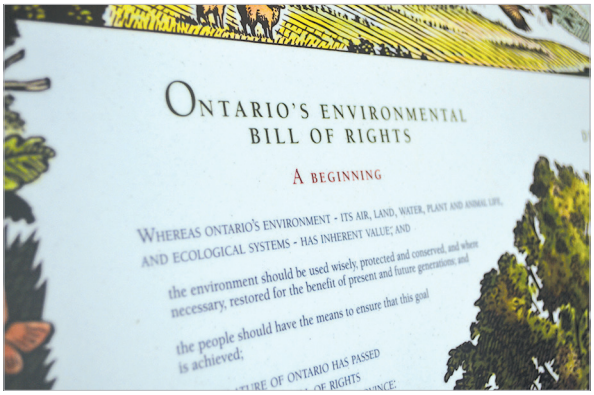
Office of the Auditor General of Ontario

Operation of the *Environmental Bill of Rights*



November 2020

Operation of the *Environmental Bill of Rights*

1.0 Introduction

The *Environmental Bill of Rights, 1993* (EBR Act) recognizes the common goal of the people of Ontario of protecting, conserving and restoring the environment for the benefit of present and future generations. The EBR Act's purpose is to better protect the environment by enabling all Ontarians to participate in—and hold the government accountable for—important decisions that affect air, water, lands and resources, plant and animal life, ecological systems and community well-being. To that end, the EBR Act provides rights for the Ontario public and obligations for Ontario government ministries that are intended to work together to improve environmental protection.

Our Office is responsible for reporting annually on the operation of the EBR Act, including the public's use of its environmental rights, the government's compliance with the EBR Act, and whether the government's environmentally significant decisions are consistent with the purposes of the EBR Act. In December 2019, we issued our first report for the period from April 1, 2018, to March 31, 2019.

This report includes two chapters:

- **Chapter 1; Transparency and Accountability in Environmental Decision-Making** includes our Office's findings on the operation of the EBR Act since our last report, including the public's use of its environmental rights for the period from April 1, 2019, to March 31, 2020; an overview of our findings about the government's compliance with the EBR Act in 2019/20; and a number of findings about environmentally significant government decisions made since our last report that were not consistent with the purposes of the EBR Act.
- **Chapter 2; Ministry Report Cards for 2019/20** includes our Office's detailed findings on whether 15 government ministries, known as "prescribed ministries," have complied with the EBR Act, including the use of best practices to meet the purposes of the EBR Act, in 2019/20. Individual ministry report cards and summaries highlight areas where ministries have met, partially met or did not meet their obligations or use best practices in accordance with our review criteria.

We found in the course of our work that government ministries again did not comply with many requirements of the EBR Act or meet best practices in 2019/20. While some ministries had taken action to respond to recommendations in our 2019 report, and made improvements in their compliance with certain criteria, overall ministry compliance worsened, with ministries not meeting or only partially meeting criteria in 38% of cases, compared with 35% in 2018/19. When ministries do not carry out their EBR Act responsibilities consistent with the EBR Act's purposes, the public loses the opportunity to meaningfully participate in the ministries' environmental decision-making, and

the government does not benefit from receiving the public's feedback on those proposals.

Moreover, we found that some ministries made decisions that were not consistent with the purposes of the EBR Act, were not transparent and risked undermining public confidence in the government's environmentally significant decisions:

- In 2019, the Ministry of the Environment, Conservation and Parks (Environment Ministry) made significant amendments to the *Endangered Species Act, 2007* that reduced legal protection for species at risk, and were inconsistent with the Ministry's objectives to improve outcomes for those species. We found that the Ministry's approach to public consultation on the amendments did not provide Ontarians with enough time or enough information to participate meaningfully in the decision-making process.
- Also in 2019, the Ministry of Natural Resources and Forestry and the Environment Ministry made six related proposals for significant changes to how Crown land is managed for commercial forestry. While the ministries consulted Ontarians on each individual proposal, they did not explain the relationship between the proposals, or tell Ontarians that the combined effect of two of the proposals would be the loss of any statutory requirement to protect species at risk from commercial forestry operations on Crown land in an area covering about 40% of the province.
- In April 2020, the Environment Ministry used a regulation to suspend the operation of the public consultation requirements of the EBR Act to allow the government to act quickly to address issues arising from the COVID-19 emergency. The regulation exempted all proposals from the EBR Act public consultation requirements, even if they were not related to COVID-19. As a result of this broad exemption, members of the public lost their right to seek leave to appeal ministries' decisions on 197 environmentally significant permits and approvals that were proposed during the ten-week exemption period—permits and approvals that, for example, would allow industrial facilities to discharge pollutants to the air and water in Ontario communities—and that were unrelated to COVID-19.
- In July 2020, the Environment Ministry and the Ministry of Municipal Affairs and Housing did not consult Ontarians about changes to the *Environmental Assessment Act* and the *Planning Act* made by the *COVID-19 Economic Recovery Act, 2020*. The Environment Ministry instead sought to retroactively deem the changes to the *Environmental Assessment Act* to be exempt from public consultation under the EBR Act. As a result, Ontarians did not have the opportunity to provide input on these significant legislative changes, and the government did not receive public input that could have informed the ministries' decision-making.

The Environment Ministry has primary responsibility for protecting the environment, administers the EBR Act and is responsible for the Environmental Registry. The Environment Ministry's compliance declined in 2019/20; it did not meet or only partially met 75% of our review criteria, compared with 62% in 2018/19. In 2019/20, the Environment Ministry received new responsibilities under the EBR Act to provide educational programs about the EBR Act to the public. We found that the Environment Ministry set up a web page on the Ontario government's website with links to information on the EBR Act and the public's rights under it, but did little to actively reach out to the public for education. We also found that the Environment Ministry does not have any processes in place to identify the ministries and laws that affect the environment and to propose that those ministries and laws be prescribed by Cabinet.

When it comes to the environment, most Ontarians would expect the Environment Ministry to lead by example in its compliance with the EBR Act. However, we found that this was not the case.

Chapter 1

Transparency and Accountability in Environmental Decision-Making

1.0 Summary

The *Environmental Bill of Rights, 1993* (EBR Act) recognizes the common goal of the people of Ontario of protecting, conserving and restoring the environment for the benefit of present and future generations. The EBR Act's purpose is to better protect the environment by enabling all Ontarians to participate in—and hold the government accountable for—important decisions that affect air, water, lands and resources, plant and animal life, ecological systems and community well-being. Public participation by affected and interested individuals, businesses and organizations provides government decision-makers with additional information and perspectives, including local and traditional. The EBR Act requires government decision-makers to consider the public's input before finalizing their decisions. This can improve the quality of environmental decisions, build public understanding and acceptance, help resolve issues and lead to greater transparency and government accountability.

The EBR Act provides rights for the Ontario public and obligations for Ontario government ministries that are intended to work together to improve environmental protection. These obligations include requirements for certain ministries to:

- have a Statement of Environmental Values that explains how they consider the purposes of the EBR Act when making decisions that may significantly affect the environment;
- notify and consult the public through the Environmental Registry when developing or changing policies, laws and regulations, and issuing permits and approvals that may significantly affect the environment; and
- respond to applications from Ontarians asking the government to review laws, policies, regulations, permits or approvals, or to investigate alleged contraventions of environmental laws, regulations or approvals.

Figure 1 lists the names of the 15 ministries that were subject to the EBR Act in 2019/20, called "prescribed ministries," and how we refer to them in this report.

Our Office is responsible for reporting annually on the operation of the EBR Act, including the public's use of its environmental rights, prescribed ministries' compliance with the EBR Act, and whether the government's environmentally significant decisions are consistent with the purposes of the EBR Act. In December 2019, we issued our first report for the period from April 1, 2018, to March 31, 2019.

This chapter includes our Office's findings on the operation of the EBR Act since our last report, including the public's use of its environmental

Figure 1: The Prescribed Ministries and How We Refer to Them in This Report

Source of data: O. Reg. 73/94, made under the *Environmental Bill of Rights, 1993*

Ministry[1]	How We Refer to It
Environment, Conservation and Parks	Environment
Natural Resources and Forestry	Natural Resources
Municipal Affairs and Housing	Municipal Affairs
Energy, Northern Development and Mines	Energy and Mines
Government and Consumer Services—Technical Standards and Safety Authority[2]	Government Services
Transportation	Transportation
Agriculture, Food and Rural Affairs	Agriculture
Heritage, Sport, Tourism and Culture Industries	Tourism
Health[3]	Health
Infrastructure	Infrastructure
Economic Development, Job Creation and Trade	Economic Development
Indigenous Affairs	Indigenous Affairs
Education	Education
Labour, Training and Skills Development	Labour
Treasury Board Secretariat	Treasury Board

1. Ministries are presented in descending order based on the total historical volume of their activities under the *Environmental Bill of Rights, 1993*.
2. The Technical Standards and Safety Authority posts notices related to the *Technical Standards and Safety Act, 2000* on behalf of the Ministry of Government and Consumer Services.
3. On June 20, 2019, the Ministry of Health and Long-Term Care was split into the Ministry of Health and the Ministry of Long-Term Care.

rights for the period from April 1, 2019, to March 31, 2020, an overview of our findings about the ministries' compliance with the EBR Act, including their use of best practices to meet the purposes of the EBR Act, in 2019/20 according to our criteria in **Appendix 1**, and a number of findings about environmentally significant ministry decisions since our last report that were not consistent with the purposes of the EBR Act.

