

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: MAY 13, 2019

FROM: Planning Services Department and Strategy, Policy and Communications Department

DATE: May 6, 2019

SUBJECT: Information Report - 10th Year Review of the Ontario's *Endangered Species Act*

LOCATION: Town Wide

WARD: Multiple Wards

Page 1

RECOMMENDATION:

1. That the report titled "Information Report - 10th Year Review of the Ontario's *Endangered Species Act*", dated May 6, 2019 be received.
2. That the report titled "Information Report - 10th Year Review of the Ontario's *Endangered Species Act*" dated May 6, 2019 be submitted to the Ministry of the Environment, Conservation and Parks by the deadline of May 18, 2019.
3. That the report titled "Information Report - 10th Year Review of the Ontario's *Endangered Species Act*", dated May 6, 2019 be forwarded to the Region of Halton, City of Burlington, Town of Halton Hills, the Town of Milton, Credit Valley Conservation, Grand River Conservation Authority and Conservation Halton for information.

KEY FACTS:

The following are key points for consideration with respect to this report:

- Following a review initiated in January 2019, the provincial government is proposing changes to the *Endangered Species Act* through a posting on the Environmental Registry of Ontario (ERO Number 013-5033) and through *Bill 108, An Act to amend various statutes with respect to housing, other development and various other matters*.
- The ERO posting is open for a 30 day comment period (April 18, 2019 - May 18, 2019) and Bill 108 passed first reading May 2, 2019.

- The *Endangered Species Act* protects species at risk and their habitats, promotes the recovery of species at risk and promotes stewardship activities to assist in the protection and recovery of species at risk.
- The province has stated that changes to the *Endangered Species Act* will improve “outcomes for species at risk by implementing recommendations received to modernize and improve the effectiveness of the act and improve outcomes for species at risk.”
- The Town of Oakville supports the province’s goal to modernize and improve the effectiveness of the *Endangered Species Act* and improve outcomes for species at risk.
- The proposed amendments to the *Endangered Species Act* do not refer to the protection of biodiversity in the Province and its role in ensuring improvements in species biodiversity.
- Town of Oakville staff believe it is vital to the health and wellness of the province’s people and environment that the integrity of the *Endangered Species Act* is maintained and holistically considers its impact on improving Ontario’s biodiversity.
- Town of Oakville staff are concerned that legislation intended to protect species at risk would be undermined through this series of proposed amendments.
- Staff are concerned that these proposed amendments, if approved, could have the opposite intended effect and that species at risk would be less protected under the *Endangered Species Act*.

BACKGROUND:

Ontario is home to over 30,000 species of plants, insects, fish and wildlife. At this time, more than 200 species of plants and animals are at risk of disappearing from Ontario. These are known as “species at risk” and the list of these species is called the Species at Risk in Ontario (SARO) List. Protecting and recovering species at risk is within the mandate of the provincial Ministry of the Environment, Conservation and Parks.

The *Endangered Species Act, 2007* (the *Act*), which came into effect on June 30, 2008, is the legislation that protects species at risk and their habitats, promotes the recovery of species at risk and promotes stewardship activities to assist in the protection and recovery of species at risk. Under the *Act*, expertise and advice on

species at risk classification is provided by an independent committee known as the Committee on the Status of Species at Risk in Ontario (COSSARO).

Under the *Act*, COSSARO has many functions including to maintain criteria used to classify a species as an extinct, extirpated, endangered, threatened or special concern. COSSARO provides reports to the Minister on its classification work which in turn results in species being added to the SARO List by the Minister.

In January 2019, the Ministry of the Environment, Conservation and Parks launched a consultation on updating the *Act* by posting the "10th Year Review of Ontario's Endangered Species Act: Discussion Paper" to the Environmental Registry of Ontario (ERO Number 013-4143). It was open for a 45-day comment period from January 18, 2019 until March 4, 2019.

After considering the comments on the Discussion Paper, the government proposed changes to the *Act*. The proposal is posted to the Environmental Registry of Ontario (ERO Number 013-5033) and it is open for a 30-day comment period from April 18, 2019 until May 18, 2019.

On May 2, 2019, proposed amendments to the *Endangered Species Act* were released when *Bill 108, An Act to amend various statutes with respect to housing, other development and various other matters* passed first reading.

COMMENT/OPTIONS:

This section of the report presents information on the changes in three parts: a summary of the proposed amendments, comments from Oakville staff and highlights of the Joint Submission from the Halton Area Planning Partnership.

Summary of the Proposed Amendments

From the province's newsroom, changes to the *Endangered Species Act* will improve "outcomes for species at risk by implementing recommendations received to modernize and improve the effectiveness of the act and improve outcomes for species at risk." A summary of the more significant amendments follows.

Classifying and Listing Species at Risk

Proposed amendments in this category include changes that would:

- Extend the time from three to twelve months for when a COSSARO report on species classification is received by the Minister to when a species must be added to the SARO List.

- Suspend adding a species to the SARO list at the 12 month period where then Minister has requested a second report from COSSARO to reconsider the species' classification.
- Allow the Minister to further suspend prohibitions on killing a species or causing damage to its habitat for up to three years, in the case where a species is listed on SARO List for the first time.
- Require COSSARO to consider a species' condition around its broader range, inside and outside Ontario, before classifying a species as endangered or threatened. If the broader risk to the species across the range is lower, the species' classification would be adjusted to reflect its overall condition.

Species and Habitat Protections and Species Recovery

Proposed amendments in this category include changes that would:

- Allow the Minister to further limit prohibitions on killing a species or causing damage to its habitat in terms of specific activities, geographic areas or a species stage of development.
- Extend the timelines for developing government policy directions around recovery strategies for species at risk and extending the timelines for conducting reviews towards species protection and recovery.

Issuing permits and agreements, and developing regulatory exemptions

Proposed amendments in this category include changes that would:

- Allow the Minister to enter into a new type landscape agreement, according to specified criteria, with a person to authorize certain prohibited activities and allow limited conservation banking to achieve positive outcomes for a species.
- Create a Crown agency to be called the Species at Risk Conservation Fund to allow persons 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.

Enforcing the Endangered Species Act

In general, the amendments propose additional and new requirements for the Minister under the *Act*. For example, a new section is introduced giving the Minister the power to stop a person engaging activities with adverse effects on species or to take steps to address the adverse effects.

Comments from Oakville staff

Town of Oakville staff welcomes the opportunity to comment to the province regarding the proposed amendments to the *Endangered Species Act*.

Oakville supports legislation that protects species at risk and their habitats, promotes the recovery of species at risk and promotes stewardship activities to assist in the protection and recovery of species at risk. Oakville also supports the provincial government's goal to modernize and improve the effectiveness of the *Endangered Species Act* and improve outcomes for species at risk.

On September 24, 2018, Oakville Council approved the Oakville Strategy for Biodiversity to help staff, stakeholders and the public better understand and participate in supporting Oakville's natural assets.

Oakville's natural assets include over 900 species of plants, 185 types of birds, 30 species of amphibians and reptiles, 29 mammals and 58 different kinds of fish. The Town of Oakville has one of the most biodiverse environments in Ontario. A number of these species are considered endangered and threatened.

The Oakville Strategy for Biodiversity identified several provincial policies and legislation that support and direct biodiversity. Chief among them is the *Endangered Species Act*.

The province also supports biodiversity in other ways, it has endorsed the 2011 Ontario Biodiversity Strategy by the Ontario Biodiversity Council. In the province's biodiversity conservation plan "Biodiversity, it's in our Nature 2012-2022", a key action, Action #20, is to protect species diversity which includes common species and species at risk. The *Endangered Species Act* provides a regulatory framework for managing the latter. It is a foundational statute required to support biodiversity in Ontario.

The province has made significant progress in implementing the *Act* since it was revised in 2007 and continued implementation will consider "ecosystem- and multi-species-based plans and stewardship initiatives where they are feasible."

In 2018, the "Environmental Commissioner of Ontario, Environmental Protection Report" stated that "Biodiversity is crucial in supporting "ecosystem services," such as air purification, pollination and disease suppression, many of which offer direct benefits to human health. Yet globally, species are being lost at a rate that is unprecedented in history – the world's species are going extinct at 1,000 times the natural rate. Ontario's species are under tremendous pressure from habitat

destruction, invasive species, overexploitation, pollution, disease and parasites, and climate change.”

Town of Oakville staff maintain that the link between species conservation and biodiversity is clear. In order for the province to maintain its leadership role in biodiversity it is essential that the province continues to ensure that relevant policies and legislation are in place to support the conservation of the province's biodiversity.

