Public Input Co-ordinator

Species Conservation Policy Branch

Ministry of Natural Resources and Forestry

300 Water Street
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Peterborough ON K9J 3C7
Canada

January 20, 2019

**RE: Endangered Species Act 10 Year Review, ERO # 013-4143**

**Dear Public Input Co-ordinator:**

This letter is in response to the Ministry's request for comments on the 10-year review of the Endangered Species Act, posted on the ERO as # 013-4143.

I strongly support the goals identified by the Ministry in the Review document, namely:

- enabling positive outcomes for species at risk,

- considering modern and innovative approaches to achieve these outcomes, and

- considering ways to streamline and provide clarity for those who need to implement the Act.

My suggestions reflect what I learned as a practicing habitat biologist in Ontario for 40 years, and a member of COSSARO from 2011 to 2014.

In my opinion, the majority of the issues and challenges identified in the Review document are not a reflection of problems with the ESA itself. They are a direct result of COSSARO's seriously flawed, extremely liberal listing process that results in species being identified as "threatened with extinction" when they are still common. This is inconsistent with the purposes of the ESA. It results in extraordinary measures being unleashed and a huge administrative process for species that are still common, a situation that was not intended when the Act was developed. Below are a few examples of common species that were erroneously listed by COSSARO as "threatened" when still common. There may be more species in other taxa.

**Bank Swallow** - listed as "threatened" in Ontario in 2013 with 200,000 individuals because the population was "declining" rapidly. However, population size was estimated to be 409,000 in 2016 (Falconer et al. 2016), more than double the estimate only 3 years earlier in 2013. Ontario's recovery goal is 330,000, which is less than Ontario's current population. Why would COSSARO conclude that the observed population decline was enough to list the species as threatened with extinction when experts agree that "recovery" is less than the current population? Partners in Flight (PIF) estimated there are 7.7. million Bank Swallows in Canada & the USA[[1]](#footnote-1), and the species is globally secure ("common, widespread, and abundant") according to NatureServe[[2]](#footnote-2). Also, COSEWIC (2013) stated that the largest known concentration of the Bank Swallow in Canada is in southern Ontario.

**Barn Swallow** - listed as "threatened" in 2011 with a population of 350,000. The recovery strategy (Heagy et al. 2014) says it is "still common and widespread in much of Ontario". PIF estimated there are 41 million Barn Swallows in Canada & the USA. This means the species is more common in North America than the Black-capped Chickadee (39 million). NatureServe says it is globally secure ("common, widespread, and abundant"). Why would COSSARO list the Barn Swallow as "threatened with extinction" in Ontario if experts agree it is still common in much of Ontario?

**Eastern Meadowlark** - listed as "threatened" in 2012 with a population of 130,000 in Ontario according to the recovery strategy (McCracken et al. 2013), 24 million in Canada & the USA (PIF), and the species is globally secure ("common, widespread, and abundant") according to NatureServe.

**Bobolink** - listed as "threatened" in 2010 with about 800,000 in Ontario, 1.8 to 2.2 million in Canada (McCracken et al. 2013), and 9.7 million in Canada & the USA (PIF). The species was identified as globally secure by NatureServe ("common, widespread, and abundant"). Ontario's "recovery goal" is 90% of the current population size (less than it is today; McCracken et al. 2013). "Recovering" a species to a lower level than it was at when first listed suggests that the reasons for listing it in the first place were invalid or somehow problematic.

To put the above species into context with other birds, the Ontario Breeding Bird Atlas (Cadman et al. 2007) estimated there were 1 million American Crows in Ontario in 2001-2005 and described the Crow was "an abundant breeder south of the Precambrian Shield" in Ontario. The current population of the Bank Swallow is at more than 40% of the level of the Crow, and the Bobolink was at 80% of the Crow, levels that would seem to be too high to qualify these birds as "threatened with extinction" in Ontario. The OBBA also estimated that there were fewer than 50,000 Bluebirds, Kingfishers, Black-billed Cuckoos, Rufous-sided towhees and Mockingbirds in Ontario. All are much less common than the species listed above but none is even listed as "Special Concern" in Ontario. It defies logic that the listed species should be considered "threatened with extinction" when their populations are so much larger than species that are not even listed at all.

The implications of erroneously or prematurely listing a common species as "threatened" are enormous. For example, the General Habitat Description for the Barn Swallow defines habitat, which is subject to restrictions on both public and private property, as the area within 200 meters of the nest (an area covering 12.6 hectares). With 350,000 barn swallows currently in Ontario, the area potentially subject to restrictions and permitting is very large. Assuming there are 175,000 pairs and 4 nests per location, the area affected could be 551,250 hectares. If the species was truly rare and at risk of extinction as required by the ESA, the area affected would be a small fraction of that, and the implications to society would be that much less.

Based on my experience as a member of COSSARO, I believe the reason why common species have been erroneously listed as "threatened" is that the committee has focused on "population decline" as a key criterion for some species with no consideration for residual population size. Also, COSSARO's threshold for listing a species as "threatened" based on decline is 30% or more over 10 years; this threshold has clearly been too low to differentiate still common species from those that are seriously at risk of extirpation. This is significantly out of synch with the way the IUCN classifies species (see Figure 1 below) and is inconsistent with the purpose of Ontario's ESA.

Some possible remedies are:

* putting a declining species that is still common on a  **"watch list" and performing a new status assessment** on a specified schedule (e.g., every 5 years)
* identifying a **population threshold** such that if COSSARO's evaluation suggests a species could be listed as "threatened" based on its rate of decline but its residual population exceeds the threshold, the species would be listed as "special concern" instead, and its status re-assessed on a defined schedule. The population size threshold could be COSEWIC's criterion for "a small and declining number of mature individuals" (10,000) or their criterion for "very small or restricted Canadian population" (1,000), or some multiple of that. Even 4 or 5 times these thresholds would seem like reasonable buffers to help to distinguish still common species from those on the brink of extinction.
* **increasing the lower threshold** for a declining species that qualifies as "threatened" from 30% to 50% to be consistent with the IUCN's 3 categories of risk and their criteria (see Figure 1 below).

It is imperative for COSSARO to revise the criteria they use for species assessments to ensure that the listing process will achieve the purposes of the ESA by distinguishing species that are truly at a high risk of extinction or extirpation from those that are still relatively common and widespread.



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**Figure 1.** The IUCN, COSEWIC, and COSSARO all identify 3 categories for species at risk of extinction or extirpation. However, the IUCN's names are different, and IUCN's thresholds are much higher (e.g., 80% population decline for the highest risk category versus COSSARO's 50% decline). COSSARO (and COSEWIC) have shifted the categories and thresholds so the names match with those of the IUCN (both have an "endangered" category), but the intent does not. The degree of risk implied in the IUCN"s "endangered" category would seem to be equivalent to COSEWIC & COSSARO's category for "threatened". IUCN has a category of "critically endangered", which would be functionally equivalent to COSSARO's "endangered". The result is that COSSARO's thresholds are much lower than they are for the IUCN, and species that would be listed under a lower category of risk by IUCN are elevated by COSSARO.



1. Partners in Flight (Rosenberg et al. 2016) [↑](#footnote-ref-1)
2. NatureServe G5 rating; www.natureserve.org [↑](#footnote-ref-2)