Overall Conclusions

As in 2018/19, our work identified areas where ministries did not meet all their obligations under the EBR Act or use best practices in 2019/20. We also identified a number of ministry decisions that were inconsistent with the purposes of the EBR Act, leading to lost environmental rights for Ontarians and less transparency and accountability for government environmental decision-making. Our specific findings are as follows:

- **Prescribed ministries' compliance in 2019/20 was low, with the Environment Ministry not leading by example.** As in 2018/19, there were many instances in which ministries did not meet or fully meet our review criteria in 2019/20. Overall, ministry non-compliance with the EBR Act worsened with ministries not meeting or only partially meeting criteria in 38% of cases, compared with 35% in 2018/19. In particular, the Environment Ministry's overall compliance declined; that Ministry did not meet or only partially met 75% of our review criteria, compared with 62% in 2018/19. In addition, the Natural Resources Ministry has a high level of activity under the EBR Act but did not meet or only partially met 60% of our review criteria, compared with 38% in 2018/19.
- **The Environment Ministry has not taken steps to ensure that the EBR Act's prescribing regulation is updated.** The Environment

Ministry is responsible for administering the EBR Act, including proposing updates to the regulation under the EBR Act that contains the lists of prescribed ministries and laws. However, we found that the Environment Ministry does not have processes in place and has not taken steps to identify all of the ministries and laws that should be subject to the EBR Act, or to propose that they be prescribed by Cabinet.

- **The Environment Ministry suspended environmental rights through temporary exemptions from the EBR Act's requirements due to COVID-19.** In response to the COVID-19 pandemic and the state of emergency declared in Ontario, the Environment Ministry created a regulation under the EBR Act that relieved prescribed ministries of their responsibilities to post environmentally significant proposals on the Environmental Registry for public consultation, and to consider their Statements of Environmental Values when making decisions that might have a significant effect on the environment. The exemption regulation, which was in effect from April 1 to June 15, 2020 (more than 10 weeks), was intended to allow the government to act quickly to address issues arising from the COVID-19 emergency. However, the exemption regulation exempted all proposals from the requirement to be posted on the Environmental Registry for public comment, even if they were not related to COVID-19. As a result, members of the public lost their right to seek leave to appeal ministries' decisions on 197 environmentally significant permits and approvals that were proposed during the exemption period—permits and approvals that, for example, would allow industrial facilities to discharge pollutants to the air and water in Ontario communities—and that were unrelated to COVID-19. This outcome, which effectively cancelled Ontarians' right to participate in environmental decision-making under the EBR Act for proposals made during the exemption period, could have been avoided had the Environment Ministry drafted a more targeted exemption that applied only to urgent decisions that were related to the pandemic.
- **Ontarians were not given opportunity to comment on changes to environmentally significant laws made by the *COVID-19 Economic Recovery Act, 2020*.** The *COVID-19 Economic Recovery Act, 2020* made changes to two environmentally significant laws that are prescribed under the EBR Act: the *Environmental Assessment Act* (Schedule 6) and the *Planning Act* (Schedule 17). However, the Environment and Municipal Affairs ministries did not consult the public on these changes through the Environmental Registry. As a result, Ontarians did not have an opportunity to participate in this environmentally significant decision-making, and the government missed out on receiving input from Ontarians that could have provided them with information and perspectives to inform the ministries' decision-making.
- **Ontarians were not given sufficient information and time to comment on government decisions on significant changes to forest management.** In 2019, the Natural Resources and Environment ministries gave Ontarians notice of six proposals that would together make significant changes to how the ministries regulate commercial forestry on Crown land. We found the ministries' approach to consultation on these proposals was not consistent with the purposes of the EBR Act. In particular:
  - The Natural Resources Ministry did not tell the public what it was proposing as a "long-term approach" to forestry and species at risk—specifically, whether commercial forestry would be permanently exempted from some, or all, provisions of the *Endangered Species Act, 2007* and how

species at risk would continue to be protected once an amendment to the *Crown Forest Sustainability Act, 1994* was made;
- Neither ministry told the public that the combined effect of the exemption for commercial forestry from both the *Environmental Assessment Act* and the *Endangered Species Act, 2007* would be the loss of any statutory requirement to protect species at risk;
- The relationships between the six proposals and their combined anticipated environmental impacts were not identified in any of the notices;
- The Natural Resources Ministry did not provide evidence to support its statement in one notice that the environmental impacts of the proposal would be "positive" and would "enhance" protection for species at risk, or its statement in another notice that the environmental impacts would be "neutral"; and
- The timing of the public comment periods for the six proposals likely reduced the public's ability to understand the proposals and provide informed comment.

- **Amendments to the *Endangered Species Act, 2007* reduced legal protection for species at risk.** In 2019, the Environment Ministry held two consultations regarding its program for the protection of species at risk, which led to changes to the *Endangered Species Act, 2007*. We found that the Ministry's approach to public consultation did not provide Ontarians with enough information about the actual amendments or time to meaningfully participate, and was not consistent with the purposes of the EBR Act. The Ministry's decision did not meet the Ministry's objectives cited in the proposal to improve outcomes for species at risk, and could allow actions that are not consistent with the purposes of the *Endangered Species Act, 2007* or the EBR Act.

Chapter 1 of this report contains 16 recommendations, with 27 action items, to address our findings.

OVERALL ENVIRONMENT MINISTRY RESPONSE

The Ministry of the Environment, Conservation, and Parks (Ministry) is committed to meeting our legislative obligations under the *Environmental Bill of Rights, 1993* (EBR Act) and enabling all Ontarians to participate in important environmental decisions.

We have modernized the Environmental Registry to improve public engagement, provide information to the public about how to exercise their rights under the EBR Act, and support partner ministries in fulfilling their responsibilities.

The Ministry appreciates the recommendations made within this report and is acting to fulfill our commitments. Progress has been made in a number of areas where similar recommendations were raised last year, but unfortunately due to COVID-19 the Ministry was not able to act as quickly as planned.

The Ministry is committed to engaging the public and stakeholders in environmental decision-making. These are unprecedented times and the government has had to move quickly to respond to the impacts of COVID-19, requiring some exemptions from the usual EBR consultation requirements.

We will continue to engage the people of Ontario in environmental decision-making to help protect our air, land and water, address litter and reduce waste, support Ontarians to continue to do their share to reduce greenhouse gas emissions, and help communities and families prepare for climate change.

2.0 Background

2.1 Overview of the *Environmental Bill of Rights, 1993*

The *Environmental Bill of Rights, 1993* (EBR Act) recognizes that the provincial government has the primary responsibility for protecting the natural environment and the people of Ontario have the right to participate in government decisions about the environment with the right to hold the government accountable for those decisions. The purposes of the EBR Act are to:

- protect, conserve and, where reasonable, restore the integrity of the environment;
- provide sustainability of the environment; and
- protect the right of Ontarians to a healthful environment.

The EBR Act and its two regulations set out a number of requirements and rights that work together to help meet the purposes. These include:

- requirements for 15 ministries (the "prescribed ministries" in **Figure 1**) to develop Statements of Environmental Values ("Statements"). A Statement explains how a ministry will apply the purposes of the EBR Act when making decisions that might significantly affect the environment, and guides ministry staff in integrating environmental values with social, economic and scientific considerations each time they make an environmentally significant decision. While ministries are not required to prioritize environmental values over other values, the process of considering their Statements helps to make ministries more deliberate and transparent about their decisions;
- requirements for prescribed ministries to post on the Environmental Registry website proposed policies, acts, regulations and "instruments" (permits, licences and other approvals and orders) that are environmentally significant, and to consult the public on these proposals (for more details and for information about the use of the Environmental Registry in 2019/20, see **Appendix 2**);
- the right of Ontarians to submit applications to a prescribed ministry asking it to review existing laws, policies or regulations, or the need for new ones to protect the environment ("applications for review") (for more details and for information about applications for review and their use in 2019/20, see **Appendix 3**);
- the right of Ontarians to ask a ministry to investigate alleged contraventions of prescribed environmental laws ("applications for investigation") (for more details and for information about applications for investigation and their use in 2019/20, see **Appendix 3**); and
- the right of Ontarians to seek permission to appeal (that is, challenge) government decisions on certain permits, approvals and orders, the right to sue for harming the environment or a public resource, and the right to protection for employees from employer reprisals for exercising their environmental rights (that is, "whistleblower" protection) (for more details about appeals, court actions and whistleblower protection and the use of these rights in 2019/20, see **Appendix 4**).

