



Committee Report

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| To: | Warden Hicks and Members of Grey County Council |
| Committee Date: | December 10, 2020 |
| Subject / Report No: | Review of Proposed Endangered Species Act Changes / Addendum # 2 to PDR-CW-14-19 |
| Title: | Grey County Comments on Updates to the Endangered Species Act Regulations |
| Prepared by: | Grey County Staff |
| Reviewed by: | Randy Scherzer |
| Lower Tier(s) Affected: | All Municipalities within Grey County |
| Status: | Recommendation adopted by Committee as presented per Resolution CW06-21; Endorsed by County Council January 14, 2021 per CC08-21; |

Recommendation

1. That Addendum # 2 to Report PDR-CW-14-19 regarding an overview of the '*Species at Risk Conservation Fund*' be received, and
2. That Addendum # 2 to Report PDR-CW-14-19 be forwarded onto the Province of Ontario as the County of Grey's comments on the proposed changes regarding Environmental Registry through posting # 019-2636, and
3. That the Report be shared with member municipalities and conservation authorities having jurisdiction within Grey County; and
4. That staff be authorized to proceed prior to County Council approval as per Section 25.6 (b) of Procedural By-law 5003-18, as amended.

Executive Summary

In 2019 the Province recently released their '*10 Year Review of Ontario's Endangered Species Act: Proposed Changes*', which the County commented on through two staff reports in February and May of that year. The Province has now released further information on the Species at Risk Conservation Fund and they are seeking comments by December 19, 2020. The proposed changes would implement regulation changes to the *Endangered Species Act* to implement the Species at Risk Conservation Fund, and the Species at Risk Conservation Trust, which were announced last year. County comments were submitted on the original legislative changes and further comments on the proposed regulations are recommended through this report. Grey

County has an interest in this review as it impacts first and foremost the protection of the County's natural environment, but also impacts future development approvals within the County, and the County's ability to build and maintain public infrastructure and facilities.

Background and Discussion

On February 28th, 2019 and May 9th, 2019 the County Committee of the Whole supported staff reports PDR-CW-14-19 and Addendum, with respect to the Province's Review of Ontario's *Endangered Species Act* (ESA). These staff reports were forwarded onto the Province as the County's comments on the matters. Copies of the County staff reports can be found in the attachments section of this report.

Building off the work completed last year, the Province has now released draft regulations to enable the Species at Risk Conservation Fund (SARCF). The Environmental Registry posting can be found [here](#). County staff also had the opportunity to attend a webinar hosted by the Province to explain the proposed regulation changes.

Some of the key proposed changes are outlined by the Province as follows:

“Recent changes to the ESA allow for the use of a new option by proponents that are authorized to undertake activities that impact species at risk: instead of completing beneficial actions for species impacted by those activities, proponents will have the option of contributing to a fund that allows a new provincial agency to pool the resources and determine how best to implement long-term, large-scale and strategic protection and recovery activities that benefit eligible species. It is important to note that regardless of the option chosen, proponents would still be required to take action to minimize impacts on species at risk and their habitats, as required by law.

The proposed approach has the potential to shorten authorization timelines, increase certainty for proponents and reduce the length of time required to fulfill authorization requirements. A proponent using this approach would, in most cases, first need to consider if there are ways to avoid impacting eligible species at risk, including consideration of reasonable alternatives. If impacts to eligible species at risk or their habitat cannot be avoided, the proponent would need to minimize the impacts through measures such as fencing an area to exclude the species or undertaking activities when the species is less likely to be impacted. The proponent will then have the option of completing beneficial actions for the species themselves, or contribute to the Fund, which the Agency will use to implement species protection and recovery activities.”

At this stage, the Province has announced the following 6 species which the SARCF would be eligible for:

1. Butternut
2. Barn Swallow
3. Bobolink
4. Eastern Meadowlark
5. Eastern Whip-poor-will
6. Populations of Blanding's Turtle within the Canadian Shield physiographic region

County staff would note that many of the above-noted species are found frequently in Grey County.

