18, 2019.

The proposed changes fall under five categories:

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

2. Defining and implementing species and habitat protections

3. Developing species at risk recovery policies

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

5. Enforcing the Endangered Species Act

Comments for the Environmental Registry

It is important to keep in mind the three purposes of the Endangered Species Act (ESA), namely:

1) To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal knowledge;

2) To protect species that are at risk and their habitats and to promote the recovery of species that are at risk

3) To promote stewardship activities to assist in the protection and recovery of species that are at risk. As such, the first desired outcome of the review, to “achieve positive outcomes for species at risk”, serves as a good litmus test against which to evaluate proposed changes. Many improvements to implementation are possible without jeopardizing the original intent of the ESA.

According to the Environmental Registry of Ontario posting 0130-4143 the desired outcome of the proposed changes to the Endangered Species Act:

• Enable positive outcomes for species at risk

• Ensure species assessments are based on up-to-date science

• Address multiple objectives for ecosystem management through stewardship and protection activities

• Increase efficiencies in service delivery for authorization clients

• Streamline processes and provide clarity for those who need to implement the Act

• Maintain an effective government oversight role

SCRCA support changes that to the Act that attain these goals without compromising the three main purposes of the ESA.

Geographic Context

The St. Clair Region Conservation Authority is located in southwestern Ontario and includes the Sydenham River watershed and smaller watersheds draining directly into southern Lake Huron, the St. Clair River and northeastern Lake St. Clair. Our position in the Carolinian Life Zone means we have a high level of biodiversity, and a high percentage of Ontario’s species at risk. The proposed changes to the ESA would require CASSARO to consider a species’ condition around its broader biologically relevant geographic area, inside and outside Ontario, before classifying a species as endangered or threatened. This could mean that many of the species currently listed under the ESA would receive less or no protection. This is especially concerning in the face of climate change, because healthy species, populations, and their habitat are needed at their northern limits to help species adapt to changing climatic conditions. Changing conditions also necessitate an increased need for habitat connectivity for movement of species, and high biodiversity provides resilience and adaptability to a changing climate.

Landscape Approach

The Sydenham River watershed and the other smaller watersheds draining directly into southern Lake Huron, the St. Clair River and northeaster Lake St. Clair consist of a highly modified landscape with limited protected area, so it is essential to maintain and protect existing natural heritage features. Across SCRCA’s region, SCRCA owns or manages 1808 ha of forests, and 259 ha of wetlands. Environment Canada recommends a minimum 30% forest cover for a healthy watershed, while forest cover for the entire St. Clair region is 11.3%. From our 2013 to our 2018 Watershed Report Card, we recorded a 3.28 km2 decrease in forest cover. Environment Canada recommends that at least 10% of each major watershed and 6% of each subwatershed should be wetland to sustain water balance and biodiversity functions, while wetland cover for the entire St. Clair region is just 1.1%. The primary cause in most species’ decline in the province is due to habitat loss and degradation, and habitat connectivity is a limiting factor in species recovery. All species, including species at risk, depend on functioning, resilient ecosystems to survive. The ecosystems which provide habitat to all of our species provide numerous irreplaceable benefits such as air and water purification, soil stabilization, flood prevention and climate change mitigation.

Conservation Offsetting

The proposed changes to the ESA include creating a 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. It is proposed that the funds would only support those activities that are reasonably likely to support the protection and recovery of prescribed species.

The concept of conservation banking should be approached with a high degree of caution, and the decision to use this approach should only be considered as an option after steps have been taken to eliminate and minimize potential negative impacts. The province should carefully examine and provide direction on conservation banking, with input from Indigenous communities, municipalities and stakeholders. If it decides to enable conservation banking through law and policy, it must address such issues as governance and oversight, limits to offsetting, equity, transparency, the mitigation sequence, establishing equivalence, monitoring and enforcement. If this Species at Risk Conservation Trust is created, interdisciplinary watershed managers with local watershed knowledge should be involved to ensure that actions are directly appropriately.

A major concern is the potential for loss of regional habitat and biodiversity in areas which have high land values if offsets are provided elsewhere in the province. It is difficult to establish equivalency, and any monetary value must include the value of the lost habitat plus an overall benefit.

The use of conservation banking offers promise in that there is increased certainty of benefitting the species when offsets are established in advance. Conservation Authorities are already actively involved in helping proponents address their overall benefit obligations through the delivery of habitat improvements required under S. 17(2)c permits. While Conservation Authorities could also be effective partners in the delivery of on-the-ground habitat improvements under alternative authorization tools such as conservation banking and/or a conservation fund, a cash-in-lieu approach solely for the purposes of expediency of approvals should be avoided.

