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BY E-MAIL ONLY (ESAre@ontario.ca)

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Re: 10th Year Review of Ontario's Endangered Species Act (ERO #013-4143)

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks' Discussion Paper on the *Endangered Species Act*, "Protecting and Recovering Species at Risk in Ontario," which poses questions under four areas of focus:

1. Landscape approach – species specific approach (current) vs. landscape approach
2. Listing process and protections for species at risk
3. Species recovery policies and habitat regulations
4. Authorization processes

We understand the government is undertaking a review of the Act to improve protections for species at risk, consider modern and innovative approaches to achieve positive outcomes for species at risk, as well as to look for ways to streamline approvals and provide clarity to support economic development. The Toronto and Region Conservation Authority (TRCA) has an ongoing interest in protecting wildlife species and their habitat given our roles as:

- A regulator under Section 28 of the *Conservation Authorities Act*;
- A public commenting body under the *Planning Act* and the *Environmental Assessment Act*;
- A resource management agency operating on a local watershed basis; and
- One of the largest landowners in the Toronto region.

In these roles, TRCA supports our provincial and municipal partners in implementing the natural heritage policies of the Provincial Policy Statement and protects and restores wildlife habitat through our mandate under the *Conservation Authorities Act*. Where endangered species are affected by development, provincial staff undertake a concurrent review of planning proposals in accordance with the Act.

As outlined in this submission, through research, science and expertise, TRCA has developed a number of tools and strategies that can be used to inform and support the implementation of the Endangered Species Act (ESA). Comprehensive, creative and collaborative approaches early in the planning process, including the use of such tools, facilitates better decision making, positive outcomes, greater certainty for all stakeholders and streamlining opportunities. With TRCA's roles and experience in mind, we offer the following responses to the Discussion Paper questions.

Area of Focus 1: Landscape Approaches

Discussion Question:

In what circumstances would a more strategic approach support a proposed activity while also ensuring or improving outcomes for species at risk? (e.g., by using a landscape approach instead of a case-by-case approach, which tends to be species and/or site-specific.)

A strategic landscape approach to protecting habitat for species at risk (SAR), ensuring that populations are sustainable, and that pathways exist for population dispersion and migration, are all integral to protecting biodiversity in Ontario. Case-by-case implementation does not address these wider issues. However, in an ecosystem approach, species recovery plans and management plans are essential components to identify the required habitats for species and in turn to inform an overall landscape strategy. The introduction of a more strategic approach should not eliminate the need for the continued implementation of a case-by-case approach, given that it is necessary to protect existing populations and critical habitat areas.

A more streamlined, up-front approach to managing SAR on large projects would avoid delays and increase certainty. For large scale planning exercises, such as Municipal Comprehensive Reviews, regional infrastructure master plans, provincial highway and transit corridor studies, addressing SAR as early as possible would result in better outcomes for those species and those delivering the projects. This up-front approach would also apply to watershed plans, subwatershed plans, Master Environmental Servicing Plans and Environmental Assessments associated with these large scale exercises. Early input would require clear direction from reviewers on SAR tied to earlier planning milestones. The intent here would be to “set-up” the project to satisfy ESA requirements. Currently, feedback is deferred to detailed design or the end of a planning process causing uncertainty and delay.

Discussion Question:

Are there existing tools or processes that support managing for species risk at a landscape scale that could be recognized under the Endangered Species Act?

The protection of identified natural heritage systems that is achieved through land use planning processes can be used as a tool in support of managing for SAR at a landscape scale. Within more developed areas, the natural heritage systems contain much of the wildlife habitat and many systems identify how much habitat is required on the landscape to support biodiversity in that region.

Science being developed at TRCA on landscape connectivity, aquatic systems and road ecology could be used to inform ESA implementation. Capacity exists at TRCA to input science into ESA-related decisions as well as provide a feedback loop where gaps in science could be identified and filled through experience gained in the application of the ESA.

In addition, TRCA's Integrated Restoration Prioritization framework is a landscape level approach to identifying ecological impairments and improving ecosystem function. While SAR are not a focus of the framework, many SAR benefit from this approach through the main restoration objectives that address hydrological processes, natural cover, connectivity and landforms and soils. Complemented

by the framework, TRCA's Restoration Opportunities Planning tool is a method to inventory feasible ecological restoration projects at the watershed sub-catchment scale that include SAR considerations.

