



Towards Better Protection of Species at Risk in Ontario



Organization of the Discussion Paper

This Discussion Paper is organized into three sections:

- **SECTION 1: INTRODUCTION** provides the context for the review of Ontario's legislation to protect species at risk.
- **SECTION 2: BACKGROUND** answers basic questions regarding species at risk, describes what is already being done to protect species at risk and identifies the purpose and principles for the legislative review.
- **SECTION 3: PROPOSED LEGISLATIVE CHANGES TO PROTECT SPECIES AT RISK** outlines concerns with the current legislation and describes proposed legislative provisions to address these concerns.

We would like you to participate

Effective legislation is important to all Ontarians. The Government of Ontario is inviting you to participate in the development of legislation for the protection and recovery of species at risk and to comment on this discussion paper. Please use the attached questionnaire for your response. The deadline for receiving your comments is July 7, 2006.

You may complete and submit the questionnaire online, or send by email, fax or mail to:

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This discussion paper is available online at
www.mnr.gov.on.ca/mnr/speciesatrisk



American Badger (endangered)

Section 1: Introduction

Ontarians are fortunate to live in a province that is home to an abundant variety of plants, animals, birds, fish and insects, as well as the forests, wetlands, lakes and rivers they inhabit. This broad network of biological species and systems – our biodiversity – enriches our lives and provides us with clean water and air, as well as sources of food, wood, medicines and energy.

Conserving Ontario's biodiversity is key to achieving a healthy environment, strong communities and a thriving economy. It includes protecting the variety of ecosystems and plant and animal species in Ontario and using our natural resources sustainably for the benefit of Ontarians.

Ontario's Biodiversity Strategy (2005)
www.mnr.gov.on.ca/mnr/pubs/biodiversity/OBS_english.pdf

Ontario is home to more than 15,000 species of animals¹ and plants. While most of these species have stable populations, some have declined or disappeared due to habitat loss, pollution, interactions with invasive species and over-harvesting. There are currently 176 animals and plants in Ontario that have been determined to be at risk (10 extirpated, 76 endangered, 45 threatened, and 45 of special concern.) If their decline continues, these species and their associated benefits may disappear from the province.

One of the recommended actions included in Ontario's Biodiversity Strategy is to

“Review and update Ontario species at risk legislation to provide broader protection for species at risk and their habitats, and to include requirements for recovery planning, assessment, reporting and enforcement.”



Blunt-lobed Woodsia (endangered)

The Ontario government is committed to working with other government agencies, stakeholder groups, Aboriginal organizations and communities, and the public to address this recommended action.

Helping a species at risk recover can be costly and complex. The best course of action is to prevent any species from becoming at risk in the first place, through responsible land use stewardship practices. Proactively protecting species at risk, and precluding the need for recovery actions, goes hand in hand with the province's commitment to a strong economy and healthy communities. The Places to Grow Act and the Greenbelt Act have clearly identified the government's intent regarding future growth across the province, and protection of agriculture and natural heritage systems around the Golden Horseshoe, respectively. These are just two examples of legislation that will help to ensure protection of Ontario's species at risk.

Updating the Endangered Species Act will lead to greater economic and environmental certainty by providing guidance on activities that may affect species at risk, tools to facilitate achievement of common goals, and by supporting industries, such as tourism, that rely on healthy ecosystems as part of their business.

1. In this discussion paper, the term “animal” means a mammal, fish, bird, reptile, amphibian or invertebrate

It is also important to note that while having appropriate legislation in place is necessary to provide clear guidance for policies, programs and activities, and effective enforcement and appropriate penalties for violators, it is just one of a suite of tools that are important for protecting species at risk.

The purpose of this discussion paper is to:

- Inform Ontarians of the review of the Endangered Species Act, and how they can be involved
- Highlight why it is important to have effective and practical legislation for species at risk in the province
- Identify key legislative provisions that are being considered, and obtain feedback.

This document is intended to generate discussion and comment. The responses and advice that are received will help to improve Ontario's legislative framework for species at risk.

Section 2: Background

This section provides information about the types of species at risk, how their status is determined, information about existing programs and initiatives, and how Ontario's species at risk legislation fits with other provincial acts. The purpose and principles for this legislative review are also described.

What are species at risk?

Any native plant or animal that is vulnerable to extinction, or is at risk of disappearing from the province, is considered a species at risk. The primary threat to species is habitat loss. Species may also become at risk due to small or declining numbers and limited distributions in combination with other factors such as pollution, competition from invasive species and over-harvesting.