The Ministry of the Environment, Conservation and Parks (Environment Ministry) administers the EBR Act's two regulations that determine which ministries are subject to the EBR Act (see **Appendix 5**), which acts are subject to the EBR Act (see **Appendix 6**), and which permits or other approvals are subject to the EBR Act (see **Appendix 7**). **Appendix 8** provides a glossary of terms.

2.2 Why the *Environmental Bill of Rights, 1993* Matters to Ontarians

The *Environmental Bill of Rights, 1993* (EBR Act) gives Ontarians unique rights to participate in the government's environmental decision-making, with the purpose of leading to better protections for the environment. The EBR Act gives Ontarians the right to:

- be informed whenever the government is proposing to do something that will have a significant effect on the environment,
- submit comments on such proposals, and be told what effect public participation had on the government's final decision;
- challenge certain government decisions about permits and other approval types that could have a significant effect on the environment (such as approvals for industrial facilities to emit contaminants to air, or to take water from a waterbody); and
- formally ask the government to review certain environmentally significant laws, policies, regulations and permits, and investigate potential violations of environmental laws.

Public participation in government environmental decision-making, such as that enabled by the EBR Act, can improve the quality of decisions—and the outcomes for the environment—by providing the decision-makers with additional information and perspectives from different sources, including local and Indigenous traditional knowledge. Other benefits of public participation can include greater government accountability for its decision-making, greater public awareness of issues and acceptance of decisions, and better implementation of decisions.

Since the EBR Act came into force in 1994, the public's participation in environmental decision-making using the EBR Act's tools has influenced government decisions affecting the environment and has led to greater protections for the environment. For example:

- Public consultation through the Environmental Registry led to:
  - the cancellation of a proposal to change regulations regarding wolf and coyote hunting, which was widely criticized as having serious ecological consequences and unlikely to help the moose population; and
  - improvements to a regulation setting out requirements for source water protection plans under the *Clean Water Act, 2006*.
- Applications submitted under the EBR Act led to:
  - improved sewage management in a provincial park;
  - an end to the hunting of snapping turtles, an at-risk species; and
  - temporary shutdown and new requirements for an asphalt maker to better control its emissions.
- Appeals initiated by members of the public through the EBR Act's leave to appeal process have successfully challenged an approval for a cement plant to burn tires, bones and other wastes, and have led to more stringent conditions on quarry operations, landfills, residential developments and industrial facilities.

Without the EBR Act, Ontarians would not be assured that they would be informed about many of the environmentally significant decisions the government makes every year, nor would they be assured the opportunity to provide their input about those decisions, challenge decisions that they believe might harm the environment, or prompt the government to review or investigate environmental matters. Without the EBR Act, the government would not be required to consider the public's feedback when making environmentally significant decisions. Most important, without the EBR Act, the EBR Act's purposes—to achieve better outcomes for the environment through public participation—might not be achieved.

2.3 Legislative Changes in 2019/20

On April 1, 2019, the *Restoring Trust, Transparency and Accountability Act, 2018* came into force. That legislation transferred some of the responsibilities of the former Environmental Commissioner of Ontario (ECO) to the Office of the Auditor General of Ontario. Our Office now reports annually on the operation of the *Environmental Bill of Rights, 1993* (EBR Act). As well, we may review the government's progress on activities to promote energy conservation and reduce greenhouse gas emissions and report on any other matters our Office considers appropriate.

The Auditor General appointed the first Commissioner of the Environment as part of our expanded responsibilities. The Commissioner of the Environment works as an Assistant Auditor General and reports to the Auditor General.

All public participation rights and ministry obligations under the EBR Act remain as they did before April 1, 2019, with two exceptions:

- Beginning April 1, 2019, members of the public must submit applications for review or investigation directly to the ministry they are requesting to carry out the review or investigation. Ministries must then send the applicants and our Office a copy of their decision to undertake or deny the application and their final decision summary of any undertaken review or investigation. Our Office is responsible for assessing how ministries handle applications. (Prior to the transfer of responsibilities, members of the public submitted their applications to the former ECO, who then sent them to the ministry involved. Ministries were required to send the applicants and the ECO a copy of their decision to undertake or deny the application and their final decision summary of any undertaken review or investigation.)
- The Environment Ministry is now responsible for educating the public about the EBR Act, and posting notices of appeals and court actions on the Environmental Registry. These were both previously the responsibility of the former ECO.

3.0 Review Objective and Scope

Our objective was to review the operation of the *Environmental Bill of Rights, 1993* (EBR Act), including assessing whether the ministries prescribed under the EBR Act:

- carried out their duties during the 2019/20 reporting year (April 1, 2019 to March 31, 2020) in accordance with the requirements and purposes of the EBR Act and its regulations; and
- have systems and processes in place that accord with the requirements and purposes of the EBR Act and its regulations.

In planning our work, we identified the criteria that we would use to evaluate ministries' performance for each of their responsibilities under the EBR Act. These criteria were established based on the requirements of the EBR Act and best practices required for a ministry to fulfill its obligations in light of the EBR Act's purposes. These criteria are outlined in **Appendix 1**. Senior management at each prescribed ministry reviewed and agreed with our review objective and associated criteria.

We conducted our review from January 2020 to October 2020. We obtained written representation from senior management at each prescribed ministry that, effective October 21, 2020 to November 5, 2020, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

Our work involved discussions and correspondence with staff at the Environmental Bill of Rights Office within the Environment Ministry, as well as staff at prescribed ministries. We reviewed:

- the public and prescribed ministries' use of the EBR Act's tools, including analyzing trends in the topics covered in applications for review and for investigation that were submitted over the last 10 years;
- ministries' actions to update their Statements of Environmental Values (Statements), as well as their documentation that showed how they considered their Statements for all decisions on policies, acts, regulations and select instruments;
- environmentally significant proposals and decisions that came to our attention for which appropriate notice was not given on the Environmental Registry;
- all notices for policies, acts and regulations posted on the Environmental Registry in 2019/20, all bulletins, exception notices and appeal notices posted in 2019/20, and a random sample of 25 instrument proposal notices and 25 instrument decision notices posted in 2019/20 by each ministry that posts instrument notices;
- the Environmental Registry to identify all proposal notices that were posted more than two years earlier without an update or decision as of March 31, 2020;
- third-party leave to appeal applications made under the EBR Act, and direct appeals of permits and approvals subject to the EBR Act;
- all relevant documentation for all applications for review that ministries concluded—either denied or completed—in 2019/20;
- the status of all applications for review where the ministry had agreed to undertake the review but had not yet delivered a final decision as of March 31, 2020;
- the functionality and reliability of the Environmental Registry;
- measures taken by the Environment Ministry to provide educational programs and general information about the EBR Act to the public;
- actions taken by the prescribed ministries to respond to recommendations made in our 2019 report on the operation of the EBR Act;
- prescribed ministries' policies and procedures for complying with the EBR Act;
- prescribed ministries' processes for ensuring the EBR Act's regulations are kept up to date; and
- actions taken and decisions made by prescribed ministries about certain environmentally significant issues, to determine whether those decisions were consistent with the purposes of the EBR Act and other relevant legislation.

We conducted our work and reported on the results of our examination in accordance with Canadian Standards on Assurance Engagements (CSAE) 3001—Direct Engagements and 3531—Direct Engagements to Report on Compliance issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a limited level of assurance on the compliance by all prescribed ministries with the EBR Act for the period of April 1, 2019, to March 31, 2020. The interpretation of the significant provisions of the EBR Act is described in **Appendix 1**.

Compliance with the EBR Act is the responsibility of management. Management is also responsible for such internal control as management determines necessary to enable a prescribed ministry's compliance with the EBR Act. The Office of the Auditor General of Ontario applies the Canadian Standard on Quality Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements. We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Chartered Professional Accountants of Ontario, which are founded on fundamental

principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

Follow-up on Recommendations from Prior Year Review

Our recommendations from 2018/19 primarily requested ministries to comply with specific requirements of the EBR Act and to meet best practices associated with those requirements, in accordance with our review criteria found in **Appendix 1**. The status of a ministry's implementation of such a recommendation may change from year to year based on that ministry's level of compliance with the criteria in question. A ministry may have implemented a recommendation in one reporting year by fully complying with the requirement of the EBR Act (including associated best practices) in question, but the following year our Office may again find issues of non-compliance with that requirement.

As our Office reports annually on the operation of the EBR Act, our findings on compliance with the EBR Act in our annual reports constitute our follow-up on past recommendations by providing an update on the status of a ministry's compliance with the specific requirements of the EBR Act and best practices. We also review and report on relevant information about ministries' actions to implement those recommendations, such as the development of new policies or guidance intended to achieve compliance with the EBR Act.

For specific recommendations that are not directly related to compliance with the requirements of the EBR Act and best practices, we will follow our Office's practice of following up on the status of actions taken by ministries to implement those recommendations two years after the recommendations were published. Accordingly, we will report on the status of such recommendations made in 2018/19 in our 2020/21 Annual Report on the operation of the EBR Act.

