



March 4, 2019

Public Input Coordinator
Ministry of the Environment, Conservation and Parks
Species Conservation Policy Branch

[Submitted electronically]

RE: ERO #013-4143 Review of the *Endangered Species Act, 2007*

Dear Review Committee,

On behalf of Bird Studies Canada, I would like to offer our comments and recommendations on the recently posted *10th Year Review of Ontario's Endangered Species Act: Discussion Paper*.

Bird Studies Canada (BSC) is a national charitable organization dedicated to the conservation of Canada's birds and their habitats. Our organization's roots are in southern Ontario. This is where BSC was founded, as Long Point Bird Observatory, in 1960, and where both staff and volunteers have been working for 60 years to protect birds and the ecosystems of which they are a part. As an organization, we are dedicated to the stewardship, conservation, and protection of Ontario's birds at risk, and lead on-the-ground efforts for Endangered species such as Piping Plover and Acadian Flycatcher. We are deeply concerned about Ontario's species at risk and the overall direction put forth in the Ontario Government's discussion paper.

Ontario was the first Canadian province to respond to the biodiversity crisis, passing the original Endangered Species Act (ESA) in 1971. In 2007, the Ontario Government again took a strong leadership role, recognizing the original Act's shortcomings and passing new legislation. We at BSC ask that the Government once again take a strong leadership role to protect and recover species at risk in Ontario.

While embarking on a 10-year review of the ESA is appropriate, we urge the government to **prioritize positive outcomes for species at risk**, and to use this as the lens through which the Act, its implementation, and any proposed changes are assessed. Below, we have commented on each of the proposed areas of focus. However, **we strongly encourage the Ontario Government to "refocus" its review to assess if the implementation of the Act is achieving its intended purpose (i.e., to protect and recover species at risk).**

Questions to address include:

- Are we achieving species at risk recovery in Ontario?
- Can we improve species at risk protection and recovery?
- How has the legislation and its implementation been effective in helping recover species at risk in Ontario and why? Where has it fallen short and why?

- Have the 2013 amendments impacted species at risk in Ontario?
- Is there sufficient transparency in the Act's implementation, from assessments to exemptions, such that Ontarians are confident that the Government is protecting species at risk and their habitats?

Further, we ask that the following cornerstones of the ESA be maintained:

- Science-based assessments;
- Automatic legal protections for species and habitats;
- Mandatory timelines for government response and action; and
- Tools to promote stewardship, which assists in the protection and recovery of Endangered species.

Lastly, we wish to express our additional concern related to the apparent discontinuation of the Species at Risk Stewardship and Research funds. Although these programs are not included in the discussion paper, they play a critical role in supporting the ESA by helping to deliver on-the-ground conservation of species at risk across Ontario and gather the scientific data needed to adequately direct and evaluate conservation efforts in the province. Dismantling these programs will reduce Ontarians' participation in the recovery of species at risk and will no doubt have negative impacts for these species and their habitats.

COMMENTS ON FOCUS AREAS

FOCUS AREA 1 – LANDSCAPE APPROACHES

Comments:

- A landscape approach is essential to species at risk conservation and to maintaining functioning ecosystems. However, landscape approaches should not be prioritized to the detriment of site- or species-specific efforts.
- The ESA already recognizes and provides for a landscape approach to species at risk conservation as well as for multi-species recovery strategies. Thus, no amendment is needed.
- Authorizing activities at a landscape scale, without additional species-based considerations, will negatively impact species at risk and their habitats.

Recommendations:

- Landscape-based approaches that help recover and protect multiple species at risk and functioning ecosystems should be used, alongside species- and site-based approaches.
- A science-based approach should direct conservation efforts where the needs of different species at risk potentially conflict with one another.
- Activities that may harm one or more threatened or endangered species should not be authorized on a landscape scale.

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

Comments:

- Automatic protection measures are critical for “jump-starting” the recovery of Threatened and Endangered species, already in need of immediate conservation action at the time of assessment.
- Species that significantly intersect human activities are already the most vulnerable to harm, harassment, and habitat damage and destruction. Removing automatic protections for these species would likely result in dramatic negative impacts to species recovery.
- Issues related to “insufficient notice” can be solved by means other than timeline extensions, such as proactive communications with stakeholders.

Recommendations:

- Maintain current mandatory timelines and automatic protection measures for all listed species.
- Examine alternative mechanisms to addressing issues related to “insufficient notice”, such as proactive communications with stakeholders.

FOCUS AREA 3 – SPECIES RECOVERY POLICIES AND HABITAT REGULATIONS

Comments:

- Lengthening time frames will not have positive results for species at risk that are in need of immediate conservation action.
- Current time frames for the Government Response Strategy (GRS) are appropriate and, given the immediate need for conservation action for species at risk, efficiencies could be achieved through other mechanisms (e.g., GRS could be drafted alongside recovery plan development; further resources could be dedicated to the GRS and additional needed consultations could be included as part of the GRS).
- Five-year progress report is an important impetus to move from planning to action and a reasonable timeframe for the government to demonstrate the steps that it is taking towards species recovery, to evaluate the effectiveness of actions taken thus far, and to identify steps to improve efforts. Even in cases where long-term data are required, there should be ongoing evaluation of research and monitoring efforts, as well as concurrent conservation actions.
- The general habitat description only addresses immediate protection needs and does not include areas and habitats where the species previously occurred, or could occur in the future with recovery, and thus, in many cases, is not sufficient to support recovery.
- The Act already allows for the minister to delay the development of a habitat regulation or to not proceed with a habitat regulation, thus an additional amendment is not required.

Recommendations:

- Current timeframes for GRS and five-year progress report should be maintained.
- There should be no change related to Habitat Regulations.
- Alternative mechanisms to address timelines, including additional human and financial resources and proactive planning approaches, should be used.

FOCUS AREA 4 – AUTHORIZATION PROCESS

Comments:

- This focus area assumes that economic development, and reducing authorization and administrative processes, is the highest priority for Ontarians; this is counter to the intention of the Act and the protection of species at risk.
- The intention of the Act is to protect species at risk.
- A review of the authorization process is needed to examine whether species are being adequately protected; to date, no ESA applicant has been denied a permit.
- The 2013 amendments were made to streamline these processes; these amendments have not benefited Ontario’s species at risk or their habitats.
- Conservation banking that would allow proponents to harm threatened and endangered species or their habitats is not the right approach to achieve positive outcomes for species at risk.
- Alternatives such as stewardship and incentive programs should be given greater consideration.
- Authorization burdens could be addressed with increased human and financial resources dedicated to these administrative processes.

Recommendations:

- Current authorization requirements (permit-by rule) should be reviewed to assess impacts to species at risk.
- Any changes related to administrative burdens or delays should be solved by other mechanisms, such as increasing the human or financial resources dedicated to their administration, rather than further reducing authorization requirements.
- Activity-based requirements should be monitored and evaluated, following a standardized approach, for their effectiveness in mitigating impacts and improving species at risk recovery.
- Methods and results of activity-based requirements should be subject to scientific review and should be publicly available to a) increase transparency of completed requirements/compliance, and b) provide guidance for future activities to increase positive outcomes for species at risk.
- Stewardship of species at risk and their habitats should be encouraged and incentivized.

We appreciate the opportunity to comment on the *10th Year Review of Ontario's Endangered Species Act: Discussion Paper*. Again, we strongly encourage the Government of Ontario to refocus its review to examine whether the current implementation of the ESA is effective in species at risk recovery and protection.

Sincerely,



Becky Stewart
Ontario Program Director, Bird Studies Canada