



May 17, 2019

Ministry of the Environment, Conservation and Parks
Species at Risk Branch – Species at Risk
Recovery Section
300 Water Street, Floor 5N
Peterborough, ON
K9J 3C7

(sent via email to ESAREg@ontario.ca)

Re: OSSGA comments on Proposed Changes to Ontario's Endangered Species Act

The Ontario Stone, Sand & Gravel Association (OSSGA) appreciates the opportunity to comment on the Ministry of the Environment, Conservation and Parks (MECP) proposed changes to the *Endangered Species Act* (ESA); (ERO 013-5033). These comments should be read in conjunction with our comments on the 10th Year Review of Ontario's ESA (ERO 013-5033) submitted on March 4, 2019.

As the model of, and the voice of environmental sustainability and stewardship for the aggregate industry, OSSGA supports the government's commitment to modernizing and improving the ESA. As significant land holders, aggregate producers play a critical role in the protection of species at risk. We believe that the ESA should enable a balanced approach for species at risk and economic development and we therefore offer our comments on the proposed changes to the ESA.

1) Assessing Species at Risk and Listing them on the Species at Risk in Ontario (SARO) List

OSSGA was disappointed that the fundamental and most critical issue with the ESA – the listing process for determining which species are listed on the SARO list – was not included in the proposed changes. The recommended changes to COSSARO did not address the issue that the criteria for assessing species are not consistent and often based on limited population data. As reiterated in our comments on the 10th Year Review, COSSARO often designates a species as END or THR based on outdated or lacking data rather than applying the Data Deficient designation or designating a species as SC and using this as impetus to gather additional research and conduct further surveys. **We strongly support a critical review and reconsideration of the categories and listing criteria for status assessment used by COSSARO.**

OSSGA was pleased to see the increased predictability and certainty associated with the proposed changes to COSSARO's earlier public notice and reporting timelines. We support extending the time from when a report is received by the Minister to when a listing is to occur. We also support COSSARO's broadened member qualifications and COSSARO's requirement to consider a species' condition around a broader biologically relevant geographic area (inside and outside of Ontario) and are pleased to see that species will be reviewed against these criteria during the ten-year review. We recognize

that COSSARO must assess any plant or animal native to Ontario that has been assessed by COSEWIC but believe that COSSARO's schedule for assessment should prioritize species whose classification have the potential to be adjusted based on this new requirement. Barn Swallow, Bank Swallow and the Gray Fox are good examples of species that this could apply to, and we suspect that there are several species that could be considered under these criteria but are hesitant that it would apply in all cases.

2) Defining and implementing species and habitat protections

OSSGA supports the de-coupling of the listing process from automatic protections and the recommended provision that would give the Minister the authority to temporarily suspend species and habitat protections for up to three years for newly-listed species. However, it is not clear what would classify as "significant or economic implications for all or part of Ontario" in meeting these criteria. When determining if a species meets the criteria for temporary suspension, it is critical that the Minister consider the root cause of habitat loss. For example, population declines of Barn swallows are due to reduced availability of barns, bridges and other man-made structures in which they exclusively nest and not the loss of natural habitat. It would also be beneficial if the Ministry could provide examples of species for which they expect this tool could be used.

We also reiterate our recommendation from our comments on the 10th Year Review that differentiation between endangered and threatened species in the legislation would allow for appropriate focus on species protection. The listing of endangered could be used to put habitat protection into place immediately for those species where habitat is a problem, while listing as threatened could allow for delayed and thoughtful implementation of habitat protection, if necessary, for those species where habitat loss is not the primary threat.

Without first reconsidering the listing process - i.e. not listing a species as END or THR when there are insufficient data or data that do not actually speak to its habitat requirements and availability (for example, road side surveys that do not necessarily inform about habitat availability and use by a species) - some species may continue to be recommended for listing without proper data to support the listing. Our understanding is that the temporary suspension (pausing of habitat protections for listed species) allows for the Minister to suspend habitat protection for some species (for which data do not support that habitat is the reason for decline). This would provide time for additional research; however, this research should have been conducted before the species was listed. If the listing process was stronger, then species for which we need to pause to get more data would not be listed. Those species would ideally be classified as Data Deficient (and researched thoroughly before they are listed), rather than having protections suspended to conduct additional research.

We are also concerned about the proposed change to remove the mandatory legislative requirement and timeline to develop a habitat regulation for each newly-listed threatened or endangered species. As discussed in our comments on the 10th Year Review, **we strongly support the development of habitat regulations as they define more clearly the nature of the habitat protection and provide clarity for both the**

regulator and the proponent. General habitat descriptions are often too broad, inconsistently applied and/or not interpreted equally. The use of general habitat descriptions should only be used to focus habitat protection on important functions, while appropriate habitat regulations are being developed.