Ontario classifies species at risk into the following categories in decreasing order of risk (these categories are the same as those used by the federal government):

- **Extinct** – a species that no longer exists anywhere.
- **Extirpated** – a species that no longer exists in the wild in Ontario, but still occurs elsewhere.
- **Endangered** – a species facing imminent extinction or extirpation from Ontario.
- **Threatened** – a species that is at risk of becoming endangered if limiting factors are not reversed.
- **Special Concern** – a species with characteristics that make it sensitive to human activities or natural events.



Barn Owl (endangered)

How is the status of species at risk determined?

The provincial Committee on the Status of Species at Risk in Ontario is a group of experts that meets regularly to review provincial and national reports on the status of species. The committee makes recommendations based on the best available science to the Minister of Natural Resources regarding the appropriate provincial status for species. Based on the minister's decision, species are assigned a status on the Species at Risk in Ontario list (www.mnr.gov.on.ca/mnr/speciesatrisk)².

Recovery strategies and action plans are developed for species that are identified on the Species at Risk in Ontario list as threatened and endangered. The goal of recovery efforts is to improve the status of a species so that it can be moved to a lower risk category or no longer be considered to be at risk.

The Ontario government, along with the other provinces and territories, the federal government and non-government experts, is represented on the national Committee on the Status of Endangered Wildlife in Canada. This national committee conducts species assessments based on the best

2. The provincial status of an Ontario species on the Species at Risk in Ontario List may differ from the national status identified in Schedule 1 of the federal Species at Risk Act. For example, a species that is considered to be of special concern at a national level may be considered threatened in Ontario.

available information, and makes recommendations to the federal minister regarding the national status of species to be listed under the federal Species at Risk Act.

Why are we concerned about species at risk?

Species at risk have unique value – not only are they important components that contribute to the structure and function of healthy ecosystems, they are often indicators of ecosystem health. When we lose a species, we may lose important genetic material that is critical to the health of an ecosystem or that could have provided us with a medical breakthrough. We also lose the social, economic, aesthetic, cultural and spiritual benefits associated with that species.

Each species has specific habitat requirements. While some species are fully dependent upon a single ecosystem, most require components of many ecosystems. The ability of ecosystems to sustain species at risk, and help prevent other species from becoming at risk, is influenced primarily by land use and resource management activities.

While species at risk are known to occur in many parts of Ontario, the majority are in the southern part of the province. Southern Ontario has a wide range of habitats and climatic conditions and, not surprisingly, the highest diversity of species in Canada. This part of Ontario is also experiencing intensive use by humans, and much of the original natural habitat has been lost or altered.



Volunteers involved in habitat restoration.

What is already being done to protect species at risk?

The following are examples of existing programs and initiatives that play an important role in the conservation, protection and recovery of species at risk.

- **Inventory and Monitoring** – Information collected through monitoring programs is used to identify species that may be at risk, assess the status of species at risk, identify and protect habitats, and evaluate the effectiveness of recovery efforts. Most recovery strategies include species-specific monitoring protocols. Ontario conducts some monitoring on its own, and supports monitoring programs run by partners (for example, the Breeding Bird Atlas program led by Bird Studies Canada.) Ontario also participates with other provinces, territories and the federal government in the assessment of wild species in Canada. A major multi-jurisdictional monitoring initiative in 1999-2000 resulted in the report *Wild Species 2000: The General Status of Species in Canada* (www.wildspecies.ca/). The report summarizes the status of 1,600 species across Canada and highlights species that would benefit from more detailed studies. The 2005 report is under development.

- **Information Management** – All data on provincial species at risk from various sources is synthesized and stored in the database of Ontario's Natural Heritage Information Centre. This information is used by federal, provincial and municipal governments, and many other partners undertaking activities to protect species at risk. The information is available to the public on the centre's website (nhic.mnr.gov.on.ca/nhic_.cfm).
- **Recovery Planning and Implementation** – Recovery strategies are developed by recovery teams for species identified on the Species at Risk in Ontario list as threatened and endangered. The goal of recovery strategies is to prevent the extinction or extirpation of the species, and, if feasible, to move the species to a lower risk category. There are currently more than 70 recovery teams in Ontario working on single-species, multi-species and ecosystem recovery plans and projects.
- **Public Awareness** – Communications products such as brochures, displays, interactive web sites and fact sheets, and activities such as workshops and events are developed and implemented by both government and non-government organizations across the province. The common goal is to raise awareness about species at risk and recovery efforts, and increase public participation and support.
- **Partnerships and Stewardship** – People who directly or indirectly influence land use activities and manage resources in a way that conserves and supports biodiversity play a vital role in the stewardship of our natural resources, including species at risk.