It is important to note that prior to the Province's changes to the ESA, there were already exemptions or permits that could be issued provided certain criteria could be met. For example, generally a Butternut tree could not be removed, unless it was assessed by a Butternut Health Assessor, who determined the tree was severely impacted by the Butternut canker, to the point where it could not be saved. In some instances, permits could also be granted to remove a healthy Butternut, where certain criteria could be met, in exchange for planting new Butternut trees elsewhere. Similarly, there were provisions in place that would allow for the destruction of habitat of the above-noted grassland birds where development was proposed in a settlement area. The habitat for said birds would have to be compensated for.

The Province has noted the new system would add certainty and reduce processing time for proponents, by them the ability to;

1. complete actions themselves to benefit the species and its habitat, or
2. pay into the SARCF where the newly created agency will aid species recovery.

The Province has noted that municipalities and proponents will still be required to avoid and minimize impacts where possible. However, this new system would offer some opportunities for habitat removal where reasonable alternatives for avoidance or mitigation cannot be achieved.

The new independent Crown agency, known as the Species at Risk Conservation Trust (SARCT), would administer the above-noted funding. The SARCT would not be able to acquire lands itself, but the money would be distributed to Species at Risk Stewardship Program recipients. SARCT monies could be used by said recipients to establish habitat elsewhere, or to fund research towards species recovery (e.g. researching the canker that kills Butternut trees). SARCT funding would not be available for actions that a person is already obliged to undertake.

The proposed funding formulae generally follows a ratio of 1 : 1.5 i.e. for 1 hectare of habitat impacted, the costs for 1.5 hectares would be included in the charge. It is proposed that a 10% administration charge would also be added to cover the costs of the SARCT. Inflationary costs would also be considered as per Statistics Canada's Consumer Price index. The proposed formulas will vary by species type. The Province shared a fictional sample calculation as an illustration of the new fund/fees as follows. The values have been colour-coded for ease of reference.

Huron Homes Inc. calculates the species conservation charge for their activity that will impact Eastern Whip-poor-will in the following manner:

Components of the charge:

- Amount of habitat to be impacted = assuming **3** hectares for the purposes of this example
- Cost to establish/maintain habitat = variable cost of **\$10,900** to establish per ha and fixed cost of **\$8,500** to monitor and maintain the habitat
- Cost of the land per hectare = assuming variable cost of **\$15,000** and fixed cost of **\$1,400** for the purposes of this example
- Overall benefit ratio – **1 : 1.5**

- Cost of inflation = assuming **4%** for the purposes of this example
- Administration cost = **10%**

Total Charge:

$$[(3 * (\$10,900 * 1.04) * 1.5) + (\$8,500 * 1.04)] * 1.10 + [(3 * \$15,000 * 1.5) + \$1,400] = \$134,737$$

For Grey County, the Province has listed the variable land cost as \$8,250 per hectare and the fixed cost as \$1,400. Similar costs are provided for counties, regions, and single tiers across the Province.

Similar to the current system it would still be the Ministry of the Environment, Conservation and Parks (MECP) that would issue authorization where someone is proposing an activity that impacts a species at risk. In the above example, MECP would need to authorize the matter before the Eastern Whip-poor-will could be impacted. This authorization from MECP may come with conditions attached. After authorization, payment would then be required before the start of any activities that impact the conservation fund species and its habitat.

The Province is also proposing to make changes to conditional exemptions for Barn Swallows, Bobolinks, and Butternuts. Proponents would have the option of completing actions required or paying into the SARCF. Other changes to the Butternut process no longer require a qualified Butternut Health Assessor, but instead speak to qualified persons. The number of Butternut trees that may be impacted by a conditional exemption is also proposed to increase through these changes.

The Province has also proposed criteria for the board of directors for the SARCT, including requirements for board members to “have knowledge and scientific expertise related to the protection or recovery of species at risk”. Aboriginal traditional knowledge and indigenous community knowledge is also required for the board. Annual reports would be required by the SARCT to ensure transparency.