4.0 Ministry Compliance with the *Environmental Bill of Rights, 1993* in 2019/20

As in 2018/19, our 2019/20 compliance review identified a high number of instances in which prescribed ministries did not fully meet their obligations under the *Environmental Bill of Rights, 1993* (EBR Act) in accordance with our criteria in **Appendix 1**. When ministries do not meet their obligations under the EBR Act or use best practices, it is more difficult for Ontarians to use their environmental rights and, in turn, support or contribute to government decisions about the environment.

We found that, individually, some ministries had taken action to respond to recommendations in our 2019 report, and made improvements in their compliance with certain criteria, but improvements overall were minimal, and ministries' compliance with many criteria declined in 2019/20. Overall, ministry non-compliance worsened, with ministries not meeting or only partially meeting criteria in 38% of cases, compared with 35% in 2018/19.

Compliance by the Environment and Natural Resources ministries—the two ministries with the highest levels of activity under the EBR Act—was low, and declined overall in 2019/20; those ministries did not meet or only partially met, respectively, 75% and 60% of the review criteria, compared with 62% and 38% in 2018/19.

In particular, the Environment Ministry's compliance with three criteria declined in 2019/20, and the Ministry continued to not meet or only partially meet seven other criteria. The Ministry also did not fully meet our review criteria for its new responsibilities for providing educational programs about the EBR Act to the public, and for giving notice of appeals and leave to appeal applications under the EBR Act.

Individual ministry report cards containing our detailed findings on prescribed ministries' compliance with the EBR Act in 2019/20 and

a comparison with results from 2018/19, as well as our Office's recommendations related to compliance, are found in **Chapter 2** of this report.

The Environment Ministry has the primary responsibility for protecting the environment in Ontario. It is also responsible for administering the EBR Act and its regulations, as well as for operating the Environmental Registry. Given these roles, the Environment Ministry should set an example for other prescribed ministries by fully meeting its obligations under the EBR Act and best practices. However, the Environment Ministry again failed to lead by example in 2019/20.

Currently there are no internal oversight mechanisms in the prescribed ministries to ensure compliance with the EBR Act at the executive level. Increased compliance would be more likely to be achieved if Deputy Ministers—the most senior civil servants in ministries—were held accountable for their ministries' compliance records by the province's chief civil servant: the Secretary of Cabinet.

RECOMMENDATION 1

To support prescribed ministries' improvement of their compliance with the requirements of the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Secretary of Cabinet incorporate compliance with the EBR Act into the annual performance reviews of Deputy Ministers of prescribed ministries.

RESPONSE OF THE SECRETARY OF CABINET

The Secretary of Cabinet agrees that compliance with the EBR Act will be incorporated into the annual performance reviews of Deputy Ministers of prescribed ministries in the current year and going forward.

5.0 Environment Ministry Has Not Provided Leadership in Ensuring the EBR Act Applies to all Environmentally Significant Decisions Made by Government

The *Environmental Bill of Rights, 1993* (EBR Act) enables Ontarians to participate in environmentally significant decisions made by the government, ask for improvements to laws to better protect the environment, and ask the government to investigate when they think certain environmental laws are being broken. But in order for these rights to be put into practice, ministries and laws that affect the environment must be specifically brought under the EBR Act's umbrella, or "prescribed."

Currently, 15 ministries and 38 laws are prescribed under the EBR Act (see **Figure 1** for the list of prescribed ministries, and **Appendix 6** for a list of prescribed laws). But to meet the purposes of the EBR Act—to protect the environment by enabling Ontarians to participate in environmentally significant decisions made by the government—every ministry (or other government unit) that makes environmentally significant decisions, and every law that could significantly affect the environment, should be prescribed. The EBR Act allows for government units that make potentially environmentally significant decisions to be deemed ministries for the purposes of the EBR Act.

The Environment Ministry is responsible for administering the EBR Act. While ministries and laws may only be prescribed for the purposes of the EBR Act by regulations made by Cabinet, the Environment Ministry is responsible for proposing to Cabinet updates to the regulation under the EBR Act that contains the lists of prescribed ministries and laws. However, our Office found that the Environment Ministry does not have processes in place, nor has it made any efforts, to identify all of

the ministries and laws that should be subject to the EBR Act, and to propose to Cabinet that those ministries and laws be prescribed.

When a ministry is prescribed:

- Ontarians have the right to be notified and consulted any time the ministry proposes to make or change laws or policies that might have a significant effect on the environment;
- the ministry must develop a Statement of Environmental Values that explains how the ministry will consider the purposes of the EBR Act when making environmentally significant decisions, and consider that Statement every time it makes such a decision; and
- if the ministry is specifically prescribed for purposes of applications for review, the ministry must respond to requests from the public to review environmentally significant policies or any prescribed laws and their regulations, or permits and approvals for which the ministry is responsible, or to review the need for a new environmentally significant policy, law or regulation. If the ministry is specifically prescribed for purposes of applications for investigations, the ministry must respond to requests from the public to investigate alleged contraventions of prescribed laws, regulations or instruments for which the ministry is responsible (see **Appendix 5** for a list of which EBR Act responsibilities apply to each existing prescribed ministry).

When an individual law is prescribed:

- the ministry responsible for that law must prepare a list of any types of permits, licences and approvals issued under the law that could have a significant effect on the environment (such as permits that allow the holder to pollute or extract resources), and propose that they be prescribed under the EBR Act (see **Appendix 7** for a list of permits and other approvals that are currently subject to the EBR Act);
- Ontarians have the right to be notified and consulted any time the responsible ministry proposes to make an environmentally significant decision about regulations made under that law, or to issue prescribed permits, licences or approvals under that law;
- Ontarians have the right to challenge, through a tribunal hearing, ministry decisions to issue certain prescribed permits, licences or approvals under the law, on the basis that the decisions could result in significant harm to the environment; and
- if the law is specifically prescribed for purposes of reviews and/or investigations, Ontarians have the right to ask the responsible ministry to:
  - review the law to improve its effectiveness (by submitting an application for review); and
  - investigate if they suspect that someone is not complying with the law or its attendant regulations, permits, licences or approvals (by submitting an application for investigation).

If a ministry or law is not prescribed, the ministry obligations and public rights outlined above do not apply in relation to that ministry or law. In addition, ministries miss out on receiving the public's input into both environmentally significant decisions and the effective administration and enforcement of environmentally significant laws, which could lead to better outcomes for the environment.

In 2018, the former Environmental Commissioner of Ontario recommended that several ministries and laws be prescribed under the EBR Act on the basis that they are environmentally significant. However, none of those ministries or laws have since been prescribed. These include:

- Metrolinx, which develops and implements integrated regional transportation plans for the Greater Toronto and Hamilton Area that have far-reaching environmental effects, including significant impacts on climate change and air quality;

- the Ontario Energy Board, which develops environmentally significant policy that contributes to a sustainable and reliable energy sector and protects consumers;
- the *Drainage Act*, which sets out rules and protocols for the establishment and maintenance of municipal drains, which can threaten wetlands;
- the *Building Code Act, 1992* which contains standards for energy efficiency and insulation, as well as provisions that can contribute to water conservation; and
- three laws that are integral to the development and governing of energy conservation programs and initiatives, which affect how and how much energy Ontario residents use in their homes and businesses: the *Electricity Act, 1998*, the *Energy Consumer Protection Act, 2010*, and the *Ontario Energy Board Act, 1998*.

The Ministry told us that it does not review ministry mandates or analyze new laws to determine whether they need to be prescribed under the EBR Act. The Ministry also told us that it regularly invites existing prescribed ministries to identify laws, permits, licences and approvals that those ministries want to have prescribed, and provides support to other ministries that want to be prescribed under the EBR Act, but these steps do not ensure that the lists of prescribed ministries and laws are complete.

For Ontarians to be able to participate in the government's environmental decision-making—and better protect the environment—as the EBR Act intends, all ministries that make environmentally significant decisions, and all laws that could significantly affect the environment, should be prescribed. The Environment Ministry should regularly review Ontario's ministry mandates and laws to determine what needs to be prescribed under the EBR Act, and take steps to have the lists of prescribed ministries and acts regularly updated going forward to give effect to the purposes of the EBR Act.

RECOMMENDATION 2

So that the purposes of the *Environmental Bill of Rights, 1993* (EBR Act) can be met, we recommend that the Ministry of the Environment, Conservation and Parks:

- review all government ministries to identify those that make decisions that could have a significant effect on the environment;
- review all laws to identify those that could have a significant effect on the environment; and
- take steps to have such government ministries and laws prescribed under the EBR Act.

MINISTRY RESPONSE

The Ministry is meeting our legislative obligations under the EBR Act.

Under the EBR Act, individual ministries are responsible for determining whether they, or acts they administer, should be subject to the EBR Act. The Ministry administers the EBR Act and works with partner ministries on an annual basis to identify and bring forward any changes needed to the regulations. The Ministry will continue to provide advice to partner ministries about the requirements of the EBR Act to help them determine whether a ministry or acts they administer should be prescribed.