Many Ontarians participate in voluntary stewardship actions that contribute to the protection and recovery of species at risk. These actions can include sharing information, helping to educate others, donating land, raising funds, and becoming involved in specific projects such as the following:

- In Norfolk County, community volunteers are working with farmers to install nest boxes for barn owls, which are endangered in Ontario.
- Environmental organizations and individuals participated in captive breeding and release programs and monitoring nest sites to help in the recovery of peregrine falcons. The success of these efforts may result in a change in the status of this species from “endangered” to “threatened”, a lower risk category.
- Tallgrass prairie habitat, which is globally imperilled, is being protected and restored thanks in large part to community involvement and landowner support, including identification of remnants, management to restore degraded sites and the creation of new prairie habitat through schoolyard naturalizations and other projects.
- Restoration of the Sydenham River in southwestern Ontario has involved partner organizations, landowners and communities in implementing “best management practices” to improve water quality, such as streambank stabilization, tree planting, and fencing livestock from watercourses. This work has helped to make progress in the recovery of a number of endangered species, including the northern riffleshell and the snuffbox, two species of freshwater mussels.
- A property owners' association in Lanark County is working to increase awareness of the threatened eastern ratsnake in their neighbourhood and improve habitat by retaining dead trees to provide basking areas, and creating artificial nests.

- **Resource and Financial Support** – Protecting and recovering species at risk often requires the help of many people, and financial support to make things happen. In Ontario, resources are aligned to support species at risk activities in several different ways:
 - Through the direct support of the ministry’s Species at Risk Program, via recovery strategies, projects and stewardship programs sponsored both within the provincial government, and through a range of partnerships.
 - Through incentive programs that support conservation activities. Many of these programs help to support protection and recovery of species at risk. Programs supporting donation or conservation of ecologically significant lands include the Conservation Land Tax Incentive Program and the Managed Forest Tax Incentive Program.
 - Through a range of programs supported by the federal government, including the Environmental Farm Plan and Habitat Stewardship Program.
 - Through existing funding programs that overlap with species at risk protection, including foundations and trusts that either support natural heritage projects, or support the acquisition of land or conservation easements. The Natural Spaces Land Acquisition and Stewardship Program, Ontario Stewardship Program, Oak Ridges Moraine Foundation and Friends of the Greenbelt Foundation are a few examples.
 - Through the programs and resources of many partners, organizations and individuals.
- **Enforcement** – Ontario’s Conservation Officers enforce the Endangered Species Act and a number of other pieces of provincial and federal legislation that help protect species at risk. In addition, federal wildlife and fisheries officers enforce laws that help protect species at risk under federal jurisdiction (e.g., Species at Risk Act, Migratory Birds Convention Act, Fisheries Act).

Aboriginal communities and organizations have a significant interest in plant and animal species at risk. Some species now considered to be at risk may have spiritual or ceremonial significance for Aboriginal peoples. Aboriginal traditional and local knowledge can play an important role in understanding and evaluating the status and distribution of species at risk. Many Aboriginal communities are actively involved in protecting biodiversity, for example:

- *The Walpole Island First Nation has developed a recovery strategy for five ecosystems and more than 50 species at risk*
- *The Alderville First Nation is working to restore oak savanna, and plant lupine for recovery of the karner blue butterfly.*

Overview of existing legislation, policies and programs for protecting species at risk

Appendix 1 contains an overview of existing provincial and federal legislation and associated policies and programs, that have a role in the management of species at risk in Ontario.

A number of existing acts provide provincial and regional context for planning and resource management, including the Planning Act, Crown Forest Sustainability Act, Oak Ridges Moraine Conservation Act, Aggregate Resources Act and Greenbelt Act. Collectively, these acts and associated policy documents support landscape-level planning that helps to protect species at risk and the habitats that sustain them.

The current review of species at risk legislation in Ontario is intended to complement these existing tools, and recognize the important interrelationship between proactive planning and individual actions that protect species at risk.

Purpose and Principles for the Legislative Review

Updating the legislation is an important statement of public policy and social values related to species at risk. The new legislation should clearly set out the process, roles and responsibilities for various actions and guide future decision-making. The legislation should complement the federal Species at Risk Act and other related provincial and federal legislation in a manner that reflects Ontario's needs.

The purpose and key principles guiding the review of the current legislation and the development of new legislation are as follows:

Purpose: To provide for the assessment, protection, recovery and other relevant aspects of conservation of species at risk, including habitat protection.

