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RE: ERO Number 013-4143 - 10th Year Review of Ontario's Endangered Species Act: Discussion Paper

Pursuant to the review of the Discussion Paper, titled 10th Year Review of Ontario's Endangered Species Act, the following comments from the Essex Region Conservation Authority (ERCA) are provided for your information and consideration.

ERCA supports the review of the Endangered Species Act (ESA) and the opportunity to modernize both the legislation and the associated tools and guidelines to support its implementation. We also support opportunities to undertake landscape and ecosystem-based approaches to Species at Risk (SAR) recovery where doing so would result in better outcomes for the species, and enhanced integration between natural heritage requirements of the Provincial Policy Statement (PPS), Planning Act and ESA processes.

General, Introductory Comments

As stated within the introductory section of the Discussion Paper, 243 species are listed on the Species at Risk in Ontario List due to threats such as habitat loss, pollution, invasive species, climate change and disease. Habitat loss is listed first as it is the primary contributor to a species becoming "at risk" of extirpation or extinction. To that end, opportunities, through the Act, to support protection and management of habitat should be encouraged. This could include greater use of an ecosystem management approach, multi-species recovery plans, and stronger requirements to develop Natural Heritage System Strategies/Plans as part of Official Planning and Watershed Planning processes. Stronger links between the ESA and planning processes will reduce the concerns about time, cost and barriers to development in that there would be clarity around identified 'developable' areas.

In general, the Discussion Paper appears to promote the narrative that the Endangered Species Act is just another burdensome, bureaucratic process standing in the way of economic development. For example, in its attempt to describe the role of the SARPAC, it generalizes the various areas this committee advises the Minister on, neglecting to mention the role of the precautionary principle, regulations and permitting, but instead focusing on highlighting "approaches that may be used... to promote sustainable social and economic activities". The Endangered Species Act's primary purpose is not to promote development, but to protect species at risk.

As clearly stated in the Discussion Paper, “the government is committed to ensuring that the Endangered Species Act provides stringent protections for species at risk...” However, it states later that “the Act has been criticized for being... time consuming and costly for applicants, and for creating barriers to economic development”. Any modernization of the program must clearly demonstrate the government’s stated commitment to protect species at risk. Development approvals should not be granted unless it can be demonstrated, that all species at risk and their habitats are protected from harm. Ideally, lands where species at risk requirements may be challenging to meet should be designated (for protection) in Official Plans to further reduce conflict between important habitats and development. It should also be recognized that natural spaces and habitats are important drivers of community development, assisting with the prevention of flooding, enhancing human health and well-being and helping to mitigate impacts of severe weather events and changing weather patterns. So, while it may be perceived as a loss of development opportunities, the economic and community benefits of maintaining and protecting natural habitats may actually outweigh this perceived impact.

One of the desired outcomes of the proposed changes to the Endangered Species Act is to “ensure species assessments are based on up-to-date science”. This up-to-date science should include accurate population estimates based on results from rigorous, thorough monitoring programs, and not “best available scientific and Traditional Ecological Knowledge”. In many cases, assessments made by COSSARO are simply conjecture based upon very little up-to-date, empirical monitoring data. There may be opportunities to review potential improvements from the federal COSEWIC review process or other provincial equivalent processes to inform a review of best practices.

Finally, with respect to streamlining processes and providing clarity for those who need to implement the Act, we agree that detailed guidance, or implementation direction documents, are needed to assist provincial staff and to advise clients/consultants on the processes and approaches to implementing the Act appropriately.

Specific comments related to the “challenges” and “discussion questions” within the “areas of focus”

AREA OF FOCUS 1 – LANDSCAPE APPROACHES

Challenge or Discussion Question	Comments
<p>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.)</p>	<p>In Ontario, the first nationally recognized ecosystem-based recovery strategy was approved for the Sydenham River. This strategy addressed federally listed SAR through a watershed-based approach. The idea was to involve stakeholders and partners in the development of a geographic area that made ecological sense for the biological needs of the species but also took into account the reality of the implementation needs that would be required to benefit the species at risk.</p>



Challenge or Discussion Question

Comments

In 2002, the USFWS conducted research on the benefits and drawbacks of multi species recovery plans. This research, and assessments completed to date, should be used to inform those circumstances where a strategic approach could be used while also ensuring that single species recovery needs are fully considered.

<https://naturecanada.ca/news/blog/multi-species-plans-a-new-approach-to-species-recovery-in-canada/>

ERCA fully supports an ecosystem management approach. Examples include managing tallgrass ecosystems to inhibit woody succession, through the application of prescribed fire or by mechanical means (i.e., occasional mowing), or the manipulation of water levels within wetland impoundment areas. In both examples, a broad landscape level approach is taken to promote optimal native biodiversity at the ecosystem level. With a healthy ecosystem (ample, diverse vegetation communities) comes a healthy, diverse and stable assemblage of wildlife populations. In most cases, species at risk recovery focuses on increasing the quantity and quality of habitat and not so much on unique species-specific needs.