AUDITOR GENERAL'S RESPONSE

Final decisions on which ministries and laws are prescribed under the EBR Act are made by Cabinet. The responsibility for administering the EBR Act is specifically assigned to the Environment Minister in the legislation. For the EBR Act to achieve its purpose of providing means for Ontarians to participate in environmentally significant decisions, a government body needs to take the lead in identifying which additional existing ministries and laws could have significant effects on the environment. It is insufficient for the Environment Ministry to

work only with those ministries that are already prescribed in carrying out its work updating the regulations or to expect that all non-prescribed ministries that make environmental significant decisions will come forward to be included in the EBR Act's regulations. Ontarians would expect the Environment Ministry to be proactive and look at which other existing ministries and laws should be prescribed and make proposals to Cabinet to have the regulations updated.

RECOMMENDATION 3

So that the purposes of the *Environmental Bill of Rights, 1993* (EBR Act) can be met, we recommend that the Ministry of the Environment, Conservation and Parks:

- establish and follow processes to regularly review newly created ministries, and existing ministries whose mandates have changed, to identify those that make decisions that could have a significant effect on the environment;
- establish and follow processes to regularly review newly passed laws, and existing laws that have been amended, to identify those that could have a significant effect on the environment; and
- take steps to have such government ministries and laws prescribed under the EBR Act.

MINISTRY RESPONSE

The Ministry is meeting our legislative obligations under the EBR Act.

Under the EBR Act, individual ministries are responsible for determining whether they, or acts they administer, should be subject to the Act. The Ministry is currently working with partner ministries to develop a consolidated proposal for updates to regulations under the EBR Act, and anticipates bringing forward a suite of amendments in winter 2020.

AUDITOR GENERAL'S RESPONSE

As noted in our Office's response to the Ministry's response to **Recommendation 2** above regarding existing ministries and laws, Ontarians would expect that the Environment Ministry would take the lead in assessing newly created ministries, ministries whose mandates have changed, new laws and amended laws for their environmental significance and make appropriate proposals to Cabinet.

6.0 Environment Ministry Suspended Ontarians' Environmental Rights Through Temporary Exemptions from Requirements of the EBR Act Due to COVID-19

In late March 2020, in response to the COVID-19 pandemic and the state of emergency declared in Ontario, the Environment Ministry initiated the process to make a regulation under the *Environmental Bill of Rights, 1993* (EBR Act) to relieve prescribed ministries of their responsibilities under Part II of the EBR Act to:

- consult the public for at least 30 days using the Environmental Registry before making environmentally significant decisions, regardless of whether they were related to the pandemic; and
- consider their Statements of Environmental Values when making decisions that might significantly affect the environment.

The regulation—O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency—took effect on April 1, 2020 and remained in place for more than 10 weeks until it was revoked on June 15, 2020. (This period will be referred to as the "exemption period," and the regulation will be

referred to as the "exemption regulation," in this report.)

The Environment Ministry publicly stated—through a bulletin posted on the Environmental Registry for information only—that the exemption was necessary because the government needed to "act quickly to address issues arising from [the COVID-19 emergency], often to protect the health and safety of persons." The Ministry stated subsequently, in a special notice linked from the Environmental Registry, that the exemption regulation would "ensure our government is able to quickly respond to the time-sensitive needs of regulated businesses that may be impacted by the COVID-19 (2019 Novel Coronavirus) outbreak so they can continue operations and ensure the goods and services can be delivered." Ministry documents stated that ministries were implementing urgent measures to deal with the outbreak, "including various forms of regulatory relief arising out of the practical inability of regulated entities to comply with legislative deadlines and other similar requirements," and that the urgency motivating many of those measures made the procedural requirements of the EBR Act impractical.

On June 15, 2020, the Environment Ministry revoked the exemption regulation, fully restoring the requirements of Part II of the EBR Act from that date forward. The Ministry stated in a notice posted on the Environmental Registry the same day that it "now has a better understanding of the COVID-19 impact and can better manage its effect on the regulated community to ensure continuity of operations." The exemption was originally to apply until 30 days after the state of emergency came to an end.

6.1 Issues with Exemption Regulation

We have noted the following concerns with the exemption regulation:

- The exemption regulation—which the Ministry stated was to allow the government to act quickly to address issues arising from the COVID-19 emergency—exempted all proposals from the public consultation requirements of the EBR Act, even if they were not related to COVID-19; and
- Because of the breadth of the exemption, members of the public lost their right to seek leave to appeal ministries' decisions on 197 environmentally significant permits and approvals that were not COVID-related, but were proposed by the ministries during the exemption period.

6.2 Exemption Regulation Exempted All Proposals, Even Those Not Related to COVID-19

The EBR Act empowers Cabinet to make regulations providing for exemptions from Part II of the EBR Act in respect of "any class of proposal for a policy, Act, regulation or instrument."

The exemption regulation exempted all proposals, even if they were not related to COVID-19.

However, the Environment Ministry directed prescribed ministries to continue to post regular proposal notices and consult the public on non-COVID-related matters. Ministries were also directed to consider comments received on such proposals, and to notify the public when decisions on those proposals were made.

6.3 Only Nine of 276 Exempted Proposals Were Urgent and COVID-Related

During the exemption period, four prescribed ministries made nine environmentally significant decisions without public consultation for urgent COVID-related matters. These were the types of decisions that the exemption regulation was intended to address.

For example, the Environment Ministry extended the greenhouse gas emissions reporting deadline for Ontario facilities to harmonize with

the federal government's deadline extension in response to the COVID-19 outbreak, the Municipal Affairs Ministry gave its Minister regulation-making authority under the *Planning Act* to suspend land-use planning timelines in order to support municipal emergency response activities, and the Energy and Mines Ministry suspended time-of-use electricity rates during the outbreak. The ministries posted bulletins on the Environmental Registry to inform Ontarians that they had made these decisions.

Ministries also posted 267 regular proposal notices on the Environmental Registry during the exemption period, including two proposals for policies, two proposals for regulations and 263 proposals for instruments (permits, approvals and other authorizations and orders issued under prescribed acts). Because of the exemption, the ministries were not required to post any of those notices. Fortunately, at the direction of the Environment Ministry, ministries posted regular notices and consulted Ontarians about all non-COVID-related proposals during the exemption period.

In effect, an exemption from the EBR Act public consultation requirements was only needed for nine of the 276 environmentally significant proposals made during the exemption period—just 3%—but Ontarians' participation rights were suspended for all 276.

6.4 Members of the Public Lost Their Right to Seek Leave to Appeal Ministries' Decisions on 197 of 263 Proposed Permits and Approvals

Of the 263 proposals to issue permits and approvals posted during the exemption period, 197 proposals posted by the Environment, Natural Resources and Municipal Affairs ministries, and the Technical Standards and Safety Authority, were for types of permits and approvals that, when decided, would ordinarily be subject to the EBR Act's third-party leave to appeal rights (see **Appendix 9**). The leave to appeal rights provide members of the public with the opportunity to challenge ministry decisions to authorize certain activities if there is evidence that the decision could result in significant harm to the environment. However, these rights only apply to proposals that are required to be posted on the Environmental Registry under Part II of the EBR Act (for more information about the leave to appeal rights under the EBR Act, see **Appendix 4**). Because of the exemption regulation, ministries were not required to post the 197 proposals for permits and approvals, and therefore the public has lost the right to seek leave to appeal the issuance of those permits and approvals even if the decisions are made after the exemption regulation was revoked.

The proposals were for permits and approvals that allow certain activities to occur in communities across Ontario, such as allowing industrial plants to create air and water pollution, or allowing companies to pump water from the ground or remove it from lakes and rivers. These types of permits and approvals have all been identified, through the EBR Act's classification process, as permit and approval types that could have a significant effect on the environment and should be subject to the EBR Act's public participation requirements.

While decisions on 15 of the 197 proposals were already made when the exemption regulation was revoked and decisions for many others have been posted since then (including all of those posted by the Municipal Affairs Ministry and the Technical Standards and Safety Authority), others may not be made for weeks, months or even years, meaning the effects on the public of the Environment Ministry's broad temporary exemption regulation may be felt well into the future.

This outcome, which effectively cancelled Ontarians' environmental rights to participate in environmental decision-making under Part II of the EBR Act for proposals made during the exemption period, could have been avoided had the Environment Ministry drafted a more targeted exemption

that applied only to urgent decisions that were related to the pandemic.

RECOMMENDATION 4

So that Ontarians can exercise their rights under Part II of the *Environmental Bill of Rights, 1993* (EBR Act) to participate in the government's environmentally significant decision-making, we recommend that the Ministry of the Environment, Conservation and Parks when proposing that Cabinet use its regulation-making authority under the EBR Act to provide exemptions from Part II of the EBR Act, scope the proposed exemptions so that Ontarians' Part II rights are affected to the least extent possible.

MINISTRY RESPONSE

The Ministry appreciates this recommendation. When situations arise that may require an exemption under the EBR Act by Cabinet, the Ministry will propose that the scope of the exemption is as limited as possible based on policy needs and direction received.

