

May 17, 2019

Public Input Coordinator
Species Conservation Policy Branch
Ministry of Environment, Conservation and Parks
300 Water Street
Floor 5N
Peterborough, ON
K9J 3C7

To Whom It May Concern;

RE: ERO 013-5033 10th Year Review of Ontario's Endangered Species Act: Proposed changes

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 38,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

The Ontario Federation of Agriculture welcomes this opportunity to present its perspective on proposed changes to Ontario's Endangered Species Act. OFA was an active participant in the consultations leading up to the passing of the Endangered Species Act in 2007. As well, we have commented on numerous Endangered Species Act-related postings. For many Ontario farmers it is an every-day reality that the habitats of many endangered, threatened and special concern species are on and around their farms. From our perspective, the presence of listed species on and around farms should be applauded as testament to the suitability of agricultural land as habitat for many endangered, threatened and special concern species. However, some may view every-day agricultural activities as a threat and argue for onerous species and habitat protection provisions, provisions which would severely constrain the ability of farmers to continue to produce safe, affordable, local food. Farmers are not compensated for the broad range of environmental and ecological goods and services they provide to Ontarians. The presence of listed species on and around farms should be acknowledged as a societal benefit, and any consequences and costs should be borne by all Ontarians.

While Ontario covers a vast and diverse area; 1.07 M km² (415,598 mi²), with distinctly different geographic regions, policy-makers and legislators must not lose sight of the stark reality that less than 5% of Ontario's land base can support any agricultural production. Of that 5%, a lesser portion contains our best growing soils: Class 1, 2 or 3.

Data from the 2016 census shows a decline in the area being farmed compared to the 2011 census, following the declining trend over previous census periods. Ontario farms now encompass 12.3 million acres, down 319,700 acres over the previous census; equal to a loss of 63,940 acres per year or 175 acres/day. Regardless the reason Ontario cannot continue to

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sustain losses of this magnitude while maintaining our ability to produce higher volumes of food, fibre and fuel.

Few Ontarians are aware that agriculture and agri-food processing is Ontario's largest economic driver. Our agriculture and agri-food sector (field to fork) contributes \$39.5 billion to Ontario's economy and supports 822,483 jobs. Provincial policies that jeopardize the ability of our agriculture and agri-food sector to prosper and grow are short-sighted and counter-productive.

1. **Assessing species at risk and listing them on the Species at Risk in Ontario List**
 - A. **Provide the public earlier notice of COSSARO's species' assessment and classification results by making its report available to the public no later than three months after it is received by the Minister. Also, extend the time from when a COSSARO report is received by the Minister to when listing is to occur from three to twelve months (i.e. when a species must be added to the SARO list).**

OFA believes that making COSSARO's reports publicly available as early as possible is positive. That being said, we suggest that the publicly available reports on species assessment and classification be written for a non-scientific audience, as COSSARO's current and past reports are written for an audience with a scientific background.

The proposal to extend the time from the current three months to twelve months between the Minister receiving COSSARO's species assessment and classification to the listed species being added to the SARO List is unnecessary. Assuming that the other proposed changes to the Endangered Species Act are enacted, such as a Ministerial request to reconsider a classification, OFA does not support extending the time for adding a species to the SARO list from three months to twelve months.

- B. **Provide that the twelve-month period for amending the SARO List will apply to any COSSARO report received in 2019, to address the possibility of such a report being received before the changes, if passed, come into effect.**

In light of our objections to extending the time to add a species to the SARO list from three months to twelve months, OFA does not support this proposal.

- C. **Improve certainty of the timing of species list changes by requiring COSSARO to submit an annual report to the Minister between January 1 and January 31 of each year.**

OFA fully supports the proposed requirement that COSSARO provide an annual activity report to the Minister.

- D. **Allow the Minister to require COSSARO to reconsider the classification of a species where the Minister forms the opinion based on scientific information that the classification may no longer be appropriate. For species that are not yet on the list or are listed as special concern, the proposed changes provide that the species would not be added to the SARO list or listed to a more endangered status during COSSARO's re-assessment.**

OFA views allowing the Minister to require COSSARO to reconsider the classification of a species as good and overdue. New scientific information may come to light after a species is classified, and under this instance, a review or reconsideration of its status is justified. Some species classifications, bobolink and Algonquin wolf to name two, have been, in our opinion, ill conceived.

