



# Committee Report

|                                |  |
|--------------------------------|--|
| <b>To:</b>                     | Warden Hicks and Members of Grey County Council  |
| <b>Committee Date:</b>         | February 28, 2019  |
| <b>Subject / Report No:</b>    | Review of Endangered Species Act / PDR-CW-14-19  |
| <b>Title:</b>                  | Grey County Comments on Endangered Species Act   |
| <b>Prepared by:</b>            | Grey County Staff  |
| <b>Reviewed by:</b>            | Randy Scherzer   |
| <b>Lower Tier(s) Affected:</b> | All Municipalities within Grey County  |
| <b>Status:</b>                 | Recommendation adopted by Committee of the Whole as presented as per Resolution <i>CW51-19</i> ; Endorsed by County Council on March 14, 2019 as per Resolution <i>CC24-19</i> . |

## Recommendation

1. That Report PDR-CW-14-19 regarding an overview of the '*10th Year Review of Ontario's Endangered Species Act: Discussion Paper*' be received, and
2. That Report PDR-CW-14-19 be forwarded onto the Province of Ontario as the County of Grey's comments on the proposed legislation review posted on the Environmental Registry through posting # 013-4143, 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.

## Executive Summary

The Province recently released their '*10th Year Review of Ontario's Endangered Species Act: Discussion Paper*' and they are seeking comments by March 4, 2019. The stated goals of the review range from ensuring better protections of Ontario's endangered species and habitat, to streamlining related approvals and processes. 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. County staff have outlined some recommended process improvements for the Province to consider in undertaking this review, to maintain a balance between environmental protection and the ability to use lands for public service and private development purposes.

## Background and Discussion

On January 18, 2019 the Province released their '10th Year Review of Ontario's Endangered Species Act: Discussion Paper' (hereafter referred to as the discussion paper). A copy of this discussion paper can be found at [this link](#), and the proposed Environmental Registry posting, with a concise summary of the proposal can be found [here](#). The Province has requested comments on the discussion paper by March 4, 2019.

The stated objectives of any policy change from this review 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*
- *Maintain an effective government oversight role.”*

The Ministry of the Environment, Conservation and Parks (MECP) is interested in hearing ideas related to their four areas of focus below:

1. *“Landscape Approaches*
2. *Listing Process and Protections for Species at Risk*
3. *Species Recovery Policies and Habitat Regulations*
4. *Authorization Processes”*

In undertaking the consultation on the County's new Official Plan, Recolour Grey, staff and Council heard two messages quite clearly.

1. County residents and visitors value a healthy natural environment, which includes biodiversity of species, and
2. The protections of Grey's natural areas should be shared, and not unduly restrictive on any one landowner or sector (e.g. farmers).

At the County and Provincial levels a balance between species and habitat protection and development ability is needed.

From a County perspective, endangered species and habitat protection is most likely to arise through;

- the development process (e.g. developing a shopping centre and finding Butternut trees on-site), or
- the County's provision of public service facilities and infrastructure (e.g. replacing a County bridge and needing to consider *Redside Dace* habitat in the water below).

There are provisions in the County Official Plan which speak to the protection of natural areas, along with endangered species and their habitats. In the County's newly adopted Recolour Grey Official Plan, further mapping of natural areas and policy clarification has

also been provided. The Provincial Policy Statement (PPS) also contains similar policies at a provincial level. However, the *Endangered Species Act* goes beyond the policy level, to provide legislated requirements that apply to all Ontarians, with respect to endangered species and their habitats. These requirements get implemented in part through habitat regulations released by the Province, which apply to public bodies, and private citizens alike.

Throughout this report the term 'endangered and threatened species' is used. For the purposes of this report, the general use of this term may also be referring to other classifications such as species of special concern, or extirpated species as well.

What follows are some thoughts on the MECP's four areas of focus in the discussion paper.

## Area of Focus 1: Landscape Approaches

Under this area of focus the Province is seeking input on the implementation of landscape based approaches to species and habitat protection, versus the implementation of case-by-case and species specific policies.

### *Staff Response*

County staff see merit in a hybrid of both case-by-case type protections, as well as landscape based approaches. However, as staff are not experts in this subject matter, we would generally defer to whichever protections are most scientifically defensible for any given species or habitat.

Taking a landscape approach may work provided sensitivities to certain species and their habitats are not compromised in the process. Providing a landscape approach may better help plan at a consistent and broad scale, to ensure a wide geographic range of protection. Within landscapes, individual species could be further classified into categories that define general habitat, migration trends, and food requirements.