Key Principles:

- Conservation of species at risk is a key component of a broader strategy to maintain biodiversity and use biological resources in a sustainable manner.
- All Ontarians share responsibility for the conservation of species at risk, and governments have a leadership role to play.
- Protection of species at risk should occur through development of practical approaches and be cost effective.

- Ontarians will be provided with the opportunity for meaningful participation in relation to conservation of species at risk.
- Species at risk are an important component of the cultural heritage and conservation ethic of Aboriginal peoples, and Aboriginal peoples have an important role to play.
- The promotion of conservation through non-regulatory means such as co-operation, stewardship, education and partnerships is vital.
- Best available science will be used as a basis for exercising caution and protecting species at risk.



Wolverine (threatened)

Section 3: Proposed Legislative Changes to Protect Species at Risk

A series of legislative proposals has been developed to address the Purpose and Principles for the Legislative Review described on page 7. The proposals provide a basis for you to provide comments and suggestions.

The nine proposals address the following topics:

1. Species Assessment
2. Listing of Species on the Species at Risk in Ontario List
3. Emergency Listing of Species at Risk in Ontario
4. Protection of Species at Risk and their Habitat
5. Emergency Orders
6. Recovery Planning
7. Reporting
8. Agreements and Instruments
9. Enforcement and Penalties



Bird's-foot Violet (endangered)

1. Species Assessment

Consistent with the 1996 Accord for the Protection of Species at Risk in Canada, the modernized legislation in most other Canadian jurisdictions includes provisions describing the process to be used for assessing the status of species. Ontario has established the Committee on the Status of Species at Risk in Ontario, which reviews the status of species that may be at risk. However, there is no existing legislative provision that identifies this committee as the species assessment body for Ontario.

Legislative proposal 1:

- The Committee on the Status of Species at Risk in Ontario will be identified as the species assessment body for Ontario
- Require that the committee:
 - members be appointed for a specified period by the Minister of Natural Resources
 - be an assessment body composed of members with relevant expertise or knowledge of disciplines that can include:
 - science (biology, ecology, ecosystem management, population dynamics, taxonomy etc.)
 - community and local knowledge
 - Aboriginal traditional knowledge of native wild species, their habitats, traditional use and conservation practices
 - review status reports for species that are considered to be at risk on a regular basis and maintain a prioritized list of species to be assessed based on identified need for conservation response (e.g. threats, rate of decline)
 - base their status recommendations on the best available knowledge including science, community knowledge and Aboriginal traditional knowledge
 - report to the Minister of Natural Resources, who will make public the results of their review of species status reports on an annual basis.

2. Listing of Species on the Species at Risk in Ontario List

The term “listing” refers to the process of making changes (additions, deletions or changes in status designation) to information on the Species at Risk in Ontario list. The list includes the following species status designation categories: extinct, extirpated, endangered, threatened, special concern, not at risk and data deficient.

The Minister of Natural Resources currently considers the recommendations of both the provincial Committee on the Status of Species at Risk in Ontario and the national Committee on the Status of Endangered Wildlife in Canada, prior to making the final decision regarding listing of species and their status designations on the Species at Risk in Ontario list. Under the Environmental Bill of Rights, a Proposal Notice regarding proposed changes to the list is posted on the Environmental Registry for a minimum 30-day public review and comment period prior to the minister making a decision.

Endangered and threatened species identified on the Species at Risk in Ontario list, and their significant habitat, must be considered and protected in planning activities under various pieces of legislation, including the Planning Act, Crown Forest Sustainability Act and Aggregate Resources Act.

The ministry maintains the Species at Risk in Ontario list and makes it available to the public through the ministry website. However, there is currently no legislative requirement for the Ontario government to list species at risk and their status designations on the list. Establishing this requirement by legislation will clarify the process and importance of the list.

Legislative proposal 2:

Three alternative options to the legislative provisions regarding changes to the Species at Risk in Ontario list are outlined below.

Option 1:

Under this option, the legislation would specify that:

- The minister would make the final decision regarding listing of a species and its status on the Species at Risk in Ontario list.
- In the event that the minister’s decision does not reflect the recommendation of the Committee on the Status of Species at Risk in Ontario, the minister would be required to include in the Environmental Registry Proposal Notice the rationale for the different status.
- The minister must make a decision regarding a change to the list within a prescribed period of time after receiving a recommendation from the Committee.

Note re: Option 1:

- This option generally reflects the administrative process that is currently used.
- The recommendations of the Committee on the Status of Species at Risk in Ontario and the Committee on the Status of Endangered Wildlife in Canada, and comments received in response to the Proposal Notice posting on the Environmental Registry would be considered.
- The policy protection provisions under legislation such as the Planning Act, Crown Forest Sustainability Act and the Aggregate Resources Act would be triggered by the minister’s decision.