We have long viewed COSSARO's unchallenged listing powers as excessive and lacking accountability and oversight. During the development of the Endangered Species Act, we advocated that COSSARO's listing decisions be treated as "advice" to the Minister, who would be ultimately responsible for deciding whether or not to follow through. This change would parallel the federal Species at Risk Act. Requiring COSSARO to potentially reconsider any of its decisions will add rigour and integrity to the listing process.

- E. Require COSSARO to consider a species' condition around its broader biologically relevant geographic area, inside and outside Ontario, before classifying a species as endangered or threatened. If the overall condition of risk to the species in the broader biologically relevant geographic area is lower, COSSARO would be required to adjust the species' classification to reflect its overall condition.**

OFA welcomes this change to the Endangered Species Act. For too long, the province has viewed Ontario as an island, unconnected to neighbouring provinces and states. This has led to species at the outer limits of their geographic range to be deemed "at risk" due to low numbers in Ontario while ignoring the reality they're not at risk beyond our borders. Efforts to "recover" species at the outer limits of their geographic range reduces our ability to focus Ontario's efforts and resources towards the at-risk species whose geographic range is centered in Ontario, and where recovery actions have the greatest opportunity to positively affect species populations and distributions.

Furthermore, migratory species should be viewed through a slightly different lens than non-migratory species. Migratory species spend a portion of each year outside Ontario; time when Ontario has no ability to positively affect their numbers. We are not suggesting that migratory species deserve no protection under the Endangered Species Act; rather we are proposing that their status classification, subsequent recovery goals and Government Response Statement reflect that they spend a portion of each year outside Ontario when our recovery goals and actions may well be undermined.

- F. Broaden COSSARO membership qualifications to include members who have relevant expertise in ecology, wildlife management, as well as those with community knowledge.**

OFA welcomes the proposal to broaden COSSARO's membership qualifications to include ones with community knowledge. Farmers are intimately familiar with their lands and the range of species they share it with. Many of Ontario's listed species are now only found on and around farmlands, demonstrating that species at risk are compatible with our agricultural activities and practices. Taking advantage of farmer's community knowledge, as well as community knowledge related to ecology and wildlife management will lead to better informed decisions by COSSARO.

2. Defining and implementing species and habitat protections

- A. De-couple the listing process from automatic protections and provide greater Minister's discretion on protections, while keeping the assessment as a science-based process at arm's length. While the role of classifying species would remain with COSSARO and listing of classified species would continue to be required, the proposed changes would provide the Minister with the authority to temporarily suspend species and habitat protections for up to three years for some newly-listed species when the following criteria are met:**
 - i. applying the prohibitions to the species would likely have significant social or economic implications for all or parts of Ontario so additional time is required to determine the best approach to protect the species and its habitat;**

- ii. **the temporary suspension will not jeopardize the survival of the species in Ontario; and**
- iii. **one of the following further criteria is met:**
 - 1. **the species has a broad distribution in the wild in Ontario;**
 - 2. **habitat availability is not a limiting factor for the species;**
 - 3. **additional time is needed to address the primary threats to the species, or co-operation with other jurisdictions is necessary to reduce the primary threats;**
 - 4. **other criteria that may be specified by regulation.**

OFA supports this proposed change. We have long believed that social and economic consequences of listing have long been overlooked and ignored. They must be considered, along with population trends and distribution. Decisions on listing a species, its habitat, potential recovery actions and the Government Response Statement need to include social and economic consequences in order to make fully informed decisions. We support the criteria set out in points ii and iii.

- B. Enable scoping of species protections, where appropriate, via new Minister's regulations. This proposed new authority would enable species protections to apply to specific geographies or in specific circumstances (e.g. to species that are not affected by disease).**

Currently after the Minister receives COSSAROs status report, a species listed as endangered or threatened automatically receives province-wide general habitat and species protection. A regulation is then developed that specifically defines and describes the listed species "regulated habitat". Under the current Endangered Species Act, this occurs within two years for a species listed as endangered and within three years for one listed as threatened. The "regulated habitat" describes a specific geography or type of habitat that the listed species requires. From our perspective, we do not see how proposal B, as set out above, differs from the current protection timelines and scope for newly listed species. Moving from province-wide protections to geographically or circumstance-species protection occurs under the current Endangered Species Act. The benefits of this are dubious.

