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CFN 70873

BY E-MAIL ONLY
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Re: Regulatory changes under the Endangered Species Act to improve implementation of the species at risk program (ERO 019-8016)

Thank you for the opportunity to provide comments on the “Regulatory changes under the Endangered Species Act, 2007, to improve the implementation of the species at risk program” (019-8016) posted on the Environmental Registry of Ontario (ERO) by the Ministry of Environment, Conservation and Parks (MECP). Toronto and Region Conservation Authority (TRCA) staff appreciated MECP’s webinar on January 30, 2024, to explain this proposal and answer questions posed by attendees.

TRCA supports our provincial and municipal partners in the research and science of watershed health and protecting and restoring habitat, through our mandate under the Conservation Authorities Act and associated regulations.

Government Proposal

We understand that MECP is proposing to amend regulations under the Endangered Species Act (ESA) to improve the effectiveness and implementation of the species at risk (SAR) program. Regulatory amendments are being proposed under the following categories:

- Habitat Protections for Redside Dace (O. Reg. 832/21)
- Select conservation fund species and related administrative changes (O. Reg. 829/21 and O. Reg. 830/21).
- Adding newly listed species to existing conditional exemptions and other administrative changes (O. Reg. 242/08).
- Amendments to the conditional exemption for early exploration mining (O. Reg. 242/08).

TRCA Comments

Our comments on two of the above categories are informed by TRCA’s technical expertise in terrestrial and aquatic ecology and our ongoing watershed monitoring, research, and ecological restoration works. In addition, TRCA staff are members of the Redside Dace Recovery Implementation Team.

TRCA notes that Ontario’s biodiversity continues to decline, and more conservation efforts are needed for SAR to halt and reverse this decline. For your reference, we have bolded our main recommendations for contributing to the recovery of species under the ESA and applicable regulations.

Proposed Regulatory Amendments category	TRCA Detailed Comments
Amendments regarding the habitat protections for Redside Dace (O. Reg. 832/21)	<p>The proposed amendment aiming to modify how "recovery" habitat is determined under subparagraph 2, poses limitations on potential areas for the conservation and rehabilitation of Redside Dace. Specifically, the proposed amendment, which defines suitable areas as those "<i>currently</i> suitable for Redside Dace to carry out its life processes," relies on present data and existing conditions. This would overlook areas where recovery opportunities exist, such as through overall benefit and restoration projects, including provincially funded stewardship projects. Therefore, the amendment as proposed would not capture numerous potential sites where Redside Dace, if subjected to restoration efforts, could carry out life processes.</p> <p>The proposed amendments would also determine recovery habitat to be streams or other watercourses "directly adjacent" to occupied habitat. Sections of a watershed, even if not directly adjacent to a currently occupied Redside Dace habitat, could transform into "suitable" habitat in the future through restoration/compensation initiatives. TRCA recommends that the amendment to the definition of habitat be revised to recognize restoration opportunities and projects currently being planned and implemented.</p> <p>Further, a defined methodology and monitoring program to assess "areas that are currently suitable for Redside Dace to carry out its life processes" is unavailable. Instead, these watercourses should be evaluated using scientific protocols to assess conditions to ensure they meet the biological requirements of the species. Assessing these watercourses as opportunities for research, habitat restoration and future reintroductions of the species is encouraged as they play an important role in providing knowledge for species recovery actions.</p> <p>The proposed amendment to reduce the timeframe from 20 years to 10 years to qualify as "occupied" Redside Dace habitat under the regulation, will result in many stream reaches being removed from the protected list, including several watercourses in TRCA’s jurisdiction.</p> <p>This would ultimately decrease habitat protections for Redside Dace under the ESA. Removing non-qualifying watercourses reduces</p>

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	<p>opportunities for the survival of the species. Changing the timeframe in determining occupancy is further complicated by other issues including the following:</p> <p><u>Monitoring Availability</u></p> <ul style="list-style-type: none"> • There have been decreasing opportunities for monitoring Redside Dace and SAR overall, due to a lack of funding and resources (e.g., SAR Research Fund, SAR Stewardship Fund). • Further to the above, targeted SAR Stewardship funding focuses primarily on habitat project implementation and success monitoring. Limited funds are directed to monitoring focused on updating occurrences and identifying occupied and recovery habitats, resulting in a significant science gap for the species. • Permitting requirements currently in place under the ESA require Minister approval to assess populations of Redside Dace. This results in delays and extended timelines, which impact the ability to adequately survey for the species and in turn, lengthens project timelines for proponents. One mitigative measure would be for stakeholders to be made aware of when and where monitoring is occurring and be given access to updated records. <p><u>Monitoring Methodology</u></p> <ul style="list-style-type: none"> • There is currently no standardized methodology or monitoring program in place for the species. Given the specific sampling methodologies, seasonality, and equipment required to adequately sample Redside Dace, there is significant concern that sampling to confirm occupancy, without a science-based protocol specific to the species, will be inadequate and result in false non-occupancy status. A long-term sampling protocol should be required to adequately monitor endangered species; this would enhance certainty and clarity for all stakeholders. • While eDNA is a straightforward and efficient tool in identifying species presence, this tool is not yet considered a provincially acceptable means of confirming occupancy. Nonetheless, numerous watercourses with suitable habitat have resulted in positive eDNA results despite no physical specimen. Until such time that a standardized methodology and/or monitoring program is available to confirm occupancy using eDNA, reaches with positive eDNA results but no physical specimens captured should remain classified as occupied habitat until they can be proven otherwise.
Amendments regarding select conservation fund	The proposed amendment, seeking to remove the 30-day waiting period between the submission of a Butternut Health Expert Report and the

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species and related administrative changes (O. Reg. 830/21)	<p>registration of an eligible activity, raises concerns regarding the restricted definition of impactful action solely to the specified tree(s).</p> <ul style="list-style-type: none"> • The concern stems from the possibility that the applicant may engage in eligible activities adjacent to/surrounding the tree, such as vegetation removal or grading, which could have indirect consequences for the overall community where the butternut is situated. Should the assessment results indicate the tree's importance/requirement for preservation, previously approved eligible activities may increase its vulnerability and long-term health. • To address this issue, eligible activities should consider the potential impacts on butternut trees beyond what is explicitly defined as impactful action under O. Reg. 830/21. This broader perspective would help safeguard the overall well-being of the butternut community and prevent potential risks associated with isolated preservation efforts.

Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at (437) 880-2282 or at laurie.nelson@trca.ca.

Sincerely,

<Original signed by>

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