

ONTARIO FEDERATION OF ANGLERS & HUNTERS



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Ontario Conservation Centre

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SUBJECT: Bill 108 and proposed changes to the *Endangered Species Act* outlined in ERO # 013-5033

The Ontario Federation of Anglers and Hunters (OFAH) is Ontario's largest non-profit, conservation-based organization, representing 100,000 members, supporters and subscribers, and 740 member clubs. We have reviewed ERO Proposal 013-5033, as well as Schedule 5 (*Endangered Species Act*) of Bill 108 "*An Act to amend various statutes with respect to housing, other development and various other matters*" and respectfully submit the following comments for consideration.

General

In our previous submission dated March 4 2019, we identified several long-standing concerns with Ontario's Endangered Species Act (ESA) and strongly encouraged the Ministry of Environment, Conservation, and Parks (MECP) to undertake a thorough review of the Act. We commend the government for undertaking this thorough review, and are pleased to see that several of our concerns have been addressed in Schedule 5 of Bill 108.

The proposed changes will shift some of the responsibility that is currently delegated to unelected officials and return it to the Minister, while also infusing the process with additional flexibility. Given the increase in Ministerial discretion and responsibility, the OFAH expects to see an attendant increase in the transparency of the entire process including government decisions.

The changes proposed in Bill 108 present a tremendous opportunity to improve efficiency and potentially better outcomes for species at risk; however, successfully leveraging these opportunities will hinge entirely on balanced implementation. While we support changes that will enable a more efficient and effective implementation of the Endangered Species Act to protect and restore Ontario's biodiversity, we will not support measures that simply remove barriers to development.

Assessing species at risk and listing them on the Species at Risk in Ontario List

In our previous submission, we voiced concerns about an unelected body (the Committee on the Status of Species at Risk in Ontario; COSSARO) making unchallengeable decisions of provincial significance, especially given the lack of relevant expertise for certain species. We support the proposed expansion of relevant expertise to include community knowledge and wildlife management expertise as we previously recommended; however, without an increase in the size of COSSARO, there will still be many species for which the relevant expertise is not present on the committee. Logically, community knowledge will vary by species – how will these diverse backgrounds be incorporated? There is nothing in Bill 108 that forces a change to the committee's composition to include these additional perspectives. We recommend reviewing the COSSARO Terms of Reference to ensure they are reflective of these changes.

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The bill proposes to increase the predictability of COSSARO's reporting requirements by requiring submission of an Annual Report in January of each year. The OFAH is supportive of this change. We recommend that the COSSARO Annual Report outline: (1) how each species scored against the evaluation criteria (Indicators A to E); and (2) anonymous voting results. In the interest of transparency, we further recommend that the Minister release those reports publicly and in an unedited form. These changes would improve certainty, transparency, and predictability of listing decisions and the associated impacts of protections.

The bill proposes to increase the maximum length of time before adding species to the Species at Risk in Ontario (SARO) list from 3 months to 12 months. We interpret this to mean the Minister maintains the authority to add a species to the SARO list earlier if necessary. If this interpretation is correct, then we agree with this change as long as 12 months is not the default timeline.

We support the proposed changes to Subsections 8 (3) and (4) of the Act to lower threshold for species reassessment under strict criteria, as recommended in our previous submission.

In our previous submission, we expressed concern about edge of range species and how recovery actions were prioritized relative to other listed species. Bill 108 proposes to require COSSARO to consider a species' status across its broader range and mandates a lower threat designation in some circumstances. In our view, species that were historically precarious in Ontario, but healthy elsewhere, could be given lower priority for recovery actions under certain circumstances. Given that the species assessment processes differ between Canada, Ontario, and the United States, how will COSSARO effectively assess a historically precarious species such as gray fox or spotted gar in other jurisdictions? Does the "lowest level of risk" mentioned in Section 5 (5) include the Special Concern and Not at Risk designations, or is it limited to Endangered or Threatened?

Defining and implementing species and habitat protections

Some species have significant connections to humans, whether through their distribution (e.g. barn swallows), specific relationships to a particular industry and its impacts (e.g. bobolink and agriculture), or socio-economic value through sustainable use (e.g. Lake Sturgeon). These species warrant special consideration and increased flexibility in order to develop effective, targeted protections, while also recognizing their interactions with humans. We support the Minister's authority to pause protections for particularly difficult species under the strict criteria listed in Section 8.1 (3); however, we expect the use of this authority to be used only in exceptional circumstances, as there are some species for which a delay of three years would be very detrimental. The listing of the bobolink, and the associated impacts on agriculture, demonstrate that a heavy-handed regulatory approach can destroy goodwill and peoples' sense of stewardship while doing nothing to protect species. How will the government determine what constitutes "significant social or economic implications" as described in Section 8.1 (3)(b)(i)?

As stated previously, general habitat protections and the development of specific habitat regulations are not warranted for many species, particularly those that are not limited by habitat. Eliminating the mandatory requirement to protect the habitat of Threatened or Endangered species that are at risk due to factors other than habitat loss/degradation should result in more efficient use of limited resources and time for both the proponents and the government. We support this change.

We support the addition of Section 27.1 Species Protection Order to expand the Minister's authority to implement Species Protection Orders in addition to existing habitat protection orders.

Developing species at risk recovery policies

We support all changes proposed in this category on the condition that "removing specific reference to posting under the *Environmental Bill of Rights, 1993*" does not limit public consultation opportunities in any way.

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Issuing Endangered Species Act permits and agreements and developing regulatory exemptions

We support the establishment of the Species at Risk Conservation Fund which, if administered properly, could enable strategic and large-scale species conservation efforts that are not possible under the current system. This will be in addition to, rather than replacing, the existing permitting route which proponents can still choose to access. Enabling tools that incentivize species conservation is a positive step as long as developers are still required to avoid and mitigate impacts where possible.

MECP staff has informed us that only a small subset of species would be eligible under this regulation, mainly due to the disproportionate permitting burdens. Which species are being considered for inclusion in this regulation? How will the government accurately estimate the amount of the species conservation charge? If there is uncertainty about an appropriate species conservation charge, we recommend erring on the side of caution by increasing the charge to ensure an overall benefit to the program.

Our understanding is that this will require development of additional regulations, providing another opportunity for public comment. Section 20.7 of the Act outlines the activities that are eligible for funding from the Fund, but there is no information about the monitoring and reporting requirements for projects that receive funding. Is the onus on the proponent to monitor and report on progress? Section 20.8 outlines the creation of Guidelines for Funding – will these be informed by public input?

We agree with the proposed changes to Section 16 of the Act to ensure that landscape agreements conform to previously published government response statements, thus ensuring compliance with formal policy direction.

Enforcing the Endangered Species Act

No comment.

Conclusion

The reality is that the government has never had the capacity to implement the ESA as it was intended, and the Species at Risk in Ontario list has become a species purgatory. The changes proposed in this bill recognize the reality of species protection and recovery in Ontario and will enable additional tools that can be harnessed to benefit listed species and incentivize conservation. Thank you for considering these comments.

Yours in Conservation,



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MR/jb

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