Option 2:

Under this option, the legislation would specify that the recommendations of the Committee on the Status of Species at Risk in Ontario become the Species at Risk in Ontario list.

Option 3:

Under this option, the legislation would specify that:

- The recommendations of the Committee on the Status of Species at Risk in Ontario will automatically become the Species at Risk in Ontario list.
- However, the minister may exercise discretion under exceptional circumstances and decide that the status of a species on the list differ from the recommendation of the committee.
- The minister's discretion in making a decision different than the committee's would be exercised in unique circumstances with undesirable social, economic or ecological impacts.
- The minister shall provide rationale and post on the Environmental Registry if this discretion is exercised.

Notes re: Options 2 and 3:

- Both options would establish a more direct link between the status of a species on the Species at Risk in Ontario list and the scientific assessment process.
- The policy protection provisions under legislation such as the Planning Act, Crown Forest Sustainability Act and the Aggregate Resources Act would be triggered by the committee's recommendation.

3. Emergency Listing of Species at Risk in Ontario

There is currently no provision for including species on the Species at Risk in Ontario list on an emergency basis.

Legislative proposal 3:

- A species may be identified as endangered on the list on an emergency basis:
 - if the minister is of the opinion that there is an imminent threat to the survival of that species
 - in the absence of an assessment by the Committee on the Status of Species at Risk in Ontario or the Committee on the Status of Endangered Wildlife in Canada
 - the emergency listing would be valid for a specific timeframe (e.g. one year). During that time, the Committee on the Status of Species at Risk in Ontario would be required to formally evaluate the status of the species.

Note:

Due to the emergency nature of the listing, it would not involve consultation. However, an Exception Notice would be placed on the Environmental Registry.

The proposed legislative provisions would:

- allow for the rare occasions when there is insufficient time to go through the regular Committee on the Status of Species at Risk in Ontario status assessment process, or where new information has been identified which differs from a previous committee assessment
- trigger the policy protection provisions under legislation such as the Planning Act, Crown Forest Sustainability Act and the Aggregate Resources Act
- trigger the minister's authority to issue an Emergency Order regarding the species (see Legislative Proposal 5 further information on emergency orders)

4. Protection of Species at Risk and their Habitat

The following shortcomings have been noted regarding the current Endangered Species Act:

- Only species recommended by the Committee on the Status of Species at Risk in Ontario and the Committee on the Status of Endangered Wildlife in Canada for endangered status and approved by the minister for inclusion on the Species at Risk in Ontario list as endangered are considered eligible for protection under the Endangered Species Act. (No species identified as “threatened” or “extirpated” are protected under the act.)
- Loss of habitat is a major threat to species at risk in Ontario. However, habitat is not defined. The intent and application of provisions regarding protection of habitat are also not clear.
- The time and resources required to regulate endangered species and their habitat are considerable. In particular, the process required to identify species and habitat locations and the time necessary to undertake landowner contact and consultation can be lengthy. Although 76 species are identified as endangered on the Species at Risk in Ontario list, only 43 have been protected under the Endangered Species Act. The protection provisions of the Act only apply to those 43 species.

Legislative proposal 4:

It is proposed that the legislation include a provision specifying that:

- endangered, threatened and extirpated species that are covered by the act would be protected from:
 - killing, harming, harassing, capturing, taking, possessing, collecting, buying, selling or trading of the species
 - damage, destruction or interference with the species’ habitat

In order to achieve more effective protection of species at risk, it is further proposed that the application of the provision noted above be divided into two stages:

- protection for a species and its residence
- protection for the significant habitat of the species.

Stage 1 –

Protection for a species and its residence

Two legislative options are presented below. In both cases, a definition of “residence” would be developed, which would encompass the dwelling place of an animal, such as den, nest, and hibernacula, and appropriate equivalent for plants, such as areas of a woodlot, wetland or physical feature.

Option 1:

- Under this option, species and their residences would be protected through the passing of a regulation under the act, preceded by public consultation.
- Under this option, all species identified as endangered, threatened or extirpated on the Species at Risk in Ontario List would be eligible for regulation to protect species and residences. Prior to passing such regulations, a proposal notice would be posted on the Environmental Registry.