RECOMMENDATION 5

To minimize the negative effects of O. Reg. 115/20, Temporary Exemptions Relating to Declared Emergency, we recommend that the Ministry of the Environment, Conservation and Parks and the Ministry of Natural Resources and Forestry repost those proposals that were subject to the exemption and that are still under consideration, to restore Ontarians' leave to appeal rights under the *Environmental Bill of Rights, 1993*.

ENVIRONMENT MINISTRY RESPONSE

The Ministry will not be reposting proposals subject to the O. Reg. 115/20 temporary exemption that are still under consideration.

The temporary exemption was put in place to help ensure the health of all Ontarians while maintaining continuity of important operations. While O. Reg. 115/20 was in effect, environmental protection continued to be a priority in all government decision-making, and we continued to be transparent with the public.

For example, despite the exemption from posting requirements, ministries were expected to continue to post regular proposal notices, with public consultation, for matters that did not require urgent action to respond to the COVID-19 provincial emergency. Where urgent action was required, ministries posted information notices on the Environmental Registry to ensure public transparency.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry is committed to full compliance with its legal obligations under the EBR Act.

The Ministry met its EBR Act obligations while O. Reg. 115/20 was in place. Although not required, the Ministry provided the public with an opportunity to comment on each of the five proposal notices that were posted while the regulation was in effect.

AUDITOR GENERAL'S RESPONSE TO ENVIRONMENT AND NATURAL RESOURCES MINISTRIES

The exemption regulation exempted all proposals from the public participation requirements of the EBR Act, whether related to COVID-19 or not. While there was not any non-compliance on the part of the ministries because Part II of the EBR Act was not in effect when they posted these proposal notices, in reviewing the operation of the EBR Act our Office looks for more than strict legal compliance to determine if the purposes of the EBR Act have been met. Although not required, reposting

the proposals that remain under consideration on the Environmental Registry now that the Part II requirements are back in effect would help to minimize the overly broad impacts of the exemption regulation by restoring the public's leave to appeal rights associated with those proposals, demonstrating the ministries' commitment to the purposes of the EBR Act.

7.0 Environment and Municipal Affairs Ministries Did Not Give Public the Opportunity to Comment on Amendments to the *Environmental Assessment Act* and the *Planning Act* Contained in Bill 197, *COVID-19 Economic Recovery Act, 2020*

Bill 197, the *COVID-19 Economic Recovery Act, 2020*, was passed into law on July 21, 2020, 13 days after it was introduced in the Legislature. The omnibus bill introduced two new acts and proposed changes to 18 existing acts, including two environmentally significant acts that are prescribed under the *Environmental Bill of Rights, 1993* (EBR Act) for the purposes of public notification and comment: the *Environmental Assessment Act* and the *Planning Act*.

The EBR Act requires proposals by prescribed ministries for environmentally significant legislation to be posted on the Environmental Registry for a minimum of 30 days for public comment. The ministry must consider the public's comments when making its final decision, and post a decision notice explaining the effect of any public comments on the decision. However, the Municipal Affairs Ministry, which introduced Bill 197 in the Legislature and also administers the *Planning Act*, did not post Bill 197 or the proposed changes to the *Planning Act* in Schedule 17 of the bill on the Registry for public comment.

The Environment Ministry, which administers the *Environmental Assessment Act*, also did not post the proposed changes to the *Environmental Assessment Act* contained in Schedule 6 of Bill 197 on the Environmental Registry as a proposal for public comment. In fact, Schedule 6 of Bill 197 contained a temporary provision that sought to retroactively deem Schedule 6 to be exempt from the public consultation requirements of the EBR Act. Instead, the Environment Ministry posted a bulletin on July 8, 2020, about the changes on the Environmental Registry for the public's information only.

7.1 Changes to *Environmental Assessment Act* May Reduce Public Consultation and Participation

The *Environmental Assessment Act* provides for the protection, conservation and wise management in Ontario of the environment. It sets out a framework for assessing and mitigating environmental impacts from infrastructure and other projects. Providing opportunity for public consultation during the assessment process is a key requirement. The changes to the *Environmental Assessment Act* contained in Schedule 6 of Bill 197 are part of the Environment Ministry's pre-existing environmental assessment modernization initiative. The changes will limit the application of the *Environmental Assessment Act*'s requirements to projects that will be designated by regulations, either to follow the comprehensive environmental assessment process or to follow a new streamlined environmental assessment process. The new streamlined process will replace the existing class environmental assessments and the processes applicable to waste, electricity and transit projects. The Ministry told us that the new streamlined process will include consultation requirements, but how consultation will take place under the new process, and whether

requirements for consultation will be reduced is unknown.

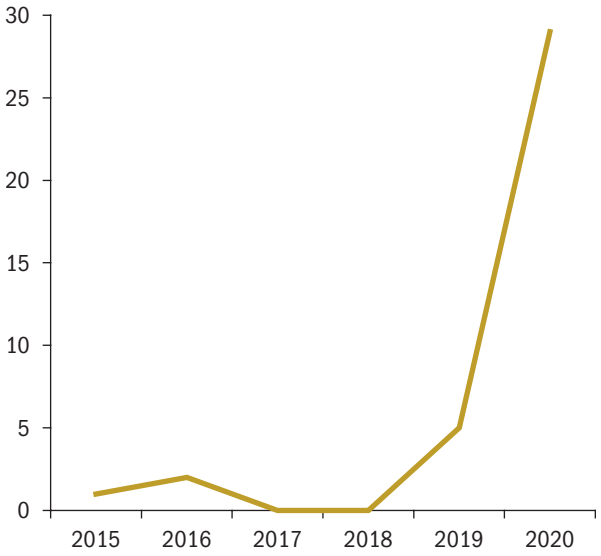
The amendments limit the grounds on which the public can make "bump-up requests." "Bump-up requests" are requests from the public that ask the Minister to "bump up" a project from a standardized class environmental assessment process to a comprehensive individual environmental assessment process. The public could ask for a bump up when concerned that the standardized process was not rigorous enough to prevent environmental harm. As a result of the changes contained in Schedule 6, the public can now only request a bump-up if the order might prevent, mitigate or remedy adverse impacts on constitutionally protected Aboriginal and treaty rights. A transitional provision terminated all in-process bump-up requests (except those made on the grounds that the order may prevent, mitigate or remedy adverse impacts on Aboriginal and treaty rights) upon the passing of the *COVID-19 Economic Recovery Act, 2020*. As a result, bump-up requests related to 19 projects were terminated, including proposals to: build a new road through a mature Carolinian woodlot in the Greenbelt; construct municipal infrastructure through an area containing contaminated soil and groundwater; develop a wastewater treatment system that could affect fish and water resources; and rehabilitate mine tailings contaminating a nearby lake.

7.2 Changes to *Planning Act* (From Passing of Bill 197, Schedule 17) Expand Minister's Powers to Issue Minister's Zoning Orders That Bypass Public Consultation

Schedule 17 of the *COVID-19 Economic Recovery Act, 2020* contains changes to the *Planning Act* that expand the Municipal Affairs Minister's powers with respect to Minister's Zoning Orders. These orders bypass parts of the land-use planning process that require public consultation, largely at the municipal level.

Figure 2: New Minister's Zoning Orders issued under S. 47 of the *Planning Act*

Source of data: Environmental Registry



* Data are as of October 31, 2020.

If a Minister's Zoning Order is used to change or regulate how land may be used, the usual notice and consultation requirements such as holding a public meeting do not apply, and the order cannot be appealed to the Local Planning Appeal Tribunal. Moreover, Minister's Zoning Orders are specifically exempt from the public consultation requirements of the EBR Act.

These orders can permit, prohibit and/or place requirements on land development in the area covered by the orders. As of October 31, 2020, the Ministry had issued 29 new Minister's Zoning Orders since the start of 2020. This is a sharp increase from the previous three years—the Ministry issued just five new orders in 2019 and none in 2018 or 2017 (**Figure 2**). Eleven of the 2020 orders made during the COVID-19 emergency quickly permitted lands to be used for restaurant patios, retirement residences, long-term-care facilities or modular housing for the homeless. We are not aware of evidence that those uses at those sites will have significant environmental impacts. Other orders authorized large residential developments on lands previously zoned for agricultural, institutional or employment

use, automobile dealerships on a rural site, and a large distribution facility on lands containing protected wetlands.

Schedule 17 of Bill 197 also repealed certain provisions of the *More Homes, More Choice Act, 2019* that were not yet in effect. The repealed provisions would have limited how municipalities could procure land and money for parks from developers under the *Planning Act*. Environmentally significant decisions, whether positive or negative, are subject to public consultation under the EBR Act.

We wrote to the Municipal Affairs Ministry on July 17, 2020 stating that the proposed changes to the *Planning Act* and *More Homes, More Choice Act, 2019* contained in Bill 197 were environmentally significant, and that as a prescribed ministry under the EBR Act the Ministry was required to post the proposed changes on the Registry for public consultation. We stated that the Ministry should do so before the Bill received third reading by the Legislature. The Ministry decided not to post any proposals on the Registry.

