



## **Georgian Bay Association (GBA) submission on the 10th Year Review of Ontario's Endangered Species Act Discussion Paper**

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*GBA is pleased to respond to the call for a review of this important piece of legislation, which was recognized widely for its comprehensive nature when first enacted in 2007.*

*GBA is an umbrella organization for 19 community associations representing ~3,000 families. We have been advocating on behalf of our land-owning members for over 100 years. Our mandate is to work with our water-based communities and other stakeholders to ensure the careful stewardship of the greater Georgian Bay environment.*

*GBA and our member associations work closely with our partners: Georgian Bay Forever, Georgian Bay Land Trust, Georgian Bay Biosphere Reserve and the Eastern Georgian Bay Stewardship Council (collectively the GB5) to protect the Georgian Bay ecosystem along the east and north shores of Georgian Bay (referred to in this submission as the "Georgian Bay Biosphere"\*).*

\* The actual UNESCO designated biosphere reserve does not extend to the northern shore, but the littoral zone that encompasses the 35,000 islands of Georgian Bay, its shoreline and watershed share the same ecological **features** and supports the range of species at risk (SARs) referenced herein.

**GBA's primary concerns regarding the review of the Species at Risk Act are that changes do not compromise the protection of SARs by relaxing regulations to favour industry and development, but instead focus on improving the Act and its regulations to assist SAR recovery, and deal with the shortfalls in implementation that have been evident since enactment in 1971.**

### **ASSUMPTIONS**

- **This submission is based upon the following assumptions:** The aim of the review is to retain the Species at Risk Act, support its implementation, and enable the primary goal: "positive outcomes for SARs", while recognizing that there may be instances where public interests take precedence. In such cases the impact on SARs and their habitat(s) must be minimized.
- Any impediments to fulfilling the mandate of the Act should be clearly defined and appropriate resources and funding should be directed to meet such challenges.
- The Act, as currently written and with the appropriate resources applied, can accomplish the primary goal.

## **BACKGROUND**

### **1. The Wider Approach**

There are two methodologies to protecting and recovering SARs in Ontario set out in the Act: a case-by-case or species-specific approach; and a landscape approach. It has been suggested in the Draft Discussion Paper that the landscape approach may in some cases replace the case-by-case or species-specific policy approach. The landscape approach is well understood by the Ministry of the Environment Conservation & Parks (MECP) and is encompassed in their ecological studies. It permits a “multi-species” approach that includes a co-ordinated response for recovery of species with an overlapping range that are currently experiencing habitat loss and degradation.

The Georgian Bay Biosphere is a complex inter-connected ecosystem providing habitat for a vast variety of fish, plants and animals. Over the years, GB5 members, volunteers and other NGO’s, have worked extensively on projects within the Georgian Bay Biosphere identifying and monitoring SARs, determining where these species are doing well and where they are struggling, and producing comprehensive inventories of plants, forest cover and animals. This work has contributed to several research projects.

A positive example of applying a wider or landscape approach to the Georgian Bay Biosphere was the provincial decision to include, in the construction of the Toronto/Sudbury highway corridor, design features which mitigate some of the adverse effects that a project of this scale has on natural wildlife and SARs. These design features included: providing accessible passage ways such as bridges and tunnels for mammals to move safely across the road; adding fencing to deter animals from crossing the road and steer them towards the passage ways; and maintenance and/or enhancement of habitat bordering the roadway.

While the landscape approach has worked well in the example given above, it should not replace instances where using a more defined approach with clear boundaries and identification of individual SARs would be more appropriate.

### **2. Listing of Species at Risk**

According to the Act, COSSARO has the responsibility of maintaining a list of plant and animal SARs in Ontario. This panel includes experts that use the best available scientific and traditional aboriginal knowledge. With these resources and access to evidence-based science, including the possibility of including public input into decisions regarding species protection or exemptions, there should not be a need for Ministerial discretion with regard to which species should be on this list.

### **3. Species Recovery**

The Act requires the province to identify threatened SARs and the actions that will be taken to support the recovery of each species endangered or threatened. Within 9 months, according to the Act, a detailed response is required. The discussion paper is suggesting an extension of the 9 months, or possibly removing legislated timelines for planning and reporting. Any extension of the 9-month requirement would require a detailed explanation as to why this extension would be needed. As reported in the discussion paper, recovery strategies have been delayed and are already overdue for more than 40 species listed as SARs.

