



Ontario
Home Builders'
Association

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Ministry of the Environment, Conservation and Parks
Species Conservation Policy Branch
300 Water Street
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Peterborough ON
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Re: 10th Year Review of Ontario's Endangered Species Act: Discussion Paper. (EBR #013-4143)

About the Ontario Home Builders' Association (OHBA)

The Ontario Home Builders' Association (OHBA) is the voice of the land development, new housing and professional renovation industries in Ontario. OHBA represents over 4,000 member companies, organized through a network of 29 local associations across the province. Our membership is made up of all disciplines involved in land development and residential construction, including: builders, developers, professional renovators, trade contractors, manufacturers, consultants and suppliers. The residential construction industry employed over 513,000 people and contributed over \$62.3 billion to the province's economy in 2017. OHBA has been engaged with the provincial government since the initial consultations on the *Endangered Species Act, 2007* and was an active member of the *Endangered Species Act Stakeholder Group* and a member of the *Bobolink / EML Roundtable*.

OHBA members have an important role to play in protecting and preserving our environment. Through environmental stewardship, building energy efficient new housing or upgrading aging homes, creating transit efficient complete communities or cleaning up brownfields sites, our members are important partners to the government in delivering upon a *Made-in-Ontario Environment Plan*. In this submission, OHBA outlines areas that our industry can play a leading role in protecting species at risk and balance a healthy environment with a healthy economy.

Background

OHBA supports the protection of species at risk. The current *Endangered Species Act (ESA)* has a number of operational and implementation challenges that should be improved while continuing to provide important species at risk protection. The ESA is now ten-years old and consistent with the experience and insight gained over the past decade, the government is considering amendments to the ESA that would: enable positive outcomes for species at risk, while streamlining processes and providing greater clarity for those who need to implement the Act and maintain an effective government oversight role.

The implementation of the ESA has contributed to significant uncertainty and frustration, with respect to both implementation and transition, for the new housing and development industry. To date, the implementation of the Act, has been problematic and has required substantial resource and time investments through an administratively difficult process for both MNRF/MECP and industry stakeholders as opposed to assisting in species recovery. Through this legislative review, the Ontario Government should undertake an increased focus on implementation improvements such as transitional regulations, streamlining of the permit process and a stronger focus on the conservation of key ecosystems as opposed to a sole focus on individually listed species or small parcels of land in isolation on an application by application basis.

In a province where housing of all types and tenures is becoming significantly more expensive, OHBA believes that the Government has an important opportunity to consider the impacts of planning, fiscal and labour policy decisions on housing supply and, ultimately, prices. The Government has many levers it can push and pull that influence new housing supply, including, streamlining of ESA permitting, clearer guidelines and a risk based approach to habitat and species protection. OHBA supports a greater focus on outcomes that result in better transparency, accountability, consistency and fairness. OHBA is generally supportive of the *Made-in-Ontario Environment Plan* and believes that with ten years of experience, now is the right time to review of ESA.

Purpose of Proposed Legislative Review:

The Ontario government is currently undertaking a review of the ESA to improve protections for species at risk, consider modern and innovative approaches to achieve positive outcomes for species at risk, as well as to look for ways to streamline approvals and provide clarity to support economic development. Protecting and recovering our province's species at risk is part of the MECP *Made-in-Ontario Environment Plan*, which OHBA responded to in January 2019.

The desired outcomes as stated in the Environmental Registry posting (013-4143) of any proposed changes to the ESA are to:

- Enable positive outcomes for species at risk;
- Ensure species assessments are based on up-to-date science;
- Address multiple objectives for ecosystem management through stewardship and protection activities;
- Increase efficiencies in service delivery for authorization clients;
- Streamline processes and provide clarity for those who need to implement the Act; and
- Maintain an effective government oversight role.

The Ministry is particularly interested in hearing ideas in relation to four key areas of focus, as outlined in the MECP Discussion Paper to which OHBA has responded below:

OHBA Recommendations for 10-year Review – Area of Focus #1: Landscape Approaches

In what circumstances would a more strategic approach support a proposed activity while also ensuring or improving outcomes for species at risk?