Land Use Planning Efficiencies

In order to reduce duplication and streamline processes, the municipal land use planning process in Ontario provides an ideal framework within which the Endangered Species Act could nest. The Provincial Policy Statement dictates that natural heritage systems shall be identified, and that the diversity, connectivity and long-term ecological function and biodiversity of the systems should be maintained, restored or, where possible, improved. Through natural heritage advisory agreements with our 17 member-municipalities, SCRCA is supportive of a landscape-based approach for protecting the remaining habitat for species at risk in our watershed.

Consideration of SAR and ESA requirements at the early stages of the land use planning process would allow for improved outcomes for species at risk, and increased efficiency for development proponents. The Province can provide support to municipalities to update their natural heritage mapping to identify natural heritage constraints at the outset of the development process, rather than constraints being identified part way through the process when time and money have already been invested.

SCRCA supports efforts to provide greater clarity and certainty to project applicants. In the context of municipal land use planning practices, the best way to achieve this outcome is to integrate ESA requirements into existing considerations for other components of the natural heritage system, with the addition of the overall benefit requirement for species at risk. The Act already allows for such an approach under Section 18.

It is also important to note that the scale of impact to a species is not necessarily coincident with the scale of economic development; it is possible that a significant economic development project may have very little impact on species at risk and conversely, it is also possible that a project of little economic significance could have a major impact on species at risk.

Science-based Assessments

SCRCA supports the application of the precautionary principle to the Endangered Species Act (ESA). As noted in the ESA R.S.O. 2007 preamble: “lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.” We are in support of science-based assessments of the current status of species, and proposed actions to assist with their recovery. While all of the desired information may not be immediately available for all species, delays in listing species and initiating recovery actions will only result in further imperilment of the species. Once more information becomes available, the ranking of species can be changed, or removed from the SAR list altogether. It would be undesirable to provide longer timelines before a species is listed because the list should be current with the science. Also, species only become eligible for many funding programs, including SARSF, once they have been listed. Delayed funding for recovery means that projects become more expensive and less likely to succeed. In addition, allowing the Minister the ability of suspend species and habitat protections based on social or economic, not scientific, protections would mean that the public would receive no notice and would have no input on such decisions.

Extending the timeline for development of Government Response Statements should occur when it is for the benefit of the species to slow the process down and ensure that the GRS is well thought out, however there needs to be a maximum time within which a final GRS is required to ensure that the species is not left unprotected indefinitely. Similarly, with progress reports, as these are a useful resource for practitioners to understand what activities have occurred and the success of these actions.

The proposal to open up the Committee on the Status of Species at Risk in Ontario to members with “community knowledge” rather than the current membership of scientific experts is problematic. “Community knowledge” is a vague term that could open up the committee to those who do not have adequate expertise, or who have a different agenda than species protection.

Local Expertise

In many cases, the goals and objectives of SCRCA’s existing programs and expertise align well with the Endangered Species Act; particularly protecting habitat and promoting stewardship projects. We have leveraged funding from private and public sources which provide benefits to species at risk, while also contributing towards ecosystem services such as flood and erosion control. SCRCA supports continued government commitment to providing meaningful impacts to the protection and recovery of species at risk in Ontario.

**Strategic Objectives(s):**

Goal 2 – Protect, manage, and restore our natural systems including woodlands, wetlands, waterways, and lakes

Current Action:

Ecosystem Recovery Planning: The SCRCA has partnered with organizations to produce Action Plans for ecosystem recovery. Plans exist for the Sydenham River, Lake St. Clair Coastal, and Ausable River - Kettle Point to Pinery. The Sydenham River Recovery Strategy is unique in that it is the first multi-species watershed recovery strategy in Canada. An action plan for Lake Huron Coastal is currently under development.

Reptile Species at Risk: The objective of the Reptiles at Risk Monitoring program is to encourage good stewardship for snakes and turtles in the St. Clair Region. Program activities include tracking occurrences, protecting and improving habitat on Authority

and Foundation owned lands, and encouraging local community members to take similar actions.

Strategic Actions

Support Protection of Natural Heritage Systems: Through collaboration with partner organizations, the SCRCA will provide biological and ecological expertise for natural heritage plans, strategies and policies. The responsibility for natural heritage

protection falls to municipalities under The Planning Act. The Conservation Authority can provide ecological and biological expertise to support our member municipalities in satisfying provincial policies.