Another example of a landscape level approach to ecological restoration and enhancements is TRCA's Toronto Waterfront Aquatic Habitat Restoration Strategy. This approach aims to maximize the ecological integrity of the Toronto Waterfront by identifying aquatic community potential, identifying limiting factors, evaluating opportunities and proposing actions to protect and enhance nearshore habitats, developing indices to evaluate success, and implementing projects to restore aquatic habitats across the waterfront; Aquatic SAR benefit from overall improvements to aquatic habitat.

Area of Focus 2: Listing Process and Protections for Species at Risk

Discussion Question:

What changes would improve the notification process of a new species being listed on the Species at Risk in Ontario List? (e.g., longer timelines before a species is listed.)

The automatic listing provision applies only to endangered and threatened species, many of which have been special concern or vulnerable prior to their up-listing. Providing longer timelines before a species is listed is counter to the government's goal of enabling positive outcomes for SAR. A method of informing the public that a species is being considered for listing as threatened or endangered is preferable over delaying protection for a species that has been identified as requiring such protection.

Discussion Question:

Should there be a different approach or alternative to automatic species and habitat protections? (e.g., longer transition periods or ministerial discretion on whether to apply, remove or temporarily delay protections for a threatened or endangered species, or its habitat.)

If ministerial discretion is used, it should be motivated by what the science has revealed as the level of need for protection and not by limiting encumbrance to land use planning processes. As an alternative to longer notice times or ministerial discretion, perhaps transition provisions could be established for automatic listings whereby if a planning application has reached a late stage milestone, the listing would not apply.

Discussion Question:

In what circumstances would a different approach to automatic species and habitat protections be appropriate? (e.g., there is significant intersection between a species or its habitat and human activities, complexity in addressing species threats, or where a species' habitat is not limiting.)

A circumstance where automatic habitat protections may not be appropriate is when loss of habitat is not the reason for the threat to the species, such as declining numbers based on a disease outbreak.

Discussion Question:

How can the process regarding assessment and classification of a species by the Committee on the Status of Species at Risk in Ontario be improved? (e.g., request an additional review and assessment in cases where there is emerging science or conflicting information.)

TRCA suggests that better and earlier communication by the Committee would be helpful to provide more certainty for all stakeholders. COSSARO is an independent body and should be basing all decisions on emerging science and already considering conflicting information so additional review and assessment would not be required.

Area of Focus 3: Species Recovery Policies and Habitat Regulations

Discussion Question:

In what circumstances would a species and/or Ontarians benefit from additional time for the development of the Government Response Statement? (e.g., enable extending the timeline for the Government Response Statement when needed, such as when recovery approaches for a species are complex or when additional engagement is required with businesses, Indigenous peoples, landowners and conservation groups.)

As there is already flexibility built into the timeline through the development of the recovery strategy, it does not seem that additional flexibility should be required at this secondary stage.

Discussion Question:

In what circumstances would a longer timeline improve the merit and relevance of conducting a review of progress towards protection and recovery? (e.g., for species where additional data is likely to be made available over a longer timeframe, or where stewardship actions are likely to be completed over a longer timeframe.)

Creating a longer timeline before conducting a review of progress does not seem to support the goal of enabling positive outcomes for SAR. Five years of data collection should allow researchers to assess the recovery strategy.

Discussion Question:

In what circumstances is the development of a habitat regulation warranted, or not warranted? (e.g., to improve certainty for businesses and others about the scope of habitat that is protected.)

Habitat regulations should be created to provide clarity and certainty for everyone. It is not clear when it would not be warranted as that would lead to less clarity. Habitat regulations could be improved as they can be far too detailed in their requirements. As a result, the requirements can impede their intended function. For example, the requirement for the use of double silt fencing on Redside Dace projects can cause significant disturbance within highly sensitive habitat. The use of an alternative product often performs better in such circumstances. A similar example using Redside Dace are site level prescriptions that can be too rigid, targeting habitat requirements for one species rather than considering habitat prescriptions that benefit the entire natural system.

Overall, the Province's development of recovery strategies could benefit from engaging with existing local forums such as TRCA's Regional Watershed Alliance (RWA). The RWA is a formal community-based committee that works to advance TRCA's Living City vision of sustainable communities, regional biodiversity and healthy rivers and shorelines through advocacy, knowledge sharing and collective action. For recovery strategies affecting TRCA's jurisdiction, consultation with RWA and similar forums would aid in ensuring the strategies' effective local implementation. This collaborative work would be an opportunity for integrating ESA requirements with other environmental initiatives in a given jurisdiction, achieving maximum impact.