Approaches taken by the federal government to address multiple species at risk objectives and priority habitats could be modelled and adopted provincially. Ecosystem- and watershed-based recovery strategies are in place for several watersheds (Grand, Thames, Ausable, Sydenham, Maitland, and Essex-Erie) that address multiple species at risk threats and objectives in a comprehensive manner. In addition, addressing species at risk recovery needs for similar taxonomic groups can enable species at risk recovery more effectively and efficiently (e.g., mussel recovery plans, fish-based recovery plans, tallgrass ecosystem recovery, etc.). ESA and SARA requirements should be modified to reflect recommendations made through multi-species recovery strategies.

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 following tools or processes could also be recognized under the Endangered Species Act as supporting the management of species at risk habitat:

- application of prescribed fire for the management of tallgrass ecosystems,
- implementation of water level control within impounded wetland areas to manage wetland succession and vegetation diversity, and
- invasive species control techniques including application of herbicides and/or mechanical control.

AREA OF FOCUS 2 – LISTING PROCESS AND PROTECTIONS FOR SPECIES AT RISK

Challenge or Discussion Question	Comments
<p>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.)</p>	<p>ERCA does concur that there is a lack of public awareness of species at risk in Ontario, whether this is for new or existing species, which are listed on the Species at Risk in Ontario List. A more comprehensive and effective notification process should be implemented to ensure public awareness of species which are currently protected under the Ontario Endangered Species Act, as well as new species which are proposed to be listed under the Act.</p> <p>We do not support extending the timelines for the notification process if this creates unnecessary delays for the automatic protection of species and their habitats. Consideration should be given to immediately posting the decisions of COSSARO on the Environmental Registry.</p>
<p>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.)</p>	<p>No, a different approach should not be adopted, as this would not be in keeping with the precautionary principle of the Act, and the government’s commitment to ensure that the Endangered Species Act provides stringent protections for species at risk. The high uncertainty and costly impacts to businesses and the public should not be relevant concerns with respect to ensuring the protection of species at risk.</p>



Challenge or Discussion Question

Comments

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.)

The complexity in addressing species threats should not be a valid consideration on whether or not the species or its habitat should be protected. If the complexities are high then mitigation of impacts or demonstration of overall benefit may not be able to be achieved. Therefore, the species and its habitat should be protected outright. Not being able to address threats to species, due to complexity, is no excuse for protecting the species and its habitat.

Species at risk recovery strategies are written by species-specific experts who identify what is limiting with respect to recovery of the species and what the current threats are to the species and its habitat. All recovery strategies and plans should be based on rigorous scientific data. Habitat regulations are put in place where a species' habitat must be protected. The goal is to ensure there is adequate quantity and quality of habitat to sustain populations of species at levels to prevent them from being extirpated or extinct.

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.)

Species assessments should be based on up-to-date science including accurate population estimates based on results from rigorous, thorough monitoring programs, and not "best available scientific and Traditional Ecological Knowledge". In many cases, assessments made by COSSARO are based upon very little up-to-date empirical monitoring data. Species should not be listed until there is adequate data to document current population levels and trends.

Having an effective provincial science and monitoring program in place is of paramount importance to increasing data ability in COSSARO decision making. The province should support inventory efforts through the funding of academic research and core MNRF science activities that result in targeted data collection.

The province could mandate the submission of data from proponents conducting provincial Environmental Assessments, Planning Act Environmental Impact Assessments, species at risk and Endangered Species Act authorizations, etc. Data should be submitted to MNRF offices, the NHIC, and respective conservation authorities to inform better decision-making.



AREA OF FOCUS 3 – SPECIES RECOVERY POLICIES AND HABITAT REGULATIONS

Challenge or Discussion Question	Comments
<p>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.)</p>	<p>Time limits to develop Government Response Statements, as well as conducting a review of progress, are designed to ensure that the government continues to implement and monitor recovery progress for species at risk. ERCA does concur that sufficient time should be given in order to develop a Government Response Statement that has included an appropriate amount of consultation and input from stakeholders. However, it should be noted that Government Response Statements may be modified if new information becomes available. Extensive delays may result in a lack of appropriate action to ensure protection of the species in both the short-term and long-term.</p>
<p>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.)</p>	<p>Similar comments to the above relate to the required review of progress. The review should be conducted when sufficient time has passed in order to obtain valid data on species responses to recovery actions. Sometimes this may take many years. However, the requirement to review progress and monitor should remain as this is a mechanism by which successful recovery of a species can be demonstrated.</p>
<p>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.)</p>	<p>Species-specific habitat regulations are warranted when clarity is required to define the boundaries or detailed habitat characteristics of the species, which may not be captured within general habitat descriptions. When a habitat regulation is in place, it is most often very specific to the species in question, focused on the geographic range of the species and its detailed requirements. The habitat regulation process also includes a public consultation component.</p>