-) The ESA requires streamlining to improve outcomes for all stakeholders and for the listed species. The implementation of the Act thus far is very problematic from OHBA's perspective and has required substantial resources and time investments by both MNRF and industry stakeholders as opposed to

assisting in species protection and recovery. An increased focus on the conservation of key ecosystems as opposed to a sole focus on individually listed species would enable more efficient conservation and recovery investments and more successful outcomes.

-) OHBA notes that overlap in some species habitat requirements makes implementation of provisions on a species-by-species basis (one off) inefficient and frustrating for proponents, while also not necessarily providing the best outcomes for the species.
-) Opportunities exist for the grouping of species for habitat protection, rather the protection of species-by-species.
-) There is a need to consider, balance and prioritize the potentially conflicting needs of multiple species where habitat requirements differ over the same area.
-) There are few standardized requirements or approaches that are ecosystem or multi-species based, creating uncertainty for all stakeholders. A broader landscape approach should be considered on a multi-species basis, wherein certain standardized conditions for approvals would apply depending on habitat types.
-) A strategic approach should also consider the desired outcomes to recover species at risk and have a more strategic approach in what is required of proponents seeking permits.
 - o For example: with respect to four endangered bat species (Little Brown Myotis, Northern Myotis, Tri-coloured Bat, Eastern Small-footed Myotis), protection measures required by MNRF/MECP to obtain a permit range from cutting trees used for maternity roosting only in the winter, construction of bat boxes to replace roost trees, reforestation, securing forested land for permanent protection, to excluding lands from development. The frustrating component for proponents shouldering the time and cost of implementing these measures is that (in addition to the lack of consistency); as stated by MNRF/MECP, it is not a loss of roosting habitat that is contributing to the decline of the bat species, but rather it is a fungus (White Nose Syndrome) infecting bats where they hibernate.
 - o A second example is the Butternut Tree. While online registration is working well in OHBA's view for under 10 Category 2 trees, OHBA questions the process that can take over a year to assess and provide permits for over 10 Category 2 trees, or any number of Category 3 trees. The process is in some cases discourages appropriate management of lands to the benefit of this species. OHBA recommends online registration with authorization links to a conservation pool/fund dedicated to planting and research given that the threat to the species is *not* development (including infrastructure and/or homes) requiring the removal trees, but disease.
 - o OHBA questions the value of the current costly and time-consuming approach (for 10 or more Category 2 trees or any Category 3 trees) that may have little to no benefit in contributing to the recovery of the species as tree removal is not the problem. A more strategic approach is required.
 - o A third example is the Bobolink. Many OHBA members experienced significant delays when the species was first listed as there was no initial transition policy and MNRF District Offices did not have a plan to handle authorizations. This is a perfect example of problems associated with automatic listings without policies or guidance in place for the Ministry to respond to the regulated community. Furthermore, OHBA notes that the Ministry ultimately had to provide long-term exemptions to the agricultural sector as there was no possible resolution to protect managed habitat that is in fact commercial crops that are harvested.
-) OHBA notes that habitat regulation should work in association with existing legislation and complement the broader red tape reduction and streamlining goals and objectives of the Provincial Government. More simply, MNRF/MECP must work closely within MMAH provincial *One Window Review* to ensure that ESA permits are fully integrated into the planning approval process and that appropriate transition policies are applied. OHBA has expressed concern that without service improvements and careful integration of the timely issuance of permits at the end of the process, or

have resulted in a need for significant changes to approved site plans after all other various approval agency requirements have been satisfied.

-) Habitat regulations and critical habitat definitions are often generic and do not recognize the context. Redside Dace habitat is 30m beyond a meander belt. Often, this generic regulation includes active agricultural lands a considerable distance from the watercourse. On the opposite side, there are roads/highways and developments which have a substantive existing influence on habitat. The last landowner in should not bear the brunt of much of the habitat impacts that have already occurred.
-) Identification of appropriate overall benefit locations through a landscape approach would be beneficial. Concentration of efforts through multiple overall benefit permits in a specific area identified as key for the species recovery and protection can build meaningful change in a way that cannot be done on an individual basis as it is now.

Are there existing tools or processes that support managing for species at risk at a landscape scale that could be recognized under the ESA?