Area of Focus 4: Authorization Process

Are there other approaches to authorizations that could enable applicants to take a more strategic or collaborative approach to address impacts to species at risk? (e.g., create a new authorization, such as a conservation agreement.)

What changes to authorization requirements would better enable economic development while providing positive outcomes and protections for species at risk? (e.g., simplify the requirements for a permit under s. 17(2)d, and exemptions set out by regulation.)

How can the needs of species at risk be met in a way that is more efficient for activities subject to other legislative or regulatory frameworks? (e.g., better enable meeting Endangered Species Act requirements in other approval processes.)

Providing adequate frontline staff and empowering them to provide feedback throughout the planning process will aid all questions noted here. Timely response and certainty would speed up all processes. This applies to identification of habitat, feedback on what works may be permitted and feedback on what Overall Benefit works would be required. Perhaps these requirements could be tied to specific milestones in the environmental assessment and planning processes. A proponent should be able to proceed through such processes with certainty. Wholesale changes at detailed design can cause significant delay and poor outcomes for the protected species and natural heritage system as a whole.

An extremely short timeline on assessing the form and success of implementation of the ESA for newly listed species would be exceedingly helpful. Deliberate documentation and sharing of information regarding the first few applications for a new species would give proponents and staff a clear understanding of what to expect through the permitting process. This would provide all parties more clarity on what to expect moving through the process including implementation on the ground. A critique within the first year of up-listing could aid those projects to be approved in year two and beyond.

Discussion Question:

What new authorization tools could help businesses achieve benefits for species at risk? (e.g., in lieu of activity-based requirements enable paying into a conservation fund dedicated to species at risk conservation, or allow conservation banking to enable addressing requirements for species at risk prior to activities.)

While complicated to implement, paying into a conservation fund dedicated to SAR conservation or conservation banking (e.g., DFO's habitat bank) could provide a more strategic approach to species protection than individual activity-based requirements. Under this scenario, land acquisition to protect habitat in perpetuity, or to implement large-scale habitat restoration activities, are likely not feasible conservation options.

If a fund or bank approach is not feasible, identification of Overall Benefit projects available within a given area would be helpful. The process would be quicker if a series of available projects (a catalogue) were provided to proponents. This would require efforts in advance by the Province and their partners; however, it would allow proponents to avoid having to scramble to find an appropriate project in their final push for a permit. Partner agencies such as conservation authorities (CAs) could be engaged to provide restoration opportunities and services to aid in the permitting process. CAs have demonstrated expertise and capacity in delivering restoration planning and implementation related to ESA.

Discussion Question:

Are there other approaches to authorizations that could enable applicants to take a more strategic or collaborative approach to address impacts to species at risk? (e.g., create a new authorization, such as a conservation agreement.)

Different levels of authorizations could be created where not all authorizations require ministerial approval. The requirement for this high level of approval seems to cause time delays during the permitting process.

Discussion Question:

What changes to authorization requirements would better enable economic development while providing positive outcomes and protections for species at risk? (e.g., simplify the requirements for a permit under s. 17(2)d, and exemptions set out by regulation.)

In TRCA's experience, the delay in receiving approval for an authorization is mainly related to the ability of the limited amount of personnel who work in this area to review and respond to applicants. Therefore, in order to better enable economic development, more staff responsible for reviewing plans and providing authorizations is required.

Discussion Question:

How can the needs of species at risk be met in a way that is more efficient for activities subject to other legislative or regulatory frameworks? (e.g., better enable meeting Endangered Species Act requirements in other approval processes.)

The government should ensure that reviews can happen as efficiently as possible and that the fewest number of required reviewers are used. Anyone who reviews plans for compliance with the ESA must be qualified to perform this review. Conservation authorities (CAs) with capacity could undertake this role as staff are likely already involved in the project through our roles in development planning and environmental assessment review. CAs could play a more prominent role in the application of the ESA through delegation by the Province, which could include habitat delineation, permit negotiation and issuance, timing window application and Overall Benefit Permit planning and implementation. CAs could also assist in the development of recovery strategy through experience, science and monitoring expertise.

Thank you once again for the opportunity to provide comments on this important initiative. TRCA would be pleased to discuss these and other opportunities for enhancing certainty and efficiencies in the development and infrastructure review processes where endangered species are concerned. Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact the undersigned.

Sincerely,



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Chief Executive Officer

BY E-MAIL

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