Option 2:

Under this option, the legislation would specify that:

- species identified as endangered, threatened or extirpated on the Species at Risk in Ontario list would be automatically subject to the act's protection provisions for the species and their residences
- the minister may exercise discretion under exceptional circumstances and decide that a species not be subject to the protection provisions under the act
- the minister shall provide rationale and post on the Environmental Registry if this discretion is exercised.



Polar Bear (special concern)

Notes: re: Options 1 and 2:

- Option 1 requires more time than Option 2.
- Option 2 allows for a more expedient process for establishing legal protection for species and residences, and a stronger link between a species status on Species at Risk in Ontario list and protection under the act.
- In option 2, the minister's discretion in making a decision that differs from the list would be exercised in unique circumstances with undesirable social, economic or ecological impacts.

Stage 2 –

Protection for the significant habitat of the species

The legislation would specify that:

- all species identified as endangered, threatened or extirpated on the Species at Risk in Ontario list would be eligible for protection under the act regarding the significant habitat of the species. (A definition of “significant habitat” would be developed which would encompass habitat other than that covered under the definition of residence, that is necessary for the maintenance, survival and/or recovery of the species, including habitat occupied by the species during all or any part of its life cycle)
- upon regulation, the significant habitat of the species would be subject to the protection provisions of the act.

Note:

- A separate process for regulating significant habitat of the species is necessary in part due to the additional time required for mapping of significant habitat and landowner contact.
- It is anticipated that this stage would involve significant public consultation (including notice on the Environmental Registry, landowner contact).

5. Emergency Orders

On rare occasions, it may be desirable to take immediate action to protect a species or its habitat. For example, this may occur when a species is listed on the Species at Risk in Ontario list, but is not yet protected under the act, or when new information arises about the presence of a species in a particular location. Ontario currently does not have such a legislative provision.

The term “emergency order” as used here means a legally enforceable document issued by the minister to provide for the immediate protection of a species identified as endangered, threatened or extirpated on the Species at Risk in Ontario list, or a component of its habitat (e.g., residence, significant habitat, landscape feature) where there is an imminent threat to the survival of the species or of damage, destruction or alteration to its habitat. Emergency orders would be intended for use only under extraordinary circumstances and could be repealed if it were determined that the threat was no longer imminent.

Legislative proposal 5:

- The minister would have the authority to issue an emergency order for the immediate protection of a species identified as endangered, threatened or extirpated on the Species at Risk in Ontario list, or to protect a specific component of its habitat (e.g., residence, significant habitat, landscape feature)
- Parameters and conditions for the issuance of emergency orders may include:
 - restrictions or prohibitions on activities that may affect the species or components of its habitat
 - requirements for actions that protect the species or components of its habitat
 - identification of the specific area or location to which the emergency order applies
 - a timeframe for the emergency order.

6. Recovery Planning

As a signatory to the 1996 Accord for the Protection of Species at Risk in Canada, Ontario has made a commitment to develop recovery strategies for endangered and threatened species.

Ontario will continue to work with partners to develop and implement recovery strategies and action plans for species at risk. At present, there are more than 70 active recovery teams in the province. However, there is no legislative requirement for the preparation of recovery strategies, nor for the timelines in which recovery strategies must be developed.

The process of developing recovery strategies can be complicated and time-consuming. The challenge is particularly great in Ontario, due to the high number of endangered (76) and threatened (45) species in the province, as compared to most other Canadian jurisdictions.

It is important that the new legislative provisions for recovery strategies be practical and feasible to implement, because:

- Ontario has a relatively high number of species at risk
- there is currently a backlog of species in Ontario requiring recovery strategies
- consideration needs to be given to the multiple stakeholders and landowners who may be affected by, or want to be involved in, implementation of the associated recovery actions.

The process and timelines for recovery strategies as set out in the federal Species at Risk Act have proven to be problematic, and the federal government is having difficulty complying with its own timelines under the act.

Legislative proposal 6:

- In most cases, require that recovery strategies be developed and posted for comment on the Environmental Registry within the following timeframes:
 - one year for endangered species
 - two years for threatened species
 - Allow longer timelines for the development of recovery strategies to address:
 - the current backlog of recovery strategies
 - particularly complex situations.
- In the latter case, there would be a requirement that information be posted on the Environmental Registry regarding the rationale and length of time required to prepare the recovery strategy.
- Encourage the preparation of multi-species and/or ecosystem-based recovery strategies, where appropriate.
 - Prescribe the basic elements to be addressed in recovery strategies.

7. Reporting

There is currently no legislated requirement for the government to report on its programs and progress towards protecting and recovering species at risk. Sharing of information and status of progress is important to generate awareness of species at risk, and helps align organization and community interests to areas where support is needed.