-) OHBA supports a landscape approach for species that depend on habitat across wide ranges that would enable planning and authorizing activities on a broader scale.
-) OHBA is concerned by the potential for unnecessary delays and potential duplication over existing processes which already incorporate significant environmental protection criteria and recommends better integration with other approvals processes.
-) Natural Heritage System Planning has become quite complex with municipalities, NGOs, conservation authorities, MNR and private businesses engaged in various aspects of the planning, design and implementation of Natural Heritage Systems. The Province could allow for some reasonable degree of planning, design and implementation flexibility, while limiting the opportunity for redundant activities and inefficient resource investments.
-) OHBA recommends that an “urban lense” be applied to Natural Heritage System planning, Conservation Authority (CA) planning and permitting as well as ESA permitting, in areas designated for growth in municipal and regional Official Plans and in the Greater Toronto and Hamilton Area’s long-term urban reserve (commonly referred to as the “whitebelt”). OHBA supports the protection of environmentally sensitive lands and features, however this must be balanced with an urban lense in the very small portion of Ontario’s land mass where urban growth is planned to accommodate the vast majority of Ontario’s growing population and employment needs for decades to come.
-) With respect to the ESA, habitat regulation should work in conjunction with existing legislation and complement other important provincial goals and objectives. However, OHBA is opposed to the delegation of ESA permitting or delegation of additional MNR responsibilities to CAs. Furthermore, OHBA notes that current ESA requirements provide 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;
-) Even the studies that are conducted ahead of approvals provide valuable insight in to population presence and use that does not get recognized as part of the overall benefit to the species that the landowner has contributed.

OHBA Recommendations for 10-year Review – Area of Focus #2: Listing Process and Protections for SAR

What changes would improve the notification process of a new species being listed on the Species-at-Risk in Ontario List?

-) OHBA strongly believes that there is not enough time and public notice before a new species are automatically listed on the SARO list.
-) While it is noted that there are (at times) transition regulations that are applicable to newly listed species, a new species listing has the potential to completely stop or significantly alter a development nearing the end of the *Planning Act* process, which at times, can take up to 10 years and a significant amount of financial investment to get through. As a result, it is recommended that a grandfathering provision be added to the legislation to reduce this risk to developers, or stronger transition regulations be implemented when any new species is added to the SARO list.
-) The SARO list, currently available on the Ontario species at risk website, should be revised to include species that will be assessed at upcoming COSSARO meetings. While it is noted that there are email lists that Ontarians can subscribe to receive this information, this information should be accessible to all in a more transparent manner.

Should there be a different approach or alternative to automatic species and habitat protections?

-) Automatic species and habitat protections create tremendous business uncertainty. The legislation should be amended with:
 - o A) Longer advanced public notice periods before being listed on the Species at Risk in Ontario (SARO) list;
 - o B) Longer transition periods that temporarily delay species and habitat protection;
 - o C) Respect planning approvals that have been obtained through transition policies;
 - o D) Allow Ministerial discretion for being listed on the Species at Risk in Ontario list.
-) When species are listed by COSSARO the process must be refined to improve both MNRF/MECP and stakeholder preparedness for listing which would ultimately optimize outcomes for species conservation and recovery. OHBA notes that over the past ten years, both the province (i.e., MNRF/MECP) and various different industries have been challenged when new species are listed for protection without direction being provided as to how to limit/avoid impacts to species and habitat (with the goal of not contravening the ESA), and, when contravening the ESA is unavoidable, how to achieve the authorization/permitting requirements of the Act (i.e. how is the habitat defined, what is required to achieve overall benefit). Businesses require greater certainty, clarity with respect to the requirements, fairness as to how to achieve the requirements and reasonable response timelines.
-) Currently O. Reg. 242/08 applies to species listed on the SARO List as it read on June 15, 2016. As additional species are listed as extirpated, endangered or threatened on the SARO List, the Ministry assesses whether amendments to O. Reg. 242/08 are warranted. The SARO List was updated on June 2, 2017, and OHBA was supportive of the proposed regulatory changes that amended the provisions of O. Reg. 242/08, so that the regulation would apply to species listed on the SARO List as of June 2, 2017. Rather than updating the transition regulation every time a new species is added, OHBA recommends that a permanent fix be introduced.
-) We need better recognition when a species is listed in Ontario because of low numbers when the area to the south (neighbouring states) have large populations. For these species it is a political boundary that makes them rare. These species need to be treated differently than ones with a larger geographic decline. Anything actions undertaken in Ontario would be miniscule in comparison with addressing main cause of loss.

