# Endangered Species Act Review Comments

**Area of Focus 1 – Landscape Approaches**

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| **Challenges** | **Discussion Questions** | **Stantec Input** |
| The case-by-case and species-specific policy approach to implementing the Endangered Species Act can sometimes limit the ability to achieve positive outcomes for species at risk. More broadly, protection and recovery approaches for individual species can limit or conflict with one another. For certain species or habitats, the ability to take a more strategic approach maybe preferred. | 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.) | The current Endangered Species Act legislation allows for a multi-species or ecosystem/landscape approach. For example, the caribou recovery documents take a landscape approach to assessing cumulative impacts. However, there appear to be very few other examples of the MNRF using a multi-species or landscape approach.  A landscape approach could be beneficial for species where habitat is limiting; multiple habitat types are required at different life phases (e.g., migration/dispersal routes), and/or for species that have low site fidelity and high annual fluctuations in population numbers. For example, multiple grassland species at risk may be present within a region (e.g. bobolink, meadowlark, short-eared owl, etc.) and may be dependent on the amount of habitat available. Direct habitat compensation to areas elsewhere in the region could result in the creation of larger patches of grassland habitat, which would benefit multiple species and likely support larger populations. Habitat targets (size, location, configuration) could be set at a landscape scale (Site Region, planning area or watershed). Proponents of site-specific applications would not have the capacity to conduct these analyses and could not bear the costs of landscape analysis, so the responsibility would fall to the Ministry or to the scientific community. (e.g, NCC)  Conversely, destruction of habitat should not be allowed for species with small home ranges, specific habitat requirements, and high site fidelity (e.g. herptile SAR) where they would not benefit from habitat compensation and overall benefit is not possible. It may benefit conservation of ESA protected species to have a habitat category that indicates overall benefit is not possible to protect the most sensitive habitats. For example, if a relatively large portion of the provincial population of a species at risk is concentrated in a localized area mitigation and compensations may not be able to offset potential impacts to the species or habitat; particularly for sensitive features, such as overwintering or breeding features.  A different approach may be needed for species with small populations or specialized habitat requirements versus species that are showing long-term declines but are still fairly widespread. |
| For species that depend on habitat across wide ranges, a landscape approach that enables planning and authorizing activities at a broad scale may be preferred. | 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? | This challenge could be addressed through improved linkages between recovery of endangered/threatened species and planning initiatives.  In some cases, the protection of habitats such as hay fields (for Bobolink/ Eastern Meadowlark), and structures for endangered bats has inadvertently resulted in the elimination of these habitat features to avoid ESA regulation. The Ministry may want to consider leniency or stewardship incentives to promote retention of these features. Stewardship agreements are part of the Act, but this tool has not been implemented. |

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

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| **Challenges** | **Discussion Questions** | **Stantec Input** |
| There is not enough public notice before a new species is automatically listed on the Species at Risk in Ontario List. | 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.) | Improved outreach and communication is needed with the public and stakeholders from COSSARO. The species that are coming up for assessment are usually known in advance, but this is not being communicated well. This would improve the transparency of the process. The COSSARO report should be made public earlier in the process. There is often a significant delay (a year or more) between when the COSSSARO decisions are made and species are added to the SARO list, but reports are only made public 30 days before species at added to the list. |
| In some cases, automatic species and habitat protections can contribute to high uncertainty and costly impacts to businesses and the public. | 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.) | Currently, MNRF will not start the permitting process for newly listed species until the day the species is officially added to the SARO list, which results in significant delays to projects that are late in their approval process. We recommend an approach that allows for a review (i.e. IGF) and the initiation of the permitting process for species that are likely to be added to the SARO list. This would allow timely authorization to be in place the species is listed.  Another suggestion is that the Ministry be empowered to issue a Letter of Advice that would meet the intent of the ESA in the period prior to new species being added to the SARO list to avoid unnecessary delays. |
| 1. In some cases, the information around the assessment and classification of a species as threatened or endangered by the independent Committee on the Status of Species at Risk in Ontario is not transparent enough. | 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.) | COSSARO and the Ministry need to better communicate the reasons that species are being listed. Stakeholders and the general public have the perception that it is not a clear and transparent process.  The Ministry may also want to consider taking a different approach for species that are undergoing long-term declines but are still fairly widespread. Further, there are species that are classified as Threatened or Endangered for which loss of habitat is not a threat or a driving factor in the species decline. For example, Myotis bats and Butternut at risk due to disease, so habitat protection and compensation may have little or no impact on species recovery. |
|  | How can the process regarding assessment and classification of 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.) | The ESA already grants the Minister the right to request a review of a listing decision. It is important to maintain an independent body of experts to recommend the listing of species. |