Reporting on the status and progress related to species at risk is consistent with the province's commitment to being transparent and accountable, and the Ministry of Natural Resources' commitment to state of the resource reporting. Having a reporting requirement would also help ensure that the province's species at risk program is examined on a regular basis, and adjusted as necessary to provide the best possible program.

The reporting should be broad in scope, reflecting the overarching goals regarding protection and recovery of species at risk.

Legislative proposal 7:

Reports that include information regarding species at risk must be prepared and made publicly available. For example:

- species status designation
- progress in achieving protection for species and their habitat under the act
- progress on recovery strategy development
- progress of recovery plan implementation
- contributions of partners in achieving progress in recovery of the species
- inventory and information management standards for evaluating species at risk.

Prairie Smoke (rare)



8. Agreements and Instruments

The current Endangered Species Act does not include provisions that would allow the minister to authorize activities that may affect a regulated species, its residence or its significant habitat (for example, to allow for research activities and restoration projects that are related to the conservation or benefit of the listed species, or to ensure public health and safety.) Also, the current act does not include a provision to allow the minister to enter into agreements to facilitate stewardship activities related to listed species and their habitats or to help promote the principle of “net gain” for species at risk.

Legislative proposal 8:

- The Minister of Natural Resources would have the authority to enter into agreements or issue instruments (e.g., permits, licences, authorizations) to allow activities affecting a regulated species and/or its habitat. The legislation would identify the types of activities for which an instrument could be issued (e.g., scientific research, activities that could benefit the species) and would specify the conditions that the minister considers necessary, such as mitigating measures or timing of the activity.
- The minister would be required to ensure there is an overall benefit to a species and habitat when developing conditions for agreements or instruments.
- The minister could revoke or amend an agreement or instrument to help ensure the survival or recovery of a species.

9. Enforcement and Penalties

The enforcement provisions of the current Endangered Species Act are non-comprehensive and outdated. For example:

- The Crown must prove wilful intent on the part of an accused to obtain a successful prosecution. This provision, which does not exist in modernized legislation in other Canadian jurisdictions, requires the Crown to demonstrate that the defendant intended to affect the species or its habitat.
- There are no provisions regarding appointment of officers, authorization of inspections, search and seizure, and authority to arrest.
- The current maximum financial penalty under the act is a fine of \$50,000 and/or two years in jail. This penalty does not reflect the seriousness of the crime, and does not act as an effective deterrent to violators. Although the maximum penalties for offences under the act were increased in the 1990s, they are still much lower than maximum penalties under the federal Species at Risk Act (under which the maximum penalty for an individual is \$250,000 or five years in jail, and the maximum fine for corporations is \$1 million) and modernized species at risk legislation in other provinces. Some other species at risk legislation also includes scales of penalties based on offence history and whether or not the guilty party is an individual or a corporation.

Legislative proposal 9:

- The new legislative provisions would provide:
 - stronger penalties, in keeping with those jurisdictions with modernized legislation
 - remove the requirement to prove wilful intent
 - include provisions that:
 - provide for the appointment of officers
 - provide a comprehensive suite of enforcement authorities (e.g. authority to inspect, obtain search warrants, seize articles, arrest)

Appendix 1: Overview of Existing Legislation, Policies and Programs related to Species at Risk

Provincial

Note: A number of other provincial acts described below (or policies, programs or documents created under them) reference endangered and threatened species. In most cases, the Species at Risk in Ontario list is used to identify which species must be taken into consideration.

Endangered Species Act – The act came into force in 1971 and is the primary provincial law for the protection of species at risk in Ontario. It applies only to those species of plants and animals declared to be endangered by regulations under the act. The act prohibits the wilful killing, injury, interference or taking of the regulated species, and prohibits the wilful destruction of or interference with the habitat of the regulated species.

(www.e-laws.gov.on.ca/DBLaws/Statutes/English/90e15_e.htm.)

Fish and Wildlife Conservation Act – This act is used to protect a broad range of species, including those listed in schedules under the act as being “specially protected wildlife.” Some of these specially protected wildlife species are also species at risk.

The act includes provisions that can help protect species at risk, including provisions regarding the export, possession and transport of wildlife, which are meant to prevent illegal trade in wildlife. However, the act is not intended to be the primary legal tool for the protection of species at risk in Ontario. If there is conflict between this act and the Endangered Species Act, the provision affording the most protection prevails.

Planning Act – The Provincial Policy Statement under this act contains policies for the protection of the habitats of threatened and endangered species. For example, development in and site alteration of the significant habitat of these species is prohibited.