7.3 Key Changes to *Environmental Assessment Act* Would Not Have Been Delayed by Conducting Public Consultation using the Environmental Registry

In a letter dated July 17, 2020, we stated that the Environment Ministry should post Schedule 6 on the Environmental Registry for a minimum of 30 days' public consultation as required by the EBR Act. We suggested that, in the alternative, the Ministry could remove Schedule 6 from Bill 197 before it passed, and table a separate bill and post proposals for the bill and accompanying regulations on the Environmental Registry for public consultation. The Ministry stated in the Registry bulletin that the amendments would help to get "critical infrastructure projects off the ground quicker." However, in our letter we noted that, since most of the amendments to the *Environmental Assessment Act* in Schedule 6 cannot be put into practice until the Ministry files the associated regulations, the time required to consult the public on those amendments in accordance with the EBR Act would not unreasonably delay the implementation of the new environmental assessment regime. The Legislature resumed sitting on September 14, 2020, but the majority of the amendments contained in Schedule 6 were not yet in force. Further, the Ministry did not need Bill 197 to modify the environmental assessment process for priority transit projects, as the Ministry used its existing powers under the *Environmental Assessment Act* to do so.

The Environment Ministry told us it would post proposals for public consultation on the Environmental Registry for the development of the new regulations under the *Environmental Assessment Act* enabled by the changes proposed in Bill 197, including the new list of projects subject to the *Environmental Assessment Act*'s requirements, the new "streamlined environmental assessment" regulations, and the terms of reference regulations for each sector.

The Ministry also stated that the retroactive exemption of Schedule 6 from the posting requirements of the EBR Act was within the legal authority of the Legislature, and that introducing amendments in Schedule 6 of Bill 197 without posting them on the Environmental Registry for public comment was "fully transparent and lawful."

7.4 Decisions to Not Consult the Public Decrease Transparency and Potential for Better Environmental Outcomes

Not providing an opportunity for the public to comment on environmentally significant proposals can undermine public confidence in government transparency and decision-making.

When ministries forgo public consultation, the government also misses out on receiving input from the diverse voices of the people it serves and the benefits of their input and expertise, which could lead to better environmental outcomes and

increased transparency and public acceptance of those decisions.

RECOMMENDATION 6

To engage the public in the government's environmentally significant decision-making in accordance with the purposes of the *Environmental Bill of Rights, 1993* (EBR Act), we recommend that the Ministry of the Environment, Conservation and Parks and the Ministry of Municipal Affairs and Housing:

- consistently consult with the public about environmentally significant proposals in accordance with the requirements under Part II of the EBR Act; and
- refrain from using provisions that deem proposals to be exempt from the EBR Act.

ENVIRONMENT MINISTRY RESPONSE

The Ministry appreciate this recommendation, and will take it into consideration in developing any future legislative proposals. The Ministry will work to meet its consultation obligations under the EBR Act, and is committed to consulting with the public on environmental assessment modernization.

MUNICIPAL AFFAIRS MINISTRY RESPONSE

The Ministry agrees with this recommendation.

8.0 Ontarians Not Given Sufficient Information and Time to Inform Government Decisions About Significant Changes to Forest Management

8.1 Forestry in Ontario

Ontario covers 0.2% of the Earth's surface area but holds 71 million hectares or 2% of the world's forests—a land area larger than Germany, Italy and the Netherlands combined. About 90% of the forested land in Ontario is Crown forest. The province's forested lands meet a range of social, economic, cultural and environmental needs for Ontarians, including many Indigenous communities. Crown forests in Ontario support nearly 50,000 direct jobs and contribute $4.3 billion to the provincial Gross Domestic Product. Ontarians enjoy recreational activities in Crown forests, including camping, fishing and hunting. These forests not only provide habitat for many species of wildlife, they also play an important part in global climate stability, storing an estimated 4.3 billion tonnes of carbon.

Legal direction for the management of Crown forests is currently provided in the *Crown Forest Sustainability Act, 1994*, which is administered by the Natural Resources Ministry. Historically, direction to the Natural Resources Ministry for planning and implementing forestry operations on Crown land was also provided in a Declaration Order issued under the *Environmental Assessment Act*, which was administered by the Environment Ministry.

The *Crown Forest Sustainability Act, 1994* regulates the protection and sustainable use of Ontario's Crown forests. Under this Act, Ontario's Crown forests must be managed sustainably, consistent with principles requiring:

- conservation of large, healthy, diverse and productive Crown forests and their natural functions and diversity of species; and
- use of forest practices that emulate natural landscapes and disturbances—such as those related to weather and fire—while minimizing adverse effects on environmental, social and economic values.

Under the *Crown Forest Sustainability Act, 1994*, Crown forests are currently divided into 39 "management units." Harvesting activities on a management unit are conducted by licence holders in accordance with a Forest Management Plan. The forestry licence and Forest Management Plan are issued and approved by the Natural Resources Ministry.

The Declaration Order—which came into effect in 2003 and was last updated in 2019—exempted forestry activities such as access, harvest, renewal and maintenance within a large area known as the "Area of the Undertaking" (see **Figure 3**) from the *Environmental Assessment Act*, provided a number of conditions were met. The Area of the Undertaking covers about 40% of the province and is home to at least 54 listed species at risk. The conditions that had to be met included both "planning conditions" that directed what had to be included in the Forest Management Planning Manual and "non-planning conditions" such as those related to monitoring programs, the development of guides, and negotiations with Indigenous communities. The planning conditions in the Declaration Order were incorporated into the Forest Management Planning Manual, which was adopted by the Natural Resources Ministry under the *Crown Forest Sustainability Act, 1994*.

8.1.1 Changes to Forestry Regulation

After 2009, market conditions in the United States lowered demand for Ontario forest products and the annual harvest declined from historic levels. In September 2018, the Ontario government committed to developing a forest sector strategy that would "reduce barriers and costs, attract investment and innovation to promote economic growth, create jobs and demonstrate that Ontario is open for business." In December 2019, the Natural Resources Ministry proposed a Draft Forest Sector Strategy. The goals of the Draft Forest Sector Strategy included to, by 2030, "harvest the sustainable wood supply," which would double the actual annual wood harvest from 15 million m^3 in 2019 to the allowable sustainable wood supply of 30 million m3, and to increase demand for Ontario wood products by developing new products and markets.

Between October 2019 and February 2020, the Environment and Natural Resources ministries consulted the public on six separate but related proposals, including the Draft Forest Sector Strategy, that would result in significant changes to the regulation of forestry operations on Crown lands. The changes—which were intended to provide the commercial forestry industry relief from regulatory burdens—are described in **Figure 4**. As of October 31, 2020, only one of the six proposals—the Endangered Species proposal—remained under active consideration by the Natural Resources Ministry.

We reviewed documents related to the six proposals to determine whether the ministries' consultations through the Environmental Registry were consistent with the purposes of the *Environmental Bill of Rights, 1993* (EBR Act). We reviewed whether the notices posted on the Environmental Registry included sufficient information about the changes and their implications for environmental protection and whether adequate time was provided so that members of the public could understand the proposals, the links between them and their environmental implications and could provide informed comment and have those comments considered before final decisions were made. Our conclusions are discussed in **Sections 8.2**, **8.3** and **8.4**.

Figure 3: Area of the Undertaking*

Source: Ministry of Natural Resources and Forestry

* The area shown is the area of managed Crown forests under the *Crown Forest Sustainability Act, 1994* as of July 1, 2020, the date of the repeal of the Declaration Order and the date as of which the term "Area of the Undertaking" ceased to be used.

Figure 4: Description of Forestry-Related Proposals

Prepared by the Office of the Auditor General of Ontario

Notice #	Description of the Proposal	Implications of the Proposal	Status
Proposals posted by the Natural Resources Ministry			
019-0732	Proposal to amend the *Crown Forest Sustainability Act, 1994* to: • allow the Minister to issue permits for the removal of forest resources to allow non-forestry uses of Crown forests; • remove the requirement for Ministry review and approval of Annual Work Schedules—which outline how annual operations (such as where roads will be built and harvesting and replanting will occur) will be consistent with the approved Forest Management Plan; and • expand the Minister's authority to extend 10-year forest management plans and licences. (This proposal will be referred to as the **Bill 132 proposal** in this report.)	These changes add to the Minister's discretion and reduce oversight by the Ministry.	In force Dec 10, 2019
019-0880	Proposal to establish Ontario's Forest Sector Strategy to grow Ontario's commercial forestry industry. (This proposal will be referred to as the **Forest Sector Strategy proposal** in this report.)	This proposal would establish Ontario's forest management priorities as: reducing barriers and costs to the commercial forest sector, attracting investment and innovation, and promoting economic development and jobs. The Strategy would be implemented through numerous actions, including regulatory changes.	Final strategy decision notice posted on the Environmental Registry Sep 3, 2020
019-1020	Proposal to amend the *Crown Forest Sustainability Act, 1994* to adopt a long-term approach to address the application of the *Endangered Species Act, 2007* to forest operations on Crown land. (This proposal will be referred to as the **Endangered Species proposal** in this report.)	This proposal could permanently exempt forest operations on Crown land conducted in accordance with an approved Forest Management Plan from the *Endangered Species Act, 2007* and move protection of species at risk under these operations exclusively to the Natural Resources Ministry.	Still a proprosal as of Oct 31, 2020