In what circumstances would a different approach to automatic species and habitat protections be appropriate?

-) Review the role and mandate of COSSARO for the identification and automatic protection of endangered and threatened SARO. A review should include the criteria utilized to identify Species-at Risk, as the current criteria is not properly being used for the purposes in which it was intended. Criteria must better reflect population levels and not be primarily based on decline. Furthermore, OHBA notes that COSEWIC, the National counterpart to COSSARO does not feature automatic listings.
-) MECP should re-evaluate the composition of CASSARO with a broader spectrum of expertise and perspectives including economic and social.
-) Recognition of the sequencing of approvals under other legislation and the timing of automatic species and habitat protections and how those ESA requirements impact other approvals. There should be greater certainty with respect to transition within the planning approvals process.
-) There should be greater recognition where there is significant intersection between species/habitat and human activities (i.e. within urban areas) when evaluating appropriate habitat protections and impacts of potential automatic listing.

How can the process regarding assessment and classification of a species by the Committee on the Status of Species at Risk in Ontario be improved?

-) The process currently only applies scientific considerations in the listing and recovery planning stages. OHBA therefore recommends that a formal socio-economic assessment be incorporated into the COSSARO evaluation for listing of a species as endangered or threatened.
-) OHBA believes that the current assessment and classification process by COSSARO lacks transparency.
-) The Minister should be given the discretion to request an additional review and assessment of newly listed species or potentially listed species where there is emerging science or conflicting information after listing where there is new information or newly emerging science.

OHBA Recommendations for 10-year Review – Area of Focus #3: Species Recovery Policies and Habitat Regulation

In what circumstances would a species and/or Ontarians benefit from additional time for the development of the Government Response Statement?

-) OHBA notes that the timing of the development of *Government Response Statements* and *Habitat Regulations* has led to uncertainty in the conservation and recovery of listed species. At the same time, the uncertainty has also resulted in additional complexity and inefficiencies for resource management, habitat creation and development projects. Projects can be delayed and made vastly more complex by periods of uncertainty and requirements that are undefined, as such, authorizations are slow for extended periods under general habitat protection. The process, by definition, is reactionary, with no mechanism to anticipate and develop proactive strategies to address the implications of listing.
-) OHBA believes the nine month time limit to develop a *Government Response Statement* is too short and in many circumstances, the recovery of species would be better served with more time. OHBA recommends, a) a longer time frame; and b) an option under the Act to extend the timeline when needed.

In what circumstances would a longer timeline improve the merit and relevance of conducting a review of progress towards protection and recovery?

-) OHBA shares concerns raised in the Discussion Paper that in many cases conducting a review of progress towards the protection and recovery of species within five-years of a GRS is too soon.
-) OHBA agrees with the Discussion Paper that additional data towards the progress of protection and recovery of species may be more available, relevant and accurate over a longer timeframe. OHBA also notes that stewardship actions may take longer than five years to demonstrate effectiveness towards the recovery of species at risk.

In what circumstances is the development of a habitat regulation warranted, or not warranted?

-) OHBA agrees with the challenge outlined in the Discussion Paper that, “the development of a habitat regulation is not needed for each species since general habitat protection applies and can be classified through the use of general habitat descriptions.
-) Habitat regulations should distinguish between what is considered habitat versus what part of that habitat is a limiting factor and requires protection and recovery to improve the species potential survival long-term.

OHBA Recommendations for 10-year Review – Area of Focus #4: Authorization Processes

What new authorization tools could help businesses achieve benefits for species at risk?