The trouble with a solely landscape level approach is that many species have unique characteristics about their way of being and it could be detrimental to 'simplify' this process through a 'broad-brush' landscape approach. Case-by-case or specific species protections may be preferable where species habitat is unique, or where habitat is known to overlap with higher risk human activities.

The above comments are caveated with the fact that some species protection and habitat regulations should consider the impact on public and private interests, as well as individual sectors. For example, municipalities have invested significant amounts of money in the provision and maintenance of public infrastructure. There are instances where the replacement of that infrastructure, or the installation of new services, may need to occur within the habitat of a threatened or endangered species. The cost of maintaining and replacing infrastructure is only growing across the Province, and municipalities are struggling, as all levels of government are, to fund these costs. In some cases, the field work and permits with respect to endangered and threatened species can significantly delay, or add to the costs of an infrastructure project. Transportation Services staff have noted that added uncertainty around both costs and timing that can come with a project based on the possibility for endangered and threatened species or

their habitats. In some cases where such species were found, or required to be studied, it significantly increased the cost and timing of the projects.

Municipal planning authorities also designate land within serviced settlement areas for future growth purposes. A key tenant of our development system is being able to offer 'shovel-ready' lands for development purposes to attract new growth. As new species and habitats get added, it can be difficult to maintain lands that are truly 'shovel-ready'. To the extent feasible, protections should consider the impact on service delivery, and growth areas where infrastructure investments have already been made by municipal or senior levels of government.

Similarly, the impact on any given sector should also be considered in these protections. For example, when a grassland bird species is listed, which happens to overlap with regular farm practices (e.g. cutting alfalfa), then considerations should take into account the operations of such sectors.

County staff are not suggesting that municipalities, farmers, or any individual industry receive 'a pass' on species or habitat protection. However the protections should continue to consider any undue impacts on municipal operations, or the operations of individual sectors across the Province. Input into the listing of these species, their habitat regulations, as well as any exemptions should be duly considered under areas of focus 2 – 4 below.

## Area of Focus 2: Listing Process and Protections for Species at Risk

The current legislation provides science-based assessments of native flora and fauna by an independent committee of experts known as the Committee on the Status of Species at Risk in Ontario (COSSARO). Once identified by COSSARO, a species is given protection and habitat protection by the legislation. This area of focus examines public notice on newly listed species, uncertainty around automatic protections as they relate to impacts on businesses and the public, and the transparency around how a species is assessed by COSSARO.

### *Staff Response*

County staff sympathize with the challenge faced by the Province as it relates to listing new species with automatic habitat protection under the *Endangered Species Act*. The County has faced similar challenges as it relates to official plan policies and protections. More specifically, how do you make the public aware of a new policy at the policy development stage, or in this case species protection and identification? If notified at these crucial early stages, the public may still offer feedback which can shape the policy, before it directly impacts them.

However, even if given the ability to comment, what does this consultation look like in practice? For example, many Ontarians would have no idea what a Butternut tree looks like, and would not be able to identify such trees on or adjacent to their properties. If the Province were to give significant public notice that Butternuts were being added to the COSSARO list, most people would not pay attention to said notices. However, when someone seeks to build on their property and must maintain a 50 metre separation distance to said Butternut trees; the individual landowner could feel frustrated or confused as to why they were unaware of this restriction.

From a county and municipal perspective, staff do sometimes comment on new species or habitat regulations. However, most municipalities are too busy, or not adequately staffed, to respond each time new species or habitats are added by COSSARO.

From a public and municipal perspective, the majority of the public, County staff included, do not have the scientific background to contribute to science-based discussions on species protection. In this regard, the Province is also seeking input on ways to make the COSSARO process more transparent. This may include the ability to request additional review where there is emerging science or conflicting information.

Staff are also cognizant that if the general public were informed of potential additions to the list in advance, this could have a negative consequence for some species, as some people would eradicate species or habitats on their own properties to avoid being regulated.

County staff see some merit in being able to provide dissenting opinions from qualified scientists, or protection strategies that have proven useful in other jurisdictions. However, staff also see the challenges in opening up the opportunity to 'dispute' the findings of COSSARO, which is already an independent committee of experts (i.e. some may have the resources available to 'argue their case' whereas many others would not, or it could be open to unnecessary political or private influence).

Offering more options for habitat protections, aside from automatic species and habitat protections, could reduce transparency of the overall process, as timelines could become discretionary and there could be little consistency in adding new species.

Staff are also sympathetic to the need for some certainty with developers i.e. that if one gets 'most of the way down the road' in the development process, it can be particularly damaging if the rules suddenly change. For example, if environmental studies have been done, and a subdivision has received draft approval, the developer could face difficult circumstances if a new species was added by COSSARO, at the time when they were already part way through their construction on the site.