AREA OF FOCUS 4 – AUTHORIZATION PROCESSES

Challenge or Discussion Question	Comments
<p>Authorization processes can create significant administrative burdens and delays, in particular for applicants filing numerous authorizations or registrations under the rules-in-regulations, for routine activities.</p>	<p>Any activity, routine or not, has the potential to adversely affect species at risk. Perhaps these 'routine activities' should take place elsewhere, outside of species at risk habitat. This would significantly reduce the administrative burden and delays upon applicants.</p>
<p>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.)</p>	<p>Conservation banking may be considered if the area identified as 'the bank' is secured, fully restored and functional, and shown to support populations of the affected species at risk, prior to the original habitat being destroyed by development. In effect, the existing population is essentially translocated to areas functioning as 'the bank' with no temporal lag between habitat destruction and full habitat functionality of the bank. Planning authorities should have consideration for the location and long-term treatment of conservation banking locations in their natural heritage systems planning processes. Watershed plans, long-term environmental assessments and natural heritage systems have unique potential to support effective authorization tools such as conservation banking.</p> <p>Cash-in-lieu can be effective if there are provisions put into place to ensure that the timing, size, function and effectiveness of the implementation actions are completed to the satisfaction of the approval authority (i.e., Planning Act PPS 2.1.7 and/or ESA).</p>

Challenge or Discussion Question	Comments
<p>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.)</p>	<p>No, a different approach should not be adopted as this would not be in keeping with the precautionary principle of the Act, and the government’s commitment to ensure that the Endangered Species Act provides stringent protections for species at risk. The authorization process requirements ensure that species at risk are in fact protected from harm.</p> <p>Regulations under the ESA and requirements of PPS Policy 2.1.7 under the Planning Act should be clarified and harmonized. A streamlined and expedited review and approval process for ESA approvals is needed where the lands are the subject of a Planning Act application, and in particular applications that are required to fulfil PPS policy 2.1.7. Municipal Planners should be more involved in the process to identify potential solutions to regulatory barriers, such as linking priority lands suitable for compensation, enabling policies to support ESA authorizations, and in identifying suitable locations for long-term natural heritage protection.</p>
<p>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.)</p>	<p>No changes to authorization requirements should be made. The government’s stated commitment is to ensure that the Endangered Species Act provides stringent protections for species at risk. Any mechanism that does not fully consider the protection of species at risk does not meet this commitment. Development proposals, which will result in significant social or economic benefit to Ontario, still need to ensure stringent protections for species at risk.</p> <p>There are opportunities to provide additional guidance and targeted training to expert proponents and consultants on the authorization requirements to ensure a level playing field is in place for species at risk across their range. We commend the province for the creation of policy interpretation guidance materials (e.g. “Categorizing and Protecting Habitat under the Endangered Species Act, February 2012”; Endangered Species Act Submission Standards for Activity Review and 17(2)(c) Overall Benefit Permits, February 2012; Application for an overall benefit permit under clause 17(2)(c) of the Endangered Species Act, etc.). Additional guidance materials and standardized forms for various instruments and authorization tools will clarify submission requirements for proponents.</p>



Challenge or Discussion Question	Comments
<p>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.)</p>	<p>Integration between the natural heritage requirements of the PPS (Planning Act) and ESA processes could be improved upon. In some jurisdictions in the province, the processes are not appropriately linked together. Criticism has been levied that the proponent-driven ESA authorization process excludes considerations of the Planning Act land use planning process. The land use planning authority should be given the opportunity to provide more input which will result in greater beneficial outcomes (i.e., natural heritage system planning; sub-watershed planning direction).</p> <p>Other processes do not consider the intricate and specific needs of species at risk adequately enough to be a surrogate for the Endangered Species Act authorization process. Stewardship Agreements may be authorized for activities whose purpose is to assist in the protection or recovery of species. Any other activities, which by their very nature are not intended to assist in the protection or recovery of species, but rather result in the disturbance or destruction of species at risk habitat, should only proceed if all impacts to species at risk and their habitats have been fully mitigated.</p>
<p>In what circumstances would enhanced inspection and compliance powers be warranted? (e.g., regulations.)</p>	<p>In all circumstances, consistent, effective enforcement of the regulations should be the ultimate goal to ensure stringent protection for species at risk. It is recommended that the government increase the capacity of enforcement staff at the MNRF, in order to ensure compliance with the existing regulations.</p>

We would be pleased to discuss any of the above comments at your convenience. Please do not hesitate to contact our office if you should have any questions or require any additional information.

Thank you for the opportunity to comment on the Discussion Paper: 10th Year Review of Ontario's Endangered Species Act.

Sincerely,



Richard Wyma
General Manager/Secretary-Treasurer