**Area of Focus 3 – Species Recovery Policies and Habitat Regulations**

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| **Challenges** | **Discussion Questions** | **Stantec Input** |
| In some cases, the time limit of nine months to develop the Government Response Statement for an endangered or threatened species is too short, and there is no option under the Act to extend this timeline when needed. | 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.) | Timelines are important and if the Ministry is facing challenges with meeting the timeline, then further resources need to be allocated. The science on species recovery almost always contains unknowns. The Ministry must accept that there are some unknowns but still proceed with protecting endangered and threatened species and their habitats, following the intention of the Act. |
| In many cases, conducting a review of progress towards the protection and recovery of a species within five years of the Government Response Statement is too soon. | 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.) | The Ministry should be investing in ongoing monitoring of the effectiveness of the Act. Review of Government Response Statements and updates with new information every five years seems like a reasonable time frame. |
| The development of a habitat regulation is not needed for each species that is endangered and threatened since general habitat protection applies and can be clarified through the use of general habitat descriptions. | 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.) | General habitat descriptions have replaced habitat regulations for most species. However, proponents are not being provided with timely guidance on identifying and delineating habitat for species at risk and advice varies by District and among Ministry Biologists. This leads to uncertainly in project approvals and requirements. For example, provincial guidance on habitat for bat species at risk is not yet available, despite these species being listed over 6 years ago.  There is strong evidence that strong habitat protection has positive impacts on species recovery (for those species where loss of habitat is contributing to population decline), so the Ministry needs to provide clear and consistent information and commit to developing habitat regulations. |

**Area of Focus 4 – Authorization Processes**

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| **Challenge** | **Discussion Question** | **Stantec Input** |
| 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. | 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.) | Consider use of provincial wide “compensation banks” to achieve overall benefit requirements of 17 (2)c permits. Currently, some of the bigger objectives in Recovery Strategies or GRS are not achievable under a single 17 (2)c permit. However, if there was an ability for several proponents to contribute to an overall benefit bank, these bigger objectives could be met, leading to a greater benefit for individual species. Such a bank would not necessarily need to be government owned (it could be with a third party such as ENGOS or academic institutes). However, we believe MECP leadership is required to initiate and oversee such banks / programs. If the Ministry implements the use of compensation banks, there must be clear guidance on when and where it can be used. It must not be used for species with small population sizes and very specific habitat requirements, which cannot be recreated elsewhere on the landscape.  The forms currently used for ESA authorizations (i.e. IGF, AAF, CPAF) need reworking. For example, PDF’s are not very user friendly. Information is repetitive between forms, with a small change in one form causing a cascading series of changes in all forms. IGF could consider avoidance measures to be taken into consideration if an authorization is required (having to wait for the AAF stage causes un-needed delays).  Timelines for a permit (6 months +) can cause delays to projects. Two time periods that take the longest, where improvements could be made, include: (1) more staffing at the initial, application review stage and (2) faster and more efficient ministerial sign off.  Within MNRF, there is a culture of staff turnover, with staff being encouraged to move on to different roles to advance their careers. This leads to delays and uncertainly in the permitting process. New staff are less familiar with permitting requirements and processes and not familiar with the history of projects. As administration of the ESA moves from MNRF to MECP, we recommend a focus and incentives to acquire and retain the best qualified management biologists for this role.  It is a highly important role to obtain project approvals in Ontario and a role that appears to have been undervalued to date.  The Ministry should also consider dedicating staff to pre-consultation so that ESA issues, processes and timelines are identified (and documented) at project onset. This would improve efficiencies down the line. |
| The requirements that applicants must fulfill to obtain an authorization can be extensive, creating barriers to economic development (e.g., in some cases achieving an overall benefit to a species as required under a s.17(2)(c) permit can be long, onerous, and unpredictable). | 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.) | **Species Specific Considerations**  We recommend that the Ministry develop standard mitigation measures for frequently encountered species; species that use anthropogenically created habitats; and species for which habitat loss is likely not a factor limiting the recovery of the species (e.g., Bank Swallow, endangered bats).  Endangered bats are very wide spread in southern Ontario and are present on most properties. An exemption regulation under Section 23 of O.Reg 242/08 is recommended. Specifically, for damage or destruction of summer roost / foraging habitat, provided that mitigation (i.e. timing windows) are implemented.  The Ministry also needs a strategy to address planted species at risk such as Kentucky Coffee-tree, Eastern Flowering Dogwood and Dense Blazing-star. In our experience, the Ministry has dealt with authorizations for planted occurrences on a case by case basis. In some cases, the has MNRF required overall benefit permits for occurrences that were planted in manicured areas outside of their native range. Origin of the material should also be considered because exotic genotypes could dilute native genetics to the determent of species at risk. A standard approach for planted species is recommended.  **Project Specific Considerations**  Large projects and/or routine maintenance projects could be directed under a memorandum of understanding (MOU) or similar agreement. The agreement could include regulated points of consultation, reporting and adjustment so that it operates as indented. Industry has similar MOU’s for other environmental policy that could be used as a template. An MOU would also present opportunities to integrate with Landscape Approaches discusses in Focus Area 1. |
| The Act adds duplication and delay for activities that are subject to other legislative or regulatory frameworks, like forestry under Ontario’s Crown Forest Sustainability Act. | 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.) | Consider harmonization between the ESA and the federal SARA, including direction and guidance from MECP and DFO (CWS) staff. There are examples of conflicting approaches, which makes it impossible to appease either agency. Also, better integration of the ESA into the planning process at all levels would improve efficiencies. |
| Enforcement powers are inconsistent across authorizations and regulations, which can limit the ability to inspect and enforce compliance with regulations. | 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.) | A robust compliance and enforcement system must be in place to ensure that species and their habitats are being protected. |