Although increased notice, or longer timeframes for listing species, may not be the solution, some form of transition provisions may assist in reducing the impact on individual landowners, developers, or municipalities.

More education on endangered and threatened species by the Province across individual counties or regions, which is geared towards the public and landowners, would also be useful in this regard. In the past, County and municipal staff have benefited from training sessions from Ministry staff which outlined the most common endangered and threatened species in Grey County. These sessions provided information on the challenges faced by these species, their habitats, and recovery efforts. Having region specific training provides more relatable and manageable information intake, rather than a province-wide program. If additional sessions could be developed that focused on educating landowners, it may help with both understanding and overall protection.

Within the land use planning realm, the value of species protection should continue to be highly considered throughout the planning process, and development should be sensitive to the needs for protection, where feasible. Planning concepts such as infill development, increased density, and adaptive reuse, should be primarily encouraged over new 'greenfield' development. Utilizing

such concepts, may provide benefit to overall species protection, as well as achieving other economic and municipal objectives.

## Area of Focus 3: Species Recovery Policies and Habitat Regulations

A Government Response Statement (GRS) outlines the actions the government intends to take to help recover species that are endangered or threatened. The legislation requires a GRS to be issued within nine months after a recovery strategy is prepared. Within five years of issuing the GRS, a review of the progress towards the protection and recovery of the species must be undertaken.

Under the legislation, when a new species is listed the 'general habitat' of that species is protected, which is "the habitat the species depends on for its life processes." Subsequent to this process, a habitat regulation is later issued to replace this general habitat protection with a more detailed description and protection strategy.

This area of focus examines these timeframes, as well as whether or not habitat regulations are required for each species, since general habitat is already protected.

### *Staff Response*

Staff see merit in possibly extending some of these timeframes, in order to allow for some flexibility, and also allow better data to be generated. In some cases, five years may be too soon to adequately track the progress on species recovery.

From a planning perspective there is some benefit to having detailed habitats defined as it gives certainty to landowners, planners, and municipalities on exactly what needs to be protected. Whereas general habitat may be preferred from an ease of operations standpoint (i.e. it saves the government from issuing detailed habitat regulations for each species), it can provide challenges in implementation. For example, to simply note that species 'x' lives in a certain common forest type, it may provide difficulty in understanding how much area to protect when that species is found on a property. This could provide for landowners being able to 'take advantage of' the general habitat requirements, and under-protect habitat on-site. A possible solution may be to group detailed habitat regulations where similar species rely on very similar habitats.

Although not specific to general versus specific habitat regulations, one of the key challenges faced by landowners, developers, and municipalities can be the lack of data on species occurrences. In some cases this lack of data stems from the fact that the data simply does not exist, and in others it relates to restricted access to sensitive data. Much of the data related to endangered and threatened species is restricted to public access, to avoid illegal poaching or harvesting of said species.

The Province currently maintains the Natural Heritage Information Centre (NHIC) which is a great tool for accessing public data on endangered and threatened species. Additional training can also be provided to municipal or conservation authority staff, to allow access to some of the sensitive data, although some data still remains accessible to ministry staff only. County staff see great benefit to maintaining and improving this database, both from a data collection

standpoint, and from a data access standpoint. Greater coordination between county, regional, municipal, conservation authority, and the Provincial government could help ensure data within the NHIC is the best available. As an example, the County reviews a number of Environmental Impact Studies (EIS's) each year within our boundaries, where detailed field work is completed at no cost to any level of government. Provided these EIS's are conducted by qualified individuals, there should be an emphasis placed on ensuring their results get catalogued in the NHIC for future use by all.

The Province may also wish to work more closely with indigenous peoples, to see if some of their traditional knowledge can be further mapped and catalogued in the NHIC.

While staff understands the need to protect sensitive data in the NHIC, efforts should be made to efficiently distribute the data, under data-sharing agreements, to qualified individuals or groups, which meet defined criteria (e.g. municipalities, conservation authorities, etc.)

The Province may also wish to develop further guidelines for the relevancy of species information reported in the NHIC. For example, if a species has not been spotted in an area for 50 years, is it still relevant to list in that database, or does that listing come with an appropriate caveat based on the date of the finding?