- C. Remove the mandatory legislative requirements and timelines to develop a habitat regulation proposal for each newly-listed threatened or endangered species and retain the option to develop a habitat regulation when needed.**

Habitat loss is the single biggest reason for population declines. We can think of few examples of species whose decline was due to factors other than habitat loss. Broadly speaking, habitat regulations for a newly listed species are key to their numeric recovery, and ultimately being removed from the Species at Risk in Ontario list because they no longer require the species and habitat protections provided by the current Endangered Species Act. OFA does not support this specific proposal.

- D. Enable the Minister, rather than LGIC to make species-specific habitat regulations.**

OFA offers no comments on this specific proposal.

3. Developing species at risk recovery policies

- A. Give the Minister the discretion to extend the nine-month Government Response Statement development timeline for some species.**

OFA does not believe that this discretion should be open-ended. Without a set timeline, the process to develop a Government Response Statement could drag on. Perhaps extending the timeline to develop a Government Response Statement from nine months to twelve would serve to provide a bit more time, but also serve to keep the development of the Government Response Statement on target.

B. Clarify that Recovery Strategies are advice to government, and the Government Response Statements are the government’s policy direction for species at risk.

OFA supports clarifying that Recovery Strategies are advice to government, and that Government Response Statement are the government’s policy direction.

C. Allow the Minister to extend timelines for conducting the review of progress towards protection and recovery based on individual species’ needs.

As with our comments on extending the timeline for development of the Government Response Statement, we would suggest that timelines for reviews of progress towards recovery be specified. To leave them open-ended presents the likelihood that they will not be completed.

D. Remove the duplicative requirements by removing the specific reference to posting under the *Environmental Bill of Rights, 1993* and instead requiring that certain products under the Act be made available publicly on a government website.

OFA offers no comments on this specific proposal.

4. Issuing *Endangered Species Act* permits and agreements and developing regulatory exemptions

Ontario is also proposing to create Canada’s first independent Crown agency proposed to be called the Species at Risk Conservation Trust, to allow municipalities or other infrastructure developers the option to pay a charge in lieu of completing certain on-the-ground activities required by the Act. The funds would support strategic, coordinated and large-scale actions that assist in the protection and recovery of species at risk.

As a general farm organization, OFA has no direct experience with the ESA’s permitting processes. Additionally, we have not heard from any of our members on their personal experience with the Act’s permitting processes, perhaps because they haven’t had a reason to or interest in applying.

Based on the April 24th Endangered Species Act webinar, to the effect that “Trust” would be open to private developers in addition to “municipalities and other infrastructure developers”, OFA categorically opposes this proposal. It provides an easy “out” from compliance with fulfilling one’s obligations with respect to on-the-ground activities required under the Endangered Species Act.

An additional concern with this proposal is where the Trust might undertake “strategic, coordinated and large-scale actions that assist in the protection and recovery of species at risk”. We’ve opposed offsetting in the context of wetlands; i.e. creating a new wetland to replace or offset the loss of one destroyed. We oppose offsetting as we doubt created features function as well as naturally occurring ones, because valuable natural features should be protected where they are, and perhaps mostly because the lands required to create endangered species habitat would come from our finite and shrinking reserves of agricultural land.

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5. **Enforcing the *Endangered Species Act***
- A) **Enhance and streamline enforcement powers by:**
- **Applying inspection powers and offence provisions that already exist in the ESA to also include activities conducted under the regulations.**
 - **Extending current protection order powers that can be used with the Minister’s discretion to protect habitat during the intervening period before a species is listed, or where a regulation has been made so that the prohibition is not applicable, to also include the discretion to similarly protect species.**
- B) **Update provisions related to enforcement officers by removing identification of specific classes of persons (e.g. conservation officers) as enforcement officers and retain the Minister’s authority to designate officers**

OFA does not oppose the proposed changes to the enforcement of the Endangered Species Act and regulations.

OFA welcomes the opportunity to present its perspectives on the proposed changes to the Endangered Species Act. We trust that our perspectives will be reflected in any forthcoming changes.

Sincerely,



Keith Currie
President

KC/pj

cc: The Honourable Rod Phillips, Minister of Environment, Conservation and Parks
The Honourable Ernie Hardeman, Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors