



Ontario
Home Builders'
Association

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Species at Risk Branch
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Re: Amendments to the General Regulation (Ontario Regulation 242/08) under the Endangered Species Act, 2007 to prescribe the habitat for seven species at risk

EBR Registry Number: 011-5306

OHBA is pleased to be given an opportunity to present our comments as part of the input towards Amendments to the General Regulation (O.Reg 242/08) under the Endangered Species Act, 2007 to prescribe the habitat for seven species at risk. OHBA has worked in conjunction with our network of 29 local associations through the regulatory review process to provide industry advice to the provincial government regarding the Endangered Species Act.

We are pleased to provide you with our broad comments and recommendations to be considered regarding the proposed habitat regulations to prescribe habitat for: Bent Spike-rush, Common Five-lined Skink, Eastern Foxsnake (Carolinian Population), Eastern Foxsnake (Georgian Bay Population), Gray Ratsnake (Carolinian Population), Gray Ratsnake (Frontenac Axis Population), and the Rapids Clubtail. OHBA supports the conservation and environmental efforts within the larger context of the various provincial public policy objectives related to intensification and complete communities that offer a high quality of life for Ontarians.

The Endangered Species Act (ESA) has contributed to uncertainty and frustration with respect to both implementation and transition for the new housing and development industry. OHBA notes that habitat regulation should work in association with existing legislation and complement the broader goals and objectives of the provincial government. Furthermore, it is critical that there is greater integration and a coordinated approach to approvals in terms of the review process and approval agency decisions being made around the issuance of a 'C' permit. OHBA suggests that MNR must work closely within the MMAH provincial *one window* review to ensure that ESA permits are fully integrated into the planning process and the appropriate transition policies are applied. OHBA is very concerned that without careful integration, 'C' permits may be held up at the end of a process after all other various approval agency requirements have been satisfied.

OHBA is concerned that many aspects of ESA permits may duplicate the already existing rigorous process to satisfy Conservation Authority Sec. 28 permit requirements as well as overlap with ongoing Natural Heritage System (NHS) design, which is a key component of development approvals. OHBA strongly recommends better integration with other approvals processes and is concerned by the potential for unnecessary delays and potential duplication over existing processes which already incorporate significant environmental protection criteria. OHBA is concerned that the Ministry of Natural Resources has been without the resources to respond to inquiring on already listed species in a timely fashion, creating significant delays on many projects. The industry is keen to find workable efficient solutions that will favour the species at risk while not unduly constraining the Province's economic interests.

Species Specific Commentary:

- The range of the Eastern Foxsnake (Carolinian Population), Gray Ratsnake (Carolinian Population) and Gray Ratsnake (Frontenac Axis Population) and the Rapids Clubtail overlaps with areas of urban and near urban communities.
- The proposed protected habitat range for the three snake species (specifically for areas suitable for foraging, thermoregulation, hibernation, reproduction, dispersal or migration) will inevitably require more detailed stakeholder consultation with respect to transition policies, implementation and permitting (Eastern Foxsnake [Carolinian] at 1500m; Gray Ratsnake [Carolinian] at 2000m; and Gray Ratsnake [Frontenac Axis] at 1000m).
- The proposed protected habitat range including areas of deciduous or mixed forest within 200m of the high water mark of any part of a river, stream or body of water for the Rapids Clubtail and the length of time (5 years) of documented non-use is of concern. Furthermore the general lack of detailed mapping of occurrences is of concern to OHBA.

Transition:

- The province should be providing investment and process certainty by honouring approvals that have been granted through the regulatory planning approvals process and by providing appropriate transition when new policies come into force;
- Recognizing that the ESA permit is an end of process permit – it is absolutely critical that the province provide fairness and clarity through transition policies;
- OHBA notes that an ESA permit without appropriate transition would result in new requirements being brought forward at the very end of a long complex approvals process. This rigorous review process involves multiple public agencies and completed detailed engineering, planning and investment decisions that have already been approved to satisfy numerous layered requirements;
- Through the approvals process, the province must recognize that fundamental design decisions of development have already been finalized at the point of a secondary plan approval;
- OHBA is concerned that the lack of transition language for numerous species continues to challenge the efficient implementation of the ESA and that lack of certainty regarding potential legislative requirements has already negatively impacted planning and construction on a wide variety of both public and private projects;
- It would be appropriate to consider a transition from permitting requirements of the ESA for development for all public and private projects in lands currently designated for growth in municipal and regional Official Plans;

- OHBA notes that within the Greater Golden Horseshoe, that Growth Plan conformity has been a long-term and comprehensive Provincially mandated approvals process – introducing an end of process permit that potentially sterilizes lands included in growth calculations & estimates without transition is inappropriate;

Definitions:

- Lack of certainty regarding habitat definitions are of concern to the home building and development industry;
- Clear definitions regarding *damage* and *destroy* are required;
- Clear definitions in terms of *direct* and *indirect* habitat are required;
- The current lack of detailed species mapping is causing uncertainty. The industry requires better data to efficiently and effectively implement aspects of the ESA;
- The definitions should not be used to extend occupied habitat into dissimilar areas or beyond natural or artificial barriers that would prevent the movement of a species;
- The definitions should also provide a mechanism to rationally determine if the habitat characteristics that were present at the time of data collection, still occur at the present time;
- OHBA recommends that only current occurrences should be accorded recognition under the habitat regulation, as a longer time-frame may not accurately represent actual occupied habitat;
- *Overall benefit* is not clearly defined in terms of what will be required and what provincial expectations are. This creates tremendous uncertainty in the permitting process and has resulted in an inconsistent application across MNR District Offices for previously listed species.

Permitting Process:

- The timeframe for the development of permit requirements and also the approval of permits continues for previously listed species to be uncertain and many OHBA members have experienced unacceptable delays;
- OHBA is concerned that there has been little acknowledgement to the mitigation and stewardship practices already considered by the building and development industry at other points in the planning approvals process that have numerous environmental benefits. OHBA is furthermore concerned that this could lead to duplication, disproportionate costs for actual benefits and unnecessary delays;
- While some draft materials are available for currently listed species to assist applicants, guidance remains limited, incomplete and in draft form and in many cases no standards exist. MNR must have a more comprehensive set of guidelines and permitting standards when new species are listed as the current situation creates uncertainty and inefficiencies. Proper transition for newly listed species to respect urban designated lands would significantly improve the currently untenable situation;
- The process for development of a Permit application and the identification of Overall Benefit provision is still onerous and lengthy for many currently listed species, requiring drawn out and frustrating negotiations around how much benefit is enough to satisfy local MNR staff. Proper transition for newly listed species within urban designated lands would significantly improve the currently untenable situation.
- OHBA is concerned that many query letters for currently listed species result in responses suggesting the affected species is 'in the vicinity' rather than including specific data relevant to the proposed development site. This situation provides no certainty and may

unnecessarily delay a project. This does not help owners ensure compliance with the ESA or determine issues at the outset of a project.

- The 5 month Service Guarantee is helpful, but is added to the lengthy Permit development process – the Service Guarantee hasn't shortened the more consuming and complex Permit negotiation process;
 - What is required for a complete application?
 - Industry is concerned by delays to 'start the clock' through complete applications towards the 5 month service guarantee – delays are unacceptable & arbitrary;
 - OHBA supported the 5 month service guarantee yet our members are not seeing results;

OHBA supports a balanced approach to the *General Regulation* under the ESA that recognizes other important provincial goals and objectives in the broader land-use planning framework. A regulatory framework that constrains opportunities to construct sustainable complete communities in areas targeted and designated for growth municipal and regional Official Plans as well as provincial plans (*Growth Plan*), will undermine the viability of intensification objectives and sterilize land in strategic locations. Furthermore, OHBA is concerned that permitting processes that are not completely defined and consulted upon with stakeholders prior to permitting requirements taking effect will further complicate and in some cases duplicate the already complex planning approvals process. OHBA strongly believes that the habitat regulation should work in conjunction with existing legislation and complement other important provincial goals and objectives. Furthermore, the province must implement appropriate transition that respects previous approvals and land designations.

OHBA appreciates the opportunity to provide comments to the Ministry of Natural Resources and to provide advice on the proposed amendments. OHBA strongly supports a balanced approach to the environmental, social and economic goals of the province to ensure a prosperous and high quality of life for Ontario citizens.

Sincerely,



Joe Vaccaro
Chief Operating Officer
Ontario Home Builders' Association

cc. Hon. Michael Gravelle, Minister of Natural Resources