In speaking with Grey Sauble Conservation Authority staff, who manage the County's forests and trails, they note; *'species are not necessarily 'newly' endangered, but rather, newly listed. That is, there is a rating system for provincial (S), National (N), and Global (G) rarity of species and habitats. The scale is 1 – 5, with 1 being incredibly rare in the system level. There are many species that are rated S1, N1, G1, but are not listed as endangered and threatened, because COSSARO has not reviewed them yet. As such, in some cases one could have a critically imperiled species that is just newly listed, versus a newly listed species which is much less critically imperiled. In this instance, a transition period could be dramatically detrimental to these critically imperiled species. However, if COSSARO could recommend a transition period for each species, with some 'leeway' for variation or immediacy, it could work. That is, a threatened species that is starting to show decline might be transitioned over two-years, whereas a critically imperiled species might be more immediate.'*

## Area of Focus 4: Authorization Processes

The *Endangered Species Act* contains prohibitions on harming, harassing, killing, or damaging the habitat of species listed under the Act. Currently there are some permitting processes which can be considered, under certain circumstances that would allow destruction, relocation, or exemptions under the Act. This area of focus examines these processes, timeframes, and enforcement under the Act.

### *Staff Response*

Of all the areas of focus covered by the discussion paper, staff see the greatest potential in this category to improve existing processes. As noted in other sections of this report, key considerations include;

- transition provisions for when species and habitat regulations get added, and how that impacts developments or infrastructure projects already in process, and

- exemptions should be considered for some new and existing species and habitat types for infrastructure construction and maintenance.

Clearly defining the process behind such transitions or exemptions is crucial to their success, and successfully protecting Ontario's endangered and threatened species.

Within Grey County, there are some local examples of where authorizations have been granted for development or infrastructure processes. For example, in some settlement areas, development has been authorized to remove healthy Butternut trees, in exchange for re-planting healthy trees elsewhere on a 2:1 replacement ratio. Similarly, grassland bird habitat has been permitted to be removed within settlement areas, where said habitat was compensated for elsewhere.

In working through these authorization processes, and others not detailed above, it has not always been clear when in the process such an authorization is granted, or how one demonstrates eligibility for such an authorization. In many cases, one of the key eligibility criteria for such an authorization is 'avoidance' (i.e. is it possible to avoid harming that species or habitat). In theory, this test makes perfect sense, but in practice what does the test of avoidance mean;

- is avoidance limited to an examination of the subject site only,
- if not, who sets the geographic scale for the area the avoidance needs to cover, which may or may not include lands owned by that same landowner, and
- what constitutes the ability to 'feasibly' avoid i.e. if avoiding would only cost \$5,000 is it feasible, but if avoiding would cost \$500,000, is it then unfeasible.

In addition, staff have faced issues with respect to how and when an authorization gets issued. For example, in working our way through a plan of subdivision process, the developer's biologist notes that they will be applying for an authorization to remove or relocate a species or habitat type on-site. At some point County staff need to make a determination or not that the development is consistent with the PPS. If staff do not have certainty that Provincial staff will issue the authorization to remove or relocate will be granted, then it becomes difficult to conclude that the development is consistent with the PPS. However, in the past Provincial staff have noted that they are reluctant to issue the authorization, if the development may be refused for other reasons. At that stage the developer can be caught in the middle, as neither level of government is able to issue their decision, as they are 'hand-cuffed' by what the other level may do. Clear guidelines on when authorizations are issued, who is eligible, and the process for receiving them would assist greatly here.

Streamlining the permits required for individuals, through incorporating all the relevant regulatory frameworks towards the beginning of the process (where practical), could also help to remove redundancies.

Municipal staff also noted that when permissions change, or new permitting processes are implemented, that it is crucial for Provincial Ministry staff to be adequately trained on these new procedures before the process is open for public applications. Where change is frequent, if staff are not prepared or trained, then delays can stem from ministerial staff still needing to understand the 'roll-out' of the permitting process.

Clear regulations on when ecological offsetting can be considered, how it's implemented on



private lands, and what defines 'overall benefit' would also be beneficial in this regard.

With respect to all four areas of focus, broad consultation with municipalities, conservation authorities, indigenous peoples, landowners, conservation organizations, farmers, and development industry representatives is encouraged. This consultation may require extending the 45 day comment window on the Environmental Registry, or other forms of consultation (e.g. public meetings, webinars, sector-specific meetings, etc.).

## Legal and Legislated Requirements

The effect of new legislative changes can sometimes be tough to predict at this early discussion paper stage. Some of the discussion items are welcomed conversations by the County, provided the legislated changes still provide an appropriate level of protection to species and habitats.

## Financial and Resource Implications

At this stage there are no immediate financial or resource implications to this discussion paper, as the full details of its implementation are not known.

Staff will continue to monitor the review of the *Endangered Species Act* and keep County Council aware of any major changes, or regulatory changes.

## Relevant Consultation

- Internal: Planning, Transportation Services, and Legal Services.
- External: Member Municipalities and Conservation Authorities within Grey

## Appendices and Attachments

None