

February 10, 2024

To the Membership of the American Fisheries Society - Ontario Chapter,

On December 20, 2023, the Ministry of the Environment, Conservation and Parks (MECP) announced proposed regulatory changes under the *Endangered Species Act, 2007* (ESA) to ‘improve implementation of the species at risk program’. Amongst the proposed changes targeting several endangered species, including Lake Chubsucker, was the following related to Redside Dace:

- Amend Ontario Regulation 832/21 to shorten the timeframe from 20 to 10 years such that any part of a stream that was used by Redside Dace at any time during the previous 10 years would be considered to be ‘occupied’ habitat.
- Change how ‘recovery’ habitat is determined so that recovery habitat is focused on:
 - Streams or other watercourses directly adjacent to occupied habitat; and
 - Areas that are currently suitable to carry out its life processes.

The stated purpose of these regulatory changes are “to focus habitat protections on areas most likely to support Redside Dace survival and recovery”. However, the AFS-OC is concerned that the proposed changes are only being considered to accomplish the stated goal of “reducing costs and time savings for proponents, including businesses, municipalities and individuals”, and will be detrimental to this already imperiled species. For instance, the change from 20 to 10 years to determine ‘occupied’ status will take away protections from 13 of 44 subcatchments, a ~30% reduction. As such, we are submitting questions and comments (pages 2 and 3) to the MECP through the Environmental Registry of Ontario. In order for these questions and comments to have the greatest impact, we encourage our members to do the following:

1. Visit <https://ero.ontario.ca/notice/019-8016> and review the proposed regulatory changes under the ESA (ERO # 019-8016).
2. Submit questions or comments before February 20, 2024. If you do not have time to craft your own, consider submitting or adapting the questions on pages 2 and 3.
3. Include solutions in your comments that provide either reasonable alternatives to the proposed changes or ways to improve the proposed changes.

Over the past few years, we have witnessed the erosion of protections for Ontario’s water and land, highlighted by Bill 23, the increased use of Minister’s Zoning Orders, and most recently, by the (rescinded) changes to the Greenbelt. The AFS-OC is staunchly opposed to this trend, and we will continue to express our concern about regulatory changes that put our environment at risk. What we need is support from our community that shares our frustration, which is why we call upon the membership to comment on the changes to the ESA by February 20, 2024.

Sincerely,

Andre-Marcel Baril, MSc.
Vice President AFS-OC

Erik Tuononen, MSc.
President AFS-OC

Kathryn Peiman, PhD

Questions and considerations for Redside Dace – ESA changes January 2024

- What are the factors driving the need for this change?
- Given that there are many watersheds that will be impacted by the proposed changes, how will MECP staff be directed to deal with records that are older than 10 years in terms of occupancy?
- For reaches where occupancy is considered older than 10 years, how will MECP update occupancy across the species range considering the following:
 - Limited monitoring occurs specifically for species at risk, including Redside Dace, due to limited resources as well as recent changes to the Conservation Authorities Act. Conservation Authorities are now restricted to Category 1 services (unless identified under an MOU with regional and municipal entities), thereby limiting the amount of watershed-based or targeted sampling for species at risk and therefore their ability to conduct regular local monitoring, resulting in outdated records and observations for occupied and recovery habitat.
 - When the resources are available to sample Redside Dace, targeted sampling is no longer an activity that can be registered under the provincial *Endangered Species Act, 2007*. Instead, a *17(2)(b)* permit is required with minister approval. Acquiring this permit may result in significant delays thereby impacting sampling efficiency and project timelines. Additionally, we know that, in 2023, some of these permit applications for Redside Dace monitoring were denied with no reason given. How will MECP address the increased need for these permits plus the short timelines required for their issuance?
 - What level of sampling will be required to confirm occupancy? Successful sampling for this species depends heavily on methodology, seasonality, and gear types. In addition, multiple sampling events over years may be required to confirm occupancy due to the rarity of this species.
 - The established 20-year occupancy limit was based on a North American standard established by NatureServe. Science based protocols/definitions should be used and

should incorporate species specific sampling over an extended period before occupancy can be confirmed (e.g., occupancy definition for Jefferson Salamander). How was the new 10-year occupancy limit determined?

- Will eDNA now be accepted as a means of confirming occupancy? How will the use of eDNA be incorporated to confirm the presence of the species in occupied/recovery habitat? As with physical sampling, a specific protocol with repeatable eDNA collection should be required to confidently confirm occupancy.
- For recovery habitat, what criteria will be used to determine whether a stream or watercourse is “directly adjacent” to occupied habitat? How will restoration opportunities, overall benefit projects, barrier removals, etc., influence/impact these criteria?
- For recovery habitat, what scientific criteria will be used to determine whether a reach is “currently suitable” to carry out the species life processes? What scientific monitoring or assessments will be used to determine this and who will conduct this work?
- How does the change to the act uphold and protect First Nations treaties and rights?
- Redside Dace reaches and watersheds currently mapped as occupied or recovery habitat are consistent with mapping of Critical Habitat in the federal Recovery Strategy and Action Plan. Given the protections afforded to the species under the federal *Species at Risk Act*, how will MECP address inconsistencies in occupied and recovery habitat due to differences in the identification of these habitats between the two acts?
- Is there any consideration for using keystone species for Redside Dace (e.g. Creek Chub or other *Nocomis* species) as part of habitat, and not just the physical habitat (geomorphic units) of a stream or directly adjacent riparian areas?
- If this is meant to ‘focus’ on best ensuring persistence of Redside Dace populations/habitats, will there be assessments to determine which locations are critical, and concurrent amendments to have Redside Dace strongholds legally established (i.e., surrounding land protected from development)?