No explanation has been provided for the causes of these delays and why an extension of the requirement for a detailed response would prevent the delays. Not having firm timelines raises two possibilities: either nothing gets done; or the timelines will get even longer unless more resources are devoted to this work. Opening this debate up to public scrutiny, by allowing NGO’s, biologists, community associations and others to participate,

could facilitate reaching workable timelines that would allow proper evaluations and timely recovery strategies.

A rapid response and reporting on any SARs listing will not only serve to implement the recovery strategy, but will also decrease the costs of that implementation. The longer the delay, the more difficult it will become to reverse the concerning trend, and the more expensive it will be to apply remediation strategies. Early intervention therefore saves money.

Recovery efforts must be monitored and evaluated as to the progress being made to re-establish or increase the population size of the species. While the species designation determines the extent of the problem to be solved, the recovery strategy is the treatment. Without treatment, the problem persists and will worsen if not corrected.

#### **4. Authorization Process and Exemptions**

The Exemption provision, intended to be used selectively and approved only after evidence has been established that SARs are not affected, has been the rule rather than the exception. As of October 2017, there were more than 2,000 registered activities exempted from Environmental Site Assessment (ESA) prohibitions against harm to SARs and their habitat, for which no information has been publicly released. Approved in 2013, exemptions were and continue to be allowed for forestry, hydro and wind farms, mining and commercial development.

As part of Ontario's current "open for business" campaign there will likely be projects deemed appropriate for exemption due to their promise of large job numbers or significant economic value to individual communities. While such projects may qualify for an "Overall Benefit Permit", there must be a balance between the needs of the community and those of the environment. Otherwise such projects will inevitably lead to large-scale species loss and irreparable damage to the sensitive habitat and biodiversity in Ontario.

## **CONCLUSION**

When the forerunner of the Species at Risk Act was enacted in 1971, the rules and regulations, while not perfect, were sound and provided an excellent start to protecting SARs in Ontario. The current review of the Endangered Species Act, 2007, includes making the Act more responsive to time constraints and addressing the objections of industry that the Act and its regulations are too rigorous. While the regulations are reasonable and effective in protecting endangered species and their habitats, it is the implementation of the regulations, not the Act itself, that requires improvement. Improvements in the Act and implementing the regulations should not include:

- using non-transparent ministerial discretion to provide exemptions from site assessments for projects;
- removing legislated timelines for reporting;
- allowing proponents to pay into a conservation fund in lieu of meeting legislated requirements; or
- simplifying the regulations in a manner that reduces protections for SARs or the clarity of the regulations.

## RECOMMENDATIONS

*Therefore, GBA recommends that any changes made to the Act and its regulations must:*

- *Prioritize the protection of SARs and their habitats while being sensitive to the needs of local communities.*
- *Continue to provide support for not-for-profit organizations conducting research on SARs' habitats, and encourage input from local associations working at the ground level to collect valuable data at a very low cost.*
- *Provide training and resources to local communities that can offer local knowledge of SARs and make a positive contribution to habitat enhancement.*
- *Consider ways to streamline and provide clarity for those who implement the Act, including giving authority to enforcement officers to inspect exempted activities to ensure compliance with legal requirements.*
- *Establish a transparently communicated and enforceable process to follow when an exemption is sought and a closely monitored process to follow when supporting a SAR with a recovery strategy.*

*With regard to the sections above, GBA also recommends:*

1. *The Wider Approach*      *Both the landscape and the case-by-case or species-specific approach have their place in the Act and no change to the law in this respect is needed.*
2. *Listing of Species at Risk*      *Decisions on listing of SARs should not be driven by political expediency but based on scientific data.*
3. *Species Recovery*      *The 9-month requirement to produce Government Response Statements should remain a requirement under the Act. To support that goal, adequate government resources (both funding and staffing) should be made available and NGO's, biologists and community associations, including Indigenous groups, should be able to participate and add their knowledge to the process.*
4. *Authorization Process and Exemptions*
  - a) *Proponents of harmful activities should not be allowed to simply pay into a conservation fund but should be obligated to mitigate any harmful impacts on SARs and their habitats.*
  - b) *Overall Benefit Permits must: ensure transparency; apply scientific and historical data to evaluate the effects of the project on SARs; and identify and implement the remedial steps that will be taken to safeguard SARs and their habitat.*
  - c) *The exemptions for the forestry, hydro, mining and commercial development industries should include requirements for an action plan to protect SARs and preserve their habitat to the greatest extent possible, and steps must be taken to ensure that such plans are implemented.*