-) Quite simply the ESA approvals process should be streamlined for the benefit of both the MECP while also providing greater clarity, consistency, and efficiency to proponents. The MECP should adopt a risk-based standardized approach to approvals based on a prescribed standard set of conditions instead of proceeding through the regular, uncertain and time-consuming negotiated approvals process. Consideration should be given in adopting a self-assessment process, similar to the Fisheries and Oceans Canada (DFO) self-assessment process currently in place to assist proponents from determining if their projects may require a *Fisheries Act* Authorization.
-) Projects that suit this approach would generally be those that are common and repeatable where there is confidence in the outcome of mitigation and where there is an acceptable lower-to-medium risk to the species. This would support and enhance accountability and transparency with more consistent outcomes.
-) In lieu of activity-based requirements, the legislation should enable the creation of a “Conservation Fund” dedicated to species at risk conservation. Direct financial contributions to broader recovery efforts and initiatives through a ‘special purpose fund’ may achieve more positive outcomes for species than the current permitting system. OHBA notes that a shift towards a “conservation fund” could enhance cost certainty and significantly speed up the process while focusing investments on species at risk to achieve the best possible outcomes for the species.
 - For example: Funds could be pooled towards promoting disease resistant Butternut Trees rather than planting small groups of trees. Funds could also be pooled towards research toward a solution for White Nose Syndrome rather than focusing on habitat protection. Such an approach could have better long-term conservation outcomes.
 - OHBA recommends that if a “Conservation Fund”, is set-up, that it have third party oversight and be mandated to distribute funds over the broader landscape that would be most effective and beneficial to the species.

-) In lieu of activity-based requirements the legislation should allow for the use of tools successfully used in other jurisdictions such as “Conservation Land Banking”, to enable addressing requirements for species at risk prior to activities. Such a tool can offset and mitigate adverse effects of development prior to development taking place while providing benefits to species at risk and encourage relationships between project proponents and conservation and commercial organizers / ENGOs.
-) In lieu of activity-based requirements (i.e. Section C Permit), mitigation can be used under certain circumstances, and for certain species the legislation should permit this.
-) To modernize and streamline approvals, the MECP should allow for a range of authorization options based on risk:
 - Permit-by-Rule (Rules in Regulation);
 - Permit with Registration (Rules in Regulation with online registration);
 - Permit by Review.
-) OHBA can report that our members are generally satisfied that the online registration process is working well for some species and is a significant improvement from the previous cumbersome process.
-) Processes and decisions must be more consistent, not only District by District, but within Districts. Consistency is required for the following: survey protocols, habitat that is being protected (particularly key for species with general habitat protection), circumstances under which a project can proceed under a Letter of Advice versus a permit and overall benefit required for a species

Are there other approaches to authorizations that could enable applicants to take a more strategic or collaborative approach to address impacts to species at risk?

-) The MECP should continue to identify additional opportunities for using a risk-based approach to the implementation of the ESA;
-) OHBA notes that many of our members have expressed frustration with a lack of consistency in the application, implementation and interpretation of the Act by Ministry field staff. There is a general lack of confidence in the process. It needs to be more transparent, consistent and fair.
-) The MECP could improve the efficiency of the existing authorization process by recognizing and acknowledging expert consultants that are operating in a professional and ethical manner.
-) There should be greater accountability and opportunity for a formal appeal within the MECP when there is a professional disagreement between a proponent’s consultant ecologists and Ministry field staff. This applies to both in the field disagreements, and disagreements “in the office” over topics such as: results of field surveys, delineation of habitat, the need for a permit, and requirements to achieve overall benefit.
-) There should be a greater focus on habitat quality vs quantity
-) The MECP should enhance the use of the “Safe Harbour” tool, which is enabled under the ESA and encourage property owners to create or enhance Species-at-Risk habitat for a set period of time.
 - OHBA supports the concept of “Safe Harbour” as an important incentive mechanism and a key component of a successful benefits exchange program. Furthermore, in a submission on January 18, 2017 to MNRF on “Safe Harbour” under the ESA (#012-8234);
 - Property owners should have legal assurance that they can alter the land use at a later date by appropriately eliminating risks for adjacent property owners and for new species listings;
 - OHBA has previously expressed concern that there may be unintended consequences when “Safe Harbour” habitat provides habitat for non-target species at risk. As such, damage or destruction of safe harbour habitat could have unintended consequences to species at risk beyond the target species. The MECP should continue to look for ways to reduce proponent risk from entering into “Safe Harbour” agreements;

- The industry remains concerned with adjacent property spillover impacts and risk of additional species listings with habitat within a “Safe Harbor” zone. MECP should address these issues in a strategy to promote the use of “Safe-Harbour” in Ontario;
- OHBA further notes that we had previously expressed concern that the regulatory framework for “Safe Harbour” is currently limited to species listed as threatened or endangered and does not account for new listings that may have assembled on habitat created on, or protected by, a “Safe Harbour” property.

