



Ontario
Home Builders'
Association

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Delivered via email

To: ESAReg@ontario.ca
Species at Risk Protection Policy Section
300 Water Street
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Peterborough, ON
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ERO Number: 019-8016 - Regulatory changes under the Endangered Species Act to improve implementation of the species at risk program

The Ontario Home Builders' Association

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario, representing 4,000 member companies organized into 27 local associations across the province. Members include builders, developers, professional renovators, trade contractors and many others within the residential construction industry. The residential construction industry employed over 550,000 workers, paying \$38.8 billion in wages, and contributing over \$80 billion in investment value to Ontario's economy in 2022. Our members have the vital responsibility to build the housing supply that current Ontario residents are counting on at all stages of their lives and be the voice of future home buyers who want to call our province home. The OHBA's response regarding this consultation is developed through input from members and chapters across Ontario.

Environmental Registry Background

We are proposing to make regulatory changes to improve implementation of the Endangered Species Act, 2007. These changes will help the Provincial Government continue to deliver a species at risk program that is effective and focuses protections where they are needed most.

Executive Summary and General Background

OHBA continues to support provincial actions which streamline processes, permissions, and approvals to facilitate the implementation of policy required to support housing availability and new housing supply in the province. We are strongly supportive of the provincial goal to build 1.5 million new homes across Ontario over the next decade. Achieving such an ambitious goal will require cooperation from all three levels of government and smart public policy adjustments to expedite both infrastructure and housing. Through our efforts, the residential construction industry has participated in and supported the general direction of several initiatives over the past few years to streamline permissions and expand opportunities for low-risk activities.

OHBA notes that this initiative (019-8016) represents the province's ongoing work to modernize environmental approvals and improve the implementation of the Species at Risk program.

OHBA has been working with MECP in this regard to seek efficiencies in the approval processes that reduce unnecessary regulatory burdens and promote housing choice for residents of Ontario while continuing to provide Ontarians with strong environmental protections.

OHBA supports the protection of species at risk. However, the ESA continues to have several operational and implementation challenges that need to be improved while continuing to provide important species at risk protection. The ESA is now nearly two decades old and consistent with the experience and insight gained over the past 17 years, OHBA is supportive of the MECP proposed direction that would enable positive outcomes for SAR while streamlining processes and providing greater clarity for those who need to implement the Act.

OHBA notes that the proposed amendments in the ERO (019-8016) posting will support the *More Homes, Built Faster: Ontario's Housing Supply Action Plan 2022-2023*, as they will create smarter and more efficient environmental permissions processes that reduce unnecessary burden to support housing and build critical infrastructure.

OHBA is supportive of provincial efforts to improve the effectiveness and implementation of the species at risk program and is generally supportive of the proposals to amend several regulations made under the ESA to increase certainty and streamline processes for Ontarians while also delivering ESA protections where they are needed most. OHBA appreciates the opportunity to provide technical feedback, which is detailed below.

The MECP is proposing to make regulatory amendments in four key areas and this submission will divide our technical comments into four separate sections to respond to the Environmental Registry posting:

1. Regulatory amendments regarding habitat protections for Redside Dace
2. Regulatory amendments regarding select conservation fund species and related administrative changes.
3. Regulatory amendments to add newly listed species to existing conditional exemptions and other administrative changes to conditional exemptions.
4. Regulatory amendments regarding the conditional exemption for early exploration mining

OHBA Recommendations: Regulatory amendments regarding habitat protections for Redside Dace

We are aware that Ontario Streams, an environmental charity, has been asked to draft an addendum to a provincial guidance document released by MNR in March 2016, *Guidance for Development Activities in Redside Dace Protected Habitat*.

It is not clear whether the Ontario Streams initiative is part of and/or supported by the province. That document and the development of new communities and housing directly overlap with much of the habitat of this species in the Greater Toronto and Hamilton Area (GTHA). Our members across Ontario have extensive practical experience with development in Redside Dace habitat.

We request that the province engage directly with Ontario's development sector to ensure we can continue to effectively contribute to the protection and recovery of this species.

We also request clarification regarding why (if correct) the provincial guidance document is being completed by an Environmental Non-Governmental Organization (ENGO) external to the province. Our industry should be involved in any discussions and/or proposals to update that provincial guideline document.

To ensure any amendments regarding this species are practical and implementable, we request formal and direct engagement in the proposed amendments. While it makes sense that the timeframe for occupancy of a reach by this minnow species is reduced from 20 years to 10 years, we suggest a more fulsome discussion to see whether other amendments would be beneficial (e.g., exclusion of Redside Dace regulations where a project and associated infrastructure are required to meet urgent goals related to the provision of more homes).

We note that the regulatory amendments give special attention to the mining industry for the reopening and use of exploration trails with exemptions from aspects of the ESA. While not explicitly stated, we expect that this exclusion is proposed to increase the speed with which mineral exploration can access critical minerals. We believe that the province needs to give serious attention to exclusions for the housing industry in our efforts, together with the province, to meet housing supply targets.

OHBA Recommendations: Regulatory amendments regarding select conservation fund species and related administrative changes

In 2019, OHBA supported the MECP proposal to create Canada's first independent Crown agency, the *Species Conservation Action Agency*, to allow 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. 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. A shift towards a "conservation fund" within a *Species Conservation Action Agency* 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.