Staff Response

In previous staff reports County staff raised issue with the SARCF system, and the establishment of the SARCT based on the limited details available with respect to the process. Through the current ERO posting, the Province has generally provided those details. A number of the previous concerns raised by staff have now been addressed. However, staff remain unclear how the SARCT would distribute these funds, and whether actual improvements will be made locally to species recovery. For example, if a developer were to pay money to remove habitat for a Bobolink, when undertaking a development, would that recovery money then get spent locally on that species? Similarly, are municipalities or conservation authorities able to apply for these funds for local projects on public lands? It is not clearly defined who ‘Species at Risk Stewardship Program recipients’ are that would be getting these funds. Would such groups include field naturalists, Ontario Nature, Escarpment Biosphere Reserve, or other not for profits? County staff have reached out to the Province for clarification on some of these matters, but as of the date of writing this report have not yet heard back.

Staff would note that the SARCF and the SARCT is a form of ecological offsetting, which staff have been investigating for potential use within the County. Based on recent case studies

presented by a neighbouring conservation authority, staff see some merit in ecological offsetting approaches. In some cases, it may be an excellent method by which to ensure that the conservation outcomes result in no net loss of a feature and preferably a net gain for a species. However, in cases where the removal of endangered species or their habitat is 'at stake', then removing that species or replicating their habitat on another site may not be so easy. From staff's limited research to date, ecological offsetting may be an appropriate tool to use in some instances but will not work as a 'one-size-fits-all' approach and should be used as a 'last resort'. Staff appreciate that the Province has defined 6 specific species, with formulas for each one.

Staff would note that having a payment-in-lieu system may be preferable to some developers who have little ability to mitigate impacts on their own site, and do not wish to undertake beneficial actions on other sites. In the past, a 'stumbling block' to implementing any ecological offsetting has been the lack of enforcement tools available where a developer was looking to offset their impacts on a separate privately owned piece of land. Having the ability to pay into the SARCF, versus trying to police habitat restoration on other sites, may be preferable to developers and municipalities from an implementation perspective. There could also be benefits from the SARCF with respect to research funding, but at this stage it is difficult to weigh the impacts of research dollars versus species/habitat loss. As per above, staff would prefer that local restoration options be chosen, versus habitat removal in Grey with restoration projects being completed in another part of the Province.

Key to this new system will also be the need to clearly 'spell out' what avoidance and mitigation measures have to be investigated first, before one can conclude that all reasonable measures were taken (i.e. to initiate the new payment to SARCF system).

In general staff, would also question why a new agency needs to be established to oversee this program, versus this role being added onto existing Ministry of the Environment, Conservation and Parks, or Ministry of Natural Resources and Forestry duties. Similar levels of reporting and transparency could still be achieved, and staff expertise with respect to species at risk could be utilized. Staff question whether the creation of a new agency will reduce the money that gets spent on research and habitat restoration.

Staff also question whether additional species will be added to the SARCT / SARCF system in the future, or if it would generally be limited to these 6 species.

Legal and Legislated Requirements

Grey County, member municipalities, and landowners are bound by the *Endangered Species Act*. The proposed changes to the regulation would provide additional flexibility in some circumstances, as they relate to impacts on the habitat of the listed species.

Financial and Resource Implications

At this stage there are no immediate financial or resource implications to this proposed regulatory change. Grey County and member municipalities, as well as landowners or developers would have the ability to utilize the new SARCF should the regulations be passed. However, the level of usage of the SARCF is difficult to predict (i.e. who may choose to pay into the SARCF versus who would look at other options).

Staff do however appreciate the ability to comment on the proposed regulation and the details that have been provided by the Province.

Staff will continue to monitor the *Endangered Species Act* as well as any associated regulation changes, and keep County Council aware.

Relevant Consultation

Internal: Planning and Transportation Services.

External: Member Municipalities and Conservation Authorities within Grey (to be circulated following Committee of the Whole)

Appendices and Attachments

[Staff Report PDR-CW-14-19](#)

[Addendum to Staff Report PDR-CW-14-19](#)