



May 17, 2019

Public Input Coordinator
Species Conservation Policy Branch
300 Water Street
Floor 5N
Peterborough ON K9J 3C7

Re: Conservation Ontario's comments on the 10th Year Review of Ontario's Endangered Species Act:
Proposed Changes (ERO#013-5033)

Thank you for the opportunity to provide comments on the 10th Year Review of Ontario's *Endangered Species Act: Proposed Changes*. Conservation Ontario is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit consideration of comments shared individually by CAs through the *Endangered Species Act* (ESA) review consultation process.

Conservation authorities are local watershed management agencies that deliver programs and services that protect and manage water and other natural resources in partnership with government, landowners and other organizations. Through these partnerships, CAs deliver a number of programs and services that help protect species at risk (SAR) and their habitats within CA jurisdictions. As the Province's second-largest landowners, CAs protect and manage a considerable amount of habitat which is used by SAR. Within these owned and operated lands, CAs' watershed science and monitoring programs collect up-to-date information which informs many of our corporate programs which overlap with SAR protection and recovery, such as natural heritage system planning (including restoration, enhancement and protection), climate change mitigation and adaptation, and, stewardship and outreach programs. Further, CA staff have considerable expertise in the land use planning review process and may as part of a Memorandum of Understanding with their municipal partners, provide consideration for SAR and required habitats when advising municipalities on matters related to potential ecological impacts to SAR.

Conservation Ontario offers the following general comments on the proposed changes to the *Endangered Species Act* as outlined in the Environmental Registry posting, further clarified by Schedule 5 of Bill 108, *More Homes, More Choice Act*, 2019.

Species Assessment and Listing on the Species at Risk in Ontario List

The proposed changes to the *Endangered Species Act* seek to amend a number of timelines for the assessment and listing of species to the Species at Risk in Ontario (SARO) list.

Conservation Ontario recommends that the Province maintain the timelines currently prescribed in the *Endangered Species Act* regarding listing of species. For many species, a delay in formal listing could represent a critical delay in the species receiving legal protections and benefitting from funds and programs required to facilitate recovery efforts. The delayed receipt of protected status could contribute to continued population declines as many of these species are imminently at risk and require

immediate recovery action to alleviate threats and initiate a recovery process. Should the Province proceed with the proposed amendments, the timelines should still be standardized through a recommendation put forth by COSSARO when a species is recommended for listing. It is important that this extended timeline always be scientifically-defensible and determined through objective, independent assessment.

Further, it is recommended that the Province maintain the nine-month timeframe for the development of government response statements (GRS) so that government actions which support the recovery of SAR can be clearly defined as early in the listing process as possible. We note that for species with potentially complex recovery strategies, the GRSs may be modified as new information becomes available, which may be an alternate tool for the Ministry to utilize if an extension would not necessarily provide a potential benefit to the species.

Finally, the current membership eligibility for COSSARO requires members to have expertise in scientific disciplines applicable to SAR or Aboriginal Traditional Knowledge. The proposed changes to COSSARO eligibility broaden member qualifications to include those with expertise in ecology and wildlife management (i.e. scientific disciplines applicable to SAR), as well as those with only community knowledge. While Conservation Ontario is supportive of extending membership eligibility to experts in ecology and wildlife management as scientific disciplines that can contribute to SAR, it is recommended that further clarity be provided on the decision to extend membership to those with only community knowledge. While community knowledge is helpful, it should not be at the expense of achieving one of COSSARO's principle functions i.e. maintaining criteria for assessment and classifying species using best available scientific information. COSSARO membership should remain eligible only to those experts who can appropriately and impartially interpret best-available scientific information to ensure the positive outcomes for SAR in Ontario.

Transparency and Public Accessibility

The proposed amendments listed in Schedule 5 of Bill 108 remove the requirement for the Minister to post certain notices to the *Environmental Bill of Rights* and instead, require that certain notices under the Act be made available publicly on a separate government website. These proposed changes apply to the requirement for the Minister to publish a notice which identifies the need for additional time to prepare species recovery strategies as well as management plans for special concern species. Further, if the proposal to allow the Minister to temporarily suspend protections for SAR not previously listed to the SARO List for a period of up to three years passes, the Ministry is proposing to amend the General regulation under the *Environmental Bill of Rights* (O.Reg 73/94) to exempt the regulations containing Minister's orders made for the purpose of temporarily suspending protections from posting and consultation requirements. Conservation Ontario recommends that the Province maintain the current approach to posting these notices to the Environmental Registry for transparency and as an established portal for easily accessing information and consulting on government decision-making that may affect the environment. The creation of an additional website for only some notices and information related to SAR in Ontario may result in confusion for members of the public looking to access this information and create a lack of transparency in government decision making for SAR. It is recommended that these notices be prepared and posted to the Environmental Registry.