Crown Forest Sustainability Act – Manuals created under this act require that information on known forest-dependent species at risk be gathered and considered. Endangered and threatened species are considered to be *provincially featured species* for the purposes of this act.

Provincial Parks Act – The act and the General Regulation under the act prohibit the harvest or collection of plants and animals from parks without appropriate permits. As a matter of policy, species identified on the Species at Risk in Ontario list as endangered, threatened or of special concern (except where an exemption is made) are given the same level of habitat protection within provincial parks as species declared to be endangered under the Endangered Species Act.

Aggregate Resources Act – Standards created under this act require that an assessment of the potential impacts of proposed aggregate operations be done. This includes assessing potential impacts on threatened and endangered species habitat on or within 120 metres of a quarry site.

Oak Ridges Moraine Conservation Act – This act authorizes the Oak Ridges Moraine Conservation Plan, which is an ecologically based plan to provide land use and resource management direction for the landscape covered by the plan. Under this act, there is a prohibition on development and site alteration in significant portions of the habitat of endangered, rare and threatened species.

Greenbelt Act – This act authorizes the Greenbelt Plan. The Greenbelt is a broad band of permanently protected landscape around the Golden Horseshoe for agricultural and natural heritage purposes. The policies under this act prohibit development and site alteration in the significant habitat of endangered, threatened and special concern species within the key natural heritage system.

Niagara Escarpment Planning and Development

Act – This act authorizes the Niagara Escarpment Plan, which extends from Niagara to Tobermory. Associated policies protect the habitat of endangered, threatened, rare, and special concern plant and animal species in the plan area.

Assessment Act – Under this act, landowners may receive property tax exemption for several categories of conservation land, including the habitat of endangered species. Landowners must apply for the exemption each year. The amount of the tax exemption is based on the portion of the property mapped as endangered species habitat.

Environmental Bill of Rights – Under this act, Ontario residents can access information (via an electronic registry) describing proposed changes to legislation, regulations, policies and prescribed instruments that will have a significant effect on the environment. Proposal Notices are posted on the electronic registry regarding proposed changes to the Species at Risk in Ontario list, proposed regulation of species as endangered under the Endangered Species Act and recovery strategies.

Environmental Assessment Act – This act requires most government agencies, public bodies and designated major commercial enterprises to evaluate activities that may have a significant environmental impact. Impacts on species at risk and their habitats are a consideration during environmental assessments.

Places to Grow Act – The act provides a legal framework for growth planning in Ontario, and gives the Lieutenant Governor the authority to designate any area of land as a growth plan area and to establish a growth plan for all or part of that area. The plan may include policies, goals and criteria in relation to the protection of sensitive and significant lands.

Federal

Species at Risk Act – This act contains provisions for assessing the status of species, listing species in regulation, protection of listed species and their habitats, development of recovery strategies and action plans, management plans, permitting and enforcement. Supporting stewardship is a key component of the act. The act applies primarily to federal lands. However, the federal act does contain ‘safety net’ provisions under which it can be applied to Crown or private land.

Fisheries Act – The Fisheries Act contains provisions prohibiting the harmful alteration, disruption or destruction of fish habitat. The Ontario Fishery Regulations under this act prohibit fishing for (taking) or possession of fish species protected under the Species at Risk Act as well as those species listed in the regulations as being at risk, unless specifically authorized by a licence.

Migratory Birds Convention Act – This act prohibits the killing, capturing, injuring, taking or disturbing of migratory birds or the damaging, destroying, removing or disturbing of their nests.

Canadian Environmental Assessment Act – This act requires consideration of the impacts of human activities on species at risk for the purpose of federal environmental assessments.

Wild Animal and Plant Protection and Regulation of International and Interprovincial

Trade Act – This act is the tool for delivering Canada's obligations under the Convention on the International Trade in Endangered Species of Wild Flora and Fauna (known as CITES). The act regulates international and interprovincial trade in wild species.

Federal/Provincial/Territorial

Accord for the Protection of Species at Risk in Canada

The 1996 Accord for the Protection of Species at Risk in Canada (www.ec.gc.ca/press/wild_b_e.htm) was signed by the federal government and most provincial and territorial governments, including Ontario. It commits the signatories to a comprehensive program for the conservation, protection and recovery of species at risk. Under the Accord, the Canadian Endangered Species Conservation Council was created. The council coordinates activities and resolves issues related to the protection of species at risk at the national level. The council membership consists of the provincial, territorial and federal wildlife ministers, including Ontario's Minister of Natural Resources. The federal Species at Risk Act (described above) was developed in response to the Accord.