We continue to be supportive of changes that would authorize the creation of a regulatory charge that could be paid by persons who are permitted to carry out otherwise prohibited activities under certain permits, agreements, and regulations. The charge would be paid-in-lieu of fulfilling certain potential conditions that could otherwise have been imposed under the permit, agreement, or regulation. We respect that, "clients would still need to fulfill some on-the-ground requirements, including considering reasonable alternatives for their activity and taking steps to minimize the adverse effects of the activity on the species at risk." Furthermore, OHBA is supportive of an approach in which the MECP could make a regulation to specifically prescribe a subset of the species prescribed under the listing regulations as eligible for the payment-in-lieu charge. We believe a wide range of species should be considered for such an approach.

The Species Conservation Action Agency could receive the funds and ensure informed, unbiased, and expert decisions are made to disburse the funds to third parties that will undertake the activities in accordance with the purposes proposed to be set out in the statute.

Overall, OHBA continues to support the MECP proposed *Species at Risk Conservation Trust* to provide greater certainty to business and better enable positive outcomes for species at risk compared to the current piece-meal industry-led approach.

We appreciate that the province has taken this opportunity to consider the conditional exemptions for conservation fund species, including butternut. We offer the following comments regarding butternut, a species that our members often encounter, as well as comments on additional species.

Butternut is at risk because of a non-native fungal pathogen commonly known as butternut canker. In a similar manner, some bat species are at risk because of infection by a fungus that affects the skin of **bats** during hibernation (white-nose syndrome). This fungus can disturb hibernation, resulting in dehydration, starvation, and death of bats. Our organizations and members believe that these species and others that are at risk due to factors outside of habitat loss and habitat degradation should be granted exclusion in circumstances where we are working together with the province to meet housing supply targets.

We also recommend that **Chimney Swifts** should be considered for the Species at Risk Conservation Fund because:

- *Chimney swifts can be found in dense urban areas (like downtown Toronto)*
- *Due to development timelines, landowner can often only complete due diligence field investigations via drone and camera to observe characteristics of chimney from opening to base to see if there is evidence of nesting and roosting.*
- *Due to development timelines, there often is not multiple breeding seasons available to monitor chimneys.*
- *Classification of chimney as habitat can be based on public observation, even if due diligence investigation by professional concludes no habitat.*
- *Notification of habitat late in development process delays construction of new housing, especially as chimney cannot be demolished during active season - generally considered to extend from the end of April to the middle of October.*
- *Requirements for replacement habitat are very difficult to achieve in dense urban areas.*
- *Paying a charge into a species conservation fund would allow new habitat to be built in an appropriate location, without delaying construction.*

Additional species for which 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. Furthermore, funds could be pooled to acquire large contiguous areas of managed habitat for both **Bobolink** and **Eastern Meadowlark** rather than obtaining smaller non-contiguous plots of land which may be required as part of an overall benefit permit.

Also, for consideration, our members who have contributed substantial funds to the Species Conservation Action Agency (SCAA), have concerns that those funds have still not been invested in projects to help species at risk. For example, almost two years after the activation of the fund, we do not know how the funds have been invested to improve the conservation and recovery of butternut. Anecdotally, we have heard concerns from the Forest Gene Conservation Association (FGCA) that their revenues to ensure the protection and recovery of butternut has been significantly diminished.

Funds from our members were used actively, transparently, and progressively by FGCA before the establishment of the SCAA.

We request a transparent accounting of the funds received and invested by the SCAA since its inception. While we welcomed the SCAA as a means of simplifying the work of our members, we are concerned that conservation and recovery actions for butternut have been reduced or halted. We also understand that while the SCAA programs have been activated, the agency is still without permanent staff or leadership.

OHBA Recommendations: Regulatory amendments to add newly listed species to existing conditional exemptions and other administrative changes to conditional exemptions

Our comments above express an interest in additional exemptions. We have reviewed and understand the factors the province uses to determine exemptions. We note that there is no consideration of the source of the threats against species in those factors. Our members report that the time and effort to address species in declines from pathogens that are not related to our industry activities are substantial. We are concerned that those efforts are not resulting in meaningful and timely actions.

In terms of meeting home and community building targets, we respectfully suggest that butternut and SAR bats as well as Chimney Swifts be exempted from efforts to build more home faster. As the SCAA becomes more established and results are better understood, there may be important work that can be achieved to address opportunities for more advanced control of problematic pathogens.

For the edification of our members and organizations, we would like to better understand how the SCAA is making or will make decisions regarding the disposition of funds. We hope that important ongoing work will not be underfunded while the SCAA considers how to use the funds for “strategic, large-scale, and coordinated actions led by species conservation experts to support more positive outcomes for the long-term interests of conservation fund species.”

OHBA Recommendations: Regulatory amendments regarding the conditional exemption for early exploration mining

Given that these set of proposals do not directly impact the land development and housing sector, OHBA does not have any technical comments for this section of the Environmental Registry posting.

Other General ESA Comments

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. We note 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.

We support 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. We recommend that a settlement area urban lens be applied to Natural Heritage System planning, 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").

There should be greater accountability and opportunity for a formal appeal within the MECP when there is a professional disagreement between a proponent's ecologists and Ministry field staff. This applies to both "in the field" and "in the office" disagreements, over topics such as: results of field surveys, delineation of habitat, the need for a permit, and requirements to achieve overall benefit.

We are 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. It is noted that even after a permit has been agreed to at the district level, that it goes to the Regional Office in Peterborough for review, and then to the Ministry Queen's Park office and eventually to the Minister's desk to receive a signature. OHBA is concerned that this multi-step process. We further note 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 disrupt a project timeline by a year or more.

Conclusion

OHBA appreciates the opportunity to provide comments and advice to the MECP. It is important that the 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. We are supportive of 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.

Sincerely,



Neil Rodgers

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