What changes to authorization requirements would better enable economic development while providing positive outcomes and protections for species at risk?

-) OHBA notes that our members experience with the ESA and enabling activities otherwise prohibited by the Act are primarily utilizing s. 17(2)(c) “Overall Benefit Permit” or are registering under Ontario Regulation 242/08 when applicable.
-) OHBA has consistently expressed concern over the past decade with respect to the limitations of the policy provisions to enable the achievement of the objective of “overall benefit”.
-) OHBA would support greater clarity and simplification with respect to the requirements for a permit under s. 17 (2)(d) “Significant Social or Economic Benefit Permit”. Through ten-years of experience under the ESA, OHBA is not aware of any member utilizing this permit option.
-) OHBA supports an expeditious review and approval of projects subject to the ESA, particularly given that such projects have already been through an extensive review and approval process (in excess of five years at times) in advance of the ESA permit process. OHBA therefore recommends that the ESA be amended to include strict permit review timelines and service standards.
-) OHBA recommends enhancing Ministry resources for handling permitting functions (or shifting more permitting functions to a permit-by-rule approach or a “Conservation Fund” approved as discussed under the previous section).
-) The Ministry should support proponent-led assessments of species at risk requirements early in the environmental assessment and/or planning process to facilitate timely approvals.
-) OHBA notes that the implementation of the ESA has even had unintended negative consequences on project/activities that have the primary purpose of protecting or conserving habitat.
-) OHBA strongly advocates for implementation of appropriate transition measures for new endangered or threatened species listings that respect existing earned planning approvals and publicly established land designations.
-) Information Gathering Forms (IGF) that environmental consultants assess our members sites provide to the MNRF/MECP is a comprehensive undertaking that should both be streamlined and taken more seriously by Ministry staff. OHBA is concerned by reports from members that Ministry staff are often reluctant to agree with professional conclusions of environmental consultants that a site may not be an issue for species-at-risk even if an IGF determines the habitat and/or species are not present. If the result of the IGF process is not taken seriously, why is the process in place?
-) OHBA is concerned that the current process to “sign off” on an overall benefit permit is inefficient and can result in months of delay even after the Ministry’s district field office has come to an agreement with a proponent. OHBA notes that currently, even after a permit has been agreed to at the district level, that it goes to the Ministry office in Peterborough for review, and then to the Ministry Queen’s Park office and eventually to the Minister’s desk to actually receive a signature. OHBA is concerned that this multi-step process even after the terms of the permit have been agreed upon can add months of delay as the permit moves up the chain of command for final approval. OHBA further notes that a couple of months delay on a permit, can cause havoc for short construction season windows that can further be complicated by important species life-cycle functions where activities cannot disrupt habitat. This means that two or three months delay in obtaining and signing off on permits, can actually disrupt a project timeline by a year or more.

-) The MECP should amend the ESA to delegate authority to senior staff to approve applications and issue permits (versus the Minister).

How can the needs of species at risk be met in a way that is more efficient for activities subject to other legislative or regulatory frameworks?