3) Developing species at risk recovery policies

OSSGA supports added flexibility in the timeline requirements for the publishing of Recovery Strategies and Government Response Statements however the information from these policies is required for the development of habitat regulations, which we support. The timeline for these reports should be based on individual species' recovery needs and species with lower productive rates or those for which recovery actions may take longer should have extended timelines. We maintain however that Recovery Strategies and Review of Progress should focus more on population ecology and recovery and include appropriate data from suitable surveys. **Recovery Strategies and Government Response Statements should better match the ecology of the species and recovery outcomes/timelines based on the species natural history.**

4) Issuing Endangered Species Act permits and agreements and developing regulatory exemptions

OSSGA was pleased to see a transition provision for existing ESA permits – aligning with other MECP approvals; however, we were very disappointed that there were no proposed changes to Section 17 permits to make the permitting process more efficient and consistent. The proposed legislative changes claim to “streamline processes, reduce duplication and ensure costs incurred by clients are directed toward actions that improve outcomes for species or its habitat” however, without guaranteed service windows on all permits, proponents will still experience significant delays (sometimes over two years) and incur significant costs. **OSSGA strongly supports a guaranteed approval service window of six months, from the time of provision of a complete application (including a public review period) on permits issued under the ESA.** This guaranteed service window would be consistent with the service standard for submission of Environmental Compliance Approvals issued by the MECP for example.

OSSGA supports permitting options that would ensure the best outcome for a particular species' protection/recovery. We believe that a payment in-lieu, as one of several authorization tools, has the potential to help proponents achieve overall benefit for species at risk, particularly for species for which their threat is not a loss of habitat (i.e. Butternut). It is our understanding that the conditions of the payment in-lieu would still require impact monitoring, consideration of reasonable alternatives and reasonable steps to minimize adverse effects on the species. While we support activity-based species recovery/protection efforts there may be examples where a payment in-lieu could help provide the species with a range of additional benefits by allowing for broader beneficial outcomes.

The plain-language wording describing the creation of the regulatory charge currently specifies that municipalities or other infrastructure developers would have the option to

pay a charge in lieu of on-the-ground compensation and mitigation activities - this should be clarified in the Act to include all proponents. It is still not clear to OSSGA whether the fees collected for a species or project would be designated for research/recovery efforts for that particular species or if it could be utilized for another eligible species. It would be beneficial for MECP to clarify this and to provide examples of how the funds collected by the Species at Risk Conservation Trust may be used and what the criteria are that will be used to calculate the in-lieu payment amount. As mentioned in our submission on the 10th Year Review, it is also critical that the fees for a payment in-lieu option be financially viable, and that there be transparency and accountability with respect to how fees are determined and used.

We are concerned about the removal of the requirement for the Minister to consult with an expert if the Minister forms the opinion that a proposed regulation is likely to jeopardize the survival of a species in Ontario or have any other significant effect on the species. Removing this requirement has the potential to lead to a politicized decision if scientific opinion is ignored. It is also not clear if the removal of expert opinion only applies to 'D' permits. Additionally, what qualifies as a significant social and economic benefit to Ontario in the 'D' permit process should be clarified.

5) Prohibition on ESA Habitat within Growth Plan Natural Heritage Systems

One of the aggregate industry's biggest concerns is the prohibition of new aggregate applications in endangered and threatened species habitat within the Growth Plan NHS, Greenbelt NHS and Oak Ridges Moraine Conservation Plan Linkage Area. Prohibition within this habitat undermines the ESA and deters investment from the aggregate industry. The result is the sterilization of some of the highest quality and close to market resources in our province. Allowing for the replacement of habitat where the Province is satisfied that the application will result in a net overall benefit to the species while making available significant aggregate resources is a positive outcome for the species and the economy.

Changes to the Growth Plan were recently announced and unfortunately, aggregate extraction within endangered and threatened species habitat remains excluded from overall benefit authorization in accordance with the ESA. **We encourage MECP to work closely with MMAH to ensure that Provincial Plans align with the ESA.**

Conclusion

Thank you again for the consideration of our comments. We are very interested in knowing the anticipated timeline for the development of the supporting regulations and when these proposed changes would come into effect.

The aggregate industry is committed to the protection of species at risk and we look forward to continuing to work with the Ontario government on ensuring the ESA achieves a positive outcome for species at risk while not creating barriers for economic development. Should you have any questions or concerns, please do not hesitate to



ONTARIO STONE, SAND
& GRAVEL ASSOCIATION

Essential materials for building a strong Ontario

contact Ashlee Zelek, Director of Environment and Education at 647-727-8778 or
azelek@ossga.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Norman Cheesman", is written over a light blue circular stamp.

Norman Cheesman
Ontario Stone, Sand & Gravel Association