The Proposed Species at Risk Conservation Fund

The proposed amendments listed in Schedule 5 of Bill 108 introduce the establishment of the Species at Risk Conservation Fund (herein, 'the Fund') to provide for funding of activities that are "reasonably likely to protect or recover conservation fund species or support their protection or recovery". The Fund does

not apply to all listed species, rather only those the Minister designates through regulation as ‘conservation fund species’, however, the proposed legislative additions do not specify the criteria the Minister will apply in designating these species. Conservation Ontario recommends the Province develop and make available the criteria which will be used to designate species. It is recommended that these criteria be developed through collaboration with COSSARO, using best available scientific data, to ensure listing of species as ‘conservation fund species’ will not jeopardize the survival of the species in Ontario.

Conservation Ontario is further requesting confirmation that the establishment of the Fund will not replace/divert funds from the current Species at Risk Stewardship Program administered by the Ministry of the Environment, Conservation and Parks. Currently, CAs are eligible to receive funds from this program to administer projects within their watershed boundaries to protect and help facilitate the recovery of SAR in Ontario. It is recommended that CAs remain eligible to receive funds from the Species at Risk Stewardship Program as well as be eligible for the proposed Species at Risk Conservation Fund to support projects within their jurisdictions which enable positive outcomes from SAR. As the second largest landowners in the Province, CAs are actively involved in helping proponents address their overall benefit obligations through the delivery of habitat improvements required under S. 17(2)c permits on conservation authority owned lands and may as part of a Memorandum of Understanding with their municipal partners provide consideration for SAR and required habitats when advising municipalities on matters related to potential ecological impacts to SAR.

Schedule 5 further sets out the introduction of a new Crown Agency and board of directors which will administer and manage the affairs of the Fund. The Agency would receive funds primarily as a result of landscape agreements, permits authorizing actions otherwise prohibited by the *Act*, and agreements with Aboriginal persons. The proposed legislation sets out that the composition of the Agency and its board of directors will be set out in regulation. Conservation Ontario recommends that eligibility requirements include expertise in scientific disciplines applicable to SAR or Aboriginal Traditional Knowledge to ensure that funding is appropriately distributed to third parties which propose to undertake activities which would result in a benefit to any species affected by the operation of the Fund. Further, it is imperative that funds received by the Agency be allocated to activities which benefit SAR. The proposed subsection 20.10 of the *Act* would allow for additional payments out of the Fund, including payments associated with funding the administration and operation of the Agency. It is recommended that the Province make these costs transparent, as these administrative costs could potentially reallocate funds which would be otherwise directed to species recovery efforts. Proposed subsection 20.2 of the *Act* identifies that the Agency will receive funding from species conservation charges, the Crown, and donations, among other sources. It is recommended that at minimum, funding received as a result of species conservation charges be allocated only to eligible activities which will protect or advance the recovery of SAR in Ontario.

Ensuring ‘Best-in-Class’ Approaches for SAR

Throughout the posting on the Environmental Registry, the Province has committed to ensuring best-in-class protections for SAR in Ontario. Although the Province has committed to these ‘best-in-class’ approaches, it is noted that many of the proposed changes fall short of the current *Endangered Species Act* requirements which provide for an overall benefit to be achieved for affected SAR. References to the “overall benefit” test of the *Act* have been removed from Section 18 which outlines the requirements to be met when engaging in an activity authorized by other instruments which would be otherwise prohibited by the *Act*. Further, clauses 17 (2) (c) and (d) of the current *ESA* have been repealed to allow for the Minister to issue a permit, provided the proponent makes a payment to the proposed Species at

Risk Conservation Fund in lieu of achieving an overall benefit to the affected species. It is recommended that the overall benefit test of the *Act* be retained to ensure positive outcomes for SAR in Ontario. Conservation Ontario strongly supports harmonization with other instruments, however, as SAR populations are particularly susceptible to human and ecological pressures, the 'overall benefit' test of the *Act* should be retained.

Conclusion

Overall, Conservation Ontario commends the Province for undertaking a review of the *Endangered Species Act* and is supportive of the Province's commitment to ensure best-in-class approaches to on-going species habitat protections and recovery efforts.

As the Province continues to consult on proposed changes to the *Endangered Species Act*, it is recommended that conservation authorities be considered as knowledgeable and cost-effective service delivery partners for proposals affecting SAR in Ontario. CAs provide support to the protection of SAR in a variety of ways, including providing local expertise and liaison services which support the SAR program. It is recommended that the Province leverage the local knowledge and expertise of CAs when developing tools to protect SAR across Ontario.

Thank you for the opportunity to review and provide comments on the 10th Year Review of Ontario's *Endangered Species Act: Proposed Changes*. Should you have any questions about this letter please feel free to contact myself at extension 229.

Sincerely,



Nicholas Fischer
Policy and Planning Officer

c.c. All CA CAOs/GMs