# Endangered Species Act Amendments Shed More Light on Conservation Charges

**May 17, 2019**

On May 2, 2019, the Government of Ontario introduced Bill 108, the *More Homes, More Choice Act, 2019*. The *Endangered Species Act* is one of the statutes proposed to be amended by Bill 108.

Bill 108 amendments to the *Endangered Species Act* (the Act) follow the proposal first made public on April 18, 2019, but provide much needed detail.

The proposed changes previously discussed give the Minister of Environment, Conservation and Parks (the Minister) the authority to delay the listing of a species on the Species at Risk in Ontario List (SARO List) for up to 12 months. The process of listing a species on the SARO List would also no longer automatically engage the protection provisions of the Act. Instead, the Minister would have discretion to issue an order temporarily suspending all or some the protection provisions for up to three years. Proponents who have obtained a permit or an agreement before a species is listed are further exempt from complying with certain protection provisions for 12 months following the listing of the species.

These and other proposed changes were detailed in an earlier bulletin. This bulletin will highlight the additional detail provided with respect to landscape agreements, the proposed regulatory charge and the Species at Risk Conservation Fund, and proposed new enforcement provisions.

## Landscape Agreement — A New Compliance Mechanism

The proposed amendment introduces a landscape agreement as a way for a proponent to receive authorization for multiple activities throughout an identified geographic area. Activities that would otherwise be prohibited by the protection provisions in sections 9 and 10 may be allowed under a landscape agreement, provided the proponent undertakes certain beneficial actions within the same geographic area. The key to the landscape agreement is that the benefiting species are not all required to be the same as the species impacted by the proponent's activities.

Further details are to be enacted by regulation, such as the types of activities authorized as part of a landscape agreement, impacted species which are not permitted to be part of a landscape agreement and other criteria. Subject to these restrictions, the important consideration of a landscape agreement will be whether the benefits to the benefiting species outweigh the adverse effects on the impacted species. The Minister will have to answer that question in the affirmative prior to entering into a landscape agreement.

## Species at Risk Conservation Fund and Species Conservation Charge

The amendments proposed as part of Bill 108 would establish the Species at Risk Conservation Fund. The purpose of the fund is to fund activities that are reasonably likely to protect or recover Conservation Fund Species, or support their protection or recovery. The list of species included under Conservation Fund Species will be prescribed by regulation.

One of the sources of revenue of the fund are species conservation charges, which may be required as part of the following:

- Landscape agreement under section 16.1, if an impacted species is also a Conservation Fund Species;
- Permit issued under section 17 (2) (c), an overall benefit permit, where species conservation charge may be an alternative to demonstrating that an overall benefit to the species will be achieved;
- Permit issued under section 17 (2) (d), pertaining to an activity that will result in a significant social or economic benefit, where the proponent may be required to pay a species conservation charge;
- Authorization granted under section 18 to engage in an activity permitted by other acts, if the authorized person is required to pay the species conservation charge by regulation;
- A permit issued or an agreement entered into with Aboriginal persons under section 19, if required;
- Any other requirement as set out in regulations.

The Species at Risk Conservation Fund is proposed to be administered by a Crown agency referred to as the Species at Risk Conservation Trust. This agency will determine which activities are eligible for funding from the fund, and will develop guidelines to establish the objectives, priorities, and standards for activities that will receive funding from the fund.

## Species Protection Order — A New Enforcement Tool

In addition to the current stop order provisions, the proposed amendments introduce a species protection order. Species protection order is proposed to give the Minister the authority to issue an order similar to a stop order but pertaining to activities that are not in contravention of the protection provisions of section 9 due to some of the protection provisions deemed not applicable by regulation, being temporarily suspended, or if the species has been classified as extirpated, endangered, or threatened, but is not yet listed on the SARO List.

The Minister may make a species protection order if he or she has reasonable grounds to believe that an activity has or is about to have a significant adverse effect on a species. The order may require a person to stop engaging in the activity, but also to direct the person to take steps to address the significant adverse effect of the activity on the species. The person who is served with a species protection order would have the same right to a hearing on the merits of the order as do persons subject to a stop order or a habitat protection order.

# Coming into Force

The amendments to the Act are proposed to come into force on July 1, 2019.

# How BLG Can Help

Municipalities, public agencies, developers and other stakeholders involved in current or future environmental and land use matters should consider the implications of amendments proposed by the first reading of Bill 108. Our Environmental Law and Municipal and Planning Law groups are well positioned to assist you in understanding the implications of Bill 108 and how it may affect your interests.

By

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