The proposed amendments to the *Endangered Species Act* do not refer to the protection of biodiversity in the Province and its role in ensuring improvements in species biodiversity. Town of Oakville staff believe it is vital to the health and wellness of the province's people and environment that the integrity of the *Act* is maintained and holistically considers its impact on improving Ontario's biodiversity.

Joint Submission from the Halton Area Planning Partnership

The Halton Area Planning Partnership (HAPP) is comprised of Halton Region, City of Burlington, Town of Halton Hills, Town of Milton, Town of Oakville, Credit Valley Conservation, Grand River Conservation Authority and Conservation Halton.

The HAPP “10th Year Review of Ontario's Endangered Species Act – Proposed Changes, Joint Submission” is attached in Appendix A.

Please note that at the time of writing this report, the HAPP Joint Submission was awaiting final sign-off. As a result, it will be distributed at the meeting.

The following highlights key points from the HAPP Joint Submission:

Longer Review Time Needed

HAPP is requesting consideration of a 60-day comment period in the future for these types of proposals so that staff will have the opportunity to report to Municipal Councils and Conservation Authority Boards on proposed changes and to seek their input.

Implementation Improvements

HAPP is suggesting that the proposed changes could undermine existing protections for species at risk by modifying mechanisms for automatic protections of listed species and removing or extending requirements for government responses and reporting.

Habitat loss and fragmentation are among the biggest threats to species at risk in Ontario so any proposed changes that could facilitate such activities should be carefully considered.

HAPP recommends that the Ministry focus more attention on addressing implementation challenges to improve the administration and consistent application of the existing *Act* and better integrate it with the land use and infrastructure planning processes in Ontario.

Proposed Changes Vague

The descriptions in the proposed changes are vague. For example, the new option to pay a charge-in-lieu of completing certain on-the-ground activities, it is not clear if this would apply to municipalities and/or other public infrastructure developers only, or whether this option could also be available to private individuals and land developers that build infrastructure.

HAPP urges the Ministry to release a more detailed description of the proposed changes for public consultation and extend the consultation period accordingly.

Administration Transition and Timing of Review

The Ministry of the Environment, Conservation and Parks has only recently become responsible for administering the *Act*, previously it was the Ministry of Natural Resources and Forestry.

HAPP recommends postponing the current review exercise until the Ministry of the Environment, Conservation and Parks conducts complete engagements with stakeholders and can attain implementation experience administering the *Act*.

Guidelines and other Communications Materials

Should proposed changes be passed, HAPP is recommending that new guidelines and other communication materials would be required for the purpose of implementing the *Act* through *Planning Act* applications and other development and site alteration processes.

CONCLUSION:

These amendments, if approved, would have the effect of concentrating greater authority and responsibility under the *Endangered Species Act* with the Minister of the Environment, Conservation and Parks.

Further, if approved, these new powers could allow the Minister to downgrade or delay classification and protection of species at risk while allowing prohibited activities to continue, such as killing a species or causing damage to its habitat. As well, payment-in-lieu of protecting a species at risk would be allowed.

Town of Oakville staff are concerned that legislation intended to protect species at risk would be undermined through this series of proposed amendments to the

Endangered Species Act. Staff are concerned that these proposed amendments, if approved, could have the opposite intended effect and that species at risk would be less protected under the *Endangered Species Act*.

CONSIDERATIONS:

(A) PUBLIC

There are no public impacts from this report and no notice requirements.

(B) FINANCIAL

There are no financial implications from this report.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Along with input from the Strategy, Policy and Communications Department, the Parks and Open Space Department contributed to this report.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be the most livable town in Canada

(E) COMMUNITY SUSTAINABILITY

Consideration of the sustainability goals and objectives of the Livable Oakville Plan are part of all town reviews of provincial initiatives.

APPENDICES:

Appendix A - 10th Year Review of Ontario's Endangered Species Act – Proposed Changes, Joint Submission (*to be distributed at meeting*)

Prepared by:

Kirk Biggar, MCIP, RPP
Senior Planner, Policy Planning

Recommended by:

Diane Childs, MCIP, RPP
Manager, Policy Planning and Heritage

Suzanne Madder
Manager, Sustainability and Government
Relations

Submitted by:

Mark H. Simeoni, MCIP, RPP
Director, Planning Services