-) There are circumstances where existing regulatory frameworks may already provide a vehicle for the management and protection of SAR and, as such, may already achieve the intent and the purpose of the ESA. OHBA recommends the MECP assess where existing regulatory frameworks and planning processes currently contribute to and already achieve the objective of the ESA and also identify potential conflicts between the ESA and other legislation.
-) With respect to the ESA, OHBA believes that habitat regulation should work in conjunction with existing legislation and complement other important provincial goals and objectives including social and economic priorities. This means that the MECP and the ESA must respect planning (and other) approvals that have been obtained or are in the process of approval.
-) In some cases, municipalities will not consider a planning application until the Ministry has provided ESA approval. OHBA suggests an interim step whereby the Ministry can advise a municipality that the local planning process can proceed while ESA issues are being resolved. This would allow two processes to proceed concurrently.
-) OHBA is generally supportive of the modernization approach to streamlining approvals through standardized conditional approaches (Rules in Regulation with online registration).
-) OHBA notes that MNRF/MECP have been without the resources to respond to already listed species in a timely fashion, creating significant delays on many projects. The industry is keen to find workable, efficient solutions that will protect species at risk while not unduly constraining the province's economic interests.
-) OHBA strongly recommends transition provisions that recognize publicly earned approvals under other provincial legislation. Transitional provisions should be employed to assist with the implementation of the ESA to ensure meaningful protection for species at risk while providing process certainty for agencies involved in the development and construction process (i.e. municipalities, industry, non-profit sector). The land-use approvals process is lengthy and extremely complex involving multiple levels of government and approval agencies. Currently, new species listings result in habitat protection with an end of process permit that ignores all previously obtained environmental, planning and land-use approvals. It is essential that MECP recognize the uncertainty created by establishing a moving target for municipalities and the industry that undermines approvals previously granted under separate provincial legislation.
-) OHBA recognizes that high risk activities that may impact a species near extinction would not qualify for transitional regulations. Furthermore, OHBA recognizes and supports species-specific transitional conditions that would prohibit habitat damage or destruction during important life cycle windows.

In what circumstances would enhanced inspection and compliance powers be warranted?

OHBA Recommendations for 10-year Review – Other Recommendations

-) Recognize that policy which addresses issues in Southern Ontario can be detrimental to northern communities. For example, requirements under the ESA can stagnate development on private land in northern communities like Sudbury where 94 per cent of land is crown, undeveloped or undevelopable (essentially either swamp or rock). There are few opportunities for development in many Northern communities and a northern policy lens is required to support economic development.

-) Many stakeholders including OHBA and our individual member companies navigating the requirements of the ESA have expressed frustration with the lack of guidance tools such as brochures, fact sheets or online Ministry resources explaining in detail the process, conditions and requirements for obtaining approvals under the ESA. OHBA recommends MECP dedicate resources to the development of robust guidance tools including best management practices and standardized mitigation approaches for proponents.
-) OHBA is opposed to delegating ESA permitting to CAs as this measure would not streamline the permitting process and would more likely result in further delays and additional levels of complexity. The ESA is provincial legislation and the authorization process should remain with the province to ensure better consistency. Furthermore, Ontario's 36 CAs do not cover the full geography of the province.
-) In an effort to streamline processes, municipalities and industry require greater clarity regarding the "definition" of what triggers an ESA permit or application. On many occasions, permits are being processed without the existence of a threatened or endangered species or regulated habitat on a site and considerable time is being spent attempting to have MECP/MNRF confirm that an observation that may have occurred years in the past.
-) OHBA supports the protection of environmentally sensitive lands and features, however, this must be balanced with an urban lens in terms of resource management that should be applied to the very small portion of Ontario's land mass where urban growth is planned to accommodate significant population and employment needs for decades to come. OHBA recommends that MECP apply an "urban lens" to ESA permitting in areas designated for growth in municipal and regional Official Plans. The Ministry should consider the value to species recovery in which islands of habitat are being created in urban areas.

Conclusion

OHBA appreciates the opportunity to provide comments and advice to the MECP. The previous government implemented significant reforms to the land-use planning system including the introduction of the *Endangered Species Act, 2007*, which was poorly integrated into the broader planning system, contributing to uncertainty and frustration with proponents. It is important that the current Government recognize the progress we have made protecting species at risk and find a balanced solution that provides business certainty, makes life more affordable for families, and takes Ontario's role in protecting species at risk seriously. OHBA is supportive of the government's commitment to ensuring that the ESA provides stringent protections for species at risk and to continuing its work with stakeholders and Indigenous peoples to improve its effectiveness, and modernizing the program based on best practices in other jurisdictions. OHBA supports an approach that increases clarity of requirements, streamlines the process and implements fair and reasonable response times. 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.