Notice #	Description of the Proposal	Implications of the Proposal	Status
019-0715	Proposal to amend a regulation under the *Crown Forest Sustainability Act, 1994* to revise four manuals, including the Forest Management Planning Manual to, for example: • remove the requirement for a "mid-plan check" in the fourth year of a Forest Management Plan; • remove Ministry review and approval of Annual Work Schedules; • provide requirements for extending Forest Management Plans beyond 10 years, including elimination of the two-year cap on extensions; • remove the opportunity for members of the public to request a comprehensive environmental assessment for individual Forest Management Plans and actions under them; and • remove the requirement to post notices of stages in the development of forest management plans on the Environmental Registry. (This proposal will be referred to as the **Forest Manuals proposal** in this report.)	This proposal reduces some requirements for planning, implementation and oversight of Forest Management Plans and changes some aspects of public notice and consultation. It also expands the Minister's discretion to extend 10-year plans and other approvals. It incorporates changes made as a result of both the Bill 132 proposal and the Environmental Assessment proposal.	In force Jul 1, 2020
019-1006	Proposal to amend the Independent Forest Audits Regulation made under the *Crown Forest Sustainability Act, 1994* to: • change the requirement for an independent forest audit from once every 5 years to once every 10 years; and • give the Minister authority to extend the 10-year period by 2 years and to revise the scope of an audit to achieve certain objectives. (This proposal will be referred to as the **Forest Audits proposal** in this report.)	This proposal reduces the frequency of independent forest audits. These audits, which are carried out for each Management Unit by outside experts, assess the licensee's and the Natural Resources Ministry's compliance with the Forest Management Planning Manual and the Act. Audits also assess the effectiveness of activities in meeting Forest Management Plan objectives with respect to issues such as harvesting, road construction, water crossings, wildlife protection and regeneration. The proposal also provides discretion for the Minister to reduce the scope of audits.	In force Jul 1, 2020
Proposal Posted by the Environment Ministry			
019-0961	Proposal to amend a regulation under the *Environmental Assessment Act* to exempt forest operations on Crown land from environmental assessment requirements. (This proposal will be referred to as the **Environmental Assessment proposal** in this report.)	This proposal would permanently exempt forest operations in the Area of the Undertaking from the *Environmental Assessment Act*, repeal the Declaration Order, eliminate the ability of the public to request that operations under a Forest Management Plan be subject to comprehensive environmental assessment, and remove the Environment Ministry from the oversight of forestry on Crown lands.	In force Jul 1, 2020

8.2 Proposed Changes to Forestry Requirements Did Not Make Clear the Potential Impacts on Protection for Species at Risk

Our review found that the Endangered Species proposal could reduce protections for species at risk but this was not made clear in the notice.

Forestry operations can have a significant impact on the protection of species at risk. For example:

- The former Environmental Commissioner of Ontario in 2017 found that 28 of the 54 species at risk in the Area of the Undertaking that were affected by forest operations were not protected to the standards found in the *Endangered Species Act, 2007*. The *Endangered Species Act, 2007* aims to protect and recover species at risk. "Recovery" of a species at risk means reversing threats and improving the species' condition. In contrast, the *Crown Forest Sustainability Act, 1994*—under which forestry operations are conducted—does not expressly require the protection and recovery of species at risk and requires only that adverse impacts on plant and animal life be minimized, a lesser standard. This understanding of the "protection gap" was confirmed in documentation we reviewed.
- The habitat of forest-dwelling Boreal population of woodland caribou ("woodland caribou"), a threatened species under both the *Ontario Endangered Species Act, 2007* and the federal *Species at Risk Act*, overlaps with much of the Area of the Undertaking. As of 2017, eight woodland caribou ranges that intersect with the Area of the Undertaking in Ontario showed a declining population trend. Woodland caribou require at least 65% undisturbed habitat within the range, comprising large areas of mature to old-growth conifers and peat lands, to be self-sustaining. Forestry operations affect the size of disturbed areas, the ages and types of trees, and the connections between suitable areas available for woodland caribou. Since the early 1900s, the area occupied by woodland caribou has shrunk by 40% to 50% because of human activities such as forestry, mining, roads and settlements.

Currently, a temporary exemption in a regulation under the *Endangered Species Act, 2007* (O. Reg. 242/08) provides that the prohibitions on harming species at risk and their habitat do not apply to licensees conducting forest operations under approved Forest Management Plans, as long as they comply with any operational prescriptions and conditions in their Forest Management Plans that are intended to protect identified species and take steps to protect nests or other important habitat features unexpectedly encountered, among other conditions.

We identified the following ways in which the notices for the proposed changes were not clear:

- The Endangered Species proposal did not clearly state what would happen after the temporary exemption—then set for July 1, 2020, and since extended to July 1, 2021—expired. The Natural Resources Ministry stated in the proposal that it was proposing a "long-term approach that would no longer require duplicative authorizations or regulatory exemptions" under the *Endangered Species Act, 2007*, but provided no details on what that long-term approach would be. The Ministry did not tell the public in the Endangered Species proposal whether it intended to permanently exempt forest operations from some, or all, provisions of the *Endangered Species Act, 2007* through an amendment to the *Crown Forest Sustainability Act, 1994*. The public was not told any of the elements of that amendment or how the gap in protection for species identified by the former Environmental Commissioner would be addressed or how future listed species or future regulated habitats would be protected if the amendment was enacted. In order for Ontarians

to be able to provide meaningful comments on the proposal, they needed to know how the Natural Resources Ministry intended to protect species at risk in Crown forests if the temporary exemption was replaced with amendments to the *Crown Forest Sustainability Act, 1994*. Without providing this information to the public, the Natural Resources Ministry was not able to benefit from more informed comments.

- None of the proposals explained that the combination of a permanent exemption for commercial forestry from the *Endangered Species Act, 2007* and the repeal of the Declaration Order would mean that there would be no statutory requirement to protect species at risk during forestry operations to the standard required under the *Endangered Species Act, 2007*. The *Crown Forest Sustainability Act, 1994* requires that Forest Management Plans be prepared in accordance with the Forest Management Planning Manual, but the *Crown Forest Sustainability Act, 1994* itself does not provide specific direction on the contents of the Forest Management Planning Manual—as the Declaration Order did—and in particular does not mandate that species at risk be protected and recovered. The current Forest Management Planning Manual requires consideration of species at risk in Forest Management Plans, following specific direction found in approved forest management guides. However, without either the Declaration Order or an obligation to meet the requirements of the *Endangered Species Act, 2007*, there is nothing to prevent the elimination or weakening of these requirements through future revisions to the manual and guides. It would have been important for the public to understand these future implications when formulating their feedback on the proposal.

8.3 Environmental Implications of Proposals Not Identified

Our review found that none of the proposals included information regarding the environmental consequences of all of the proposals combined. This made it difficult for the public to understand and evaluate the implications of the proposals and to provide informed comments. Specifically:

- The Environmental Assessment and Forest Manuals proposals did not indicate that there could be gaps between the requirements in the Declaration Order conditions and the Natural Resources Ministry's manuals and what the impacts of any gaps would be. The Environmental Assessment proposal notice stated that the exemption and repeal of the Declaration Order would remove duplication "while maintaining environmental protections." That notice stated that the Natural Resources Ministry had incorporated all of the "planning conditions" into its manuals, guides and policies. The decision notice stated that since the Natural Resources Ministry had incorporated "almost all conditions into its forest policy framework, the protection of the environment will continue to be considered as part of forest management planning." We reviewed a document that identified the extent to which the Natural Resources Ministry had incorporated the conditions from the Declaration Order into its policy framework. One remaining gap relates to the Wildlife Population Monitoring program. The Declaration Order required the Natural Resources Ministry to carry out the program, which "shall provide long-term trend data" on certain wildlife species and "shall collect information to support testing of the effectiveness of [ministry] Guides that address habitat for wildlife species." Data generated from this program is intended to assist in the review and revision of the ministry's guides. The document states that

there "is no policy requirement directing the continuation of this program" but that the Natural Resources Ministry currently continues to monitor wildlife populations.

- The Forest Manuals proposal stated that the anticipated environmental consequences would be "positive" and that the Natural Resources Ministry's stewardship of Ontario's Crown forests, including fish and wildlife habitat, and protection for species at risk "will be maintained or enhanced with the implementation of the revisions," but did not provide information to support these claims. The regulatory impact statement included in the proposal—which, according to the EBR Act, should include a preliminary assessment of the environmental, social and economic consequences of implementing the proposal—did not specify what the anticipated environmental consequences (positive or negative) might be. The statement also did not provide a preliminary assessment of how implementing the regulatory changes would, on balance, be positive for the environment or enhance the protection of species at risk. The Ministry advised our Office that it determined that changes to the manuals addressing species at risk were not environmentally significant because they made no changes to how species at risk are protected.
- The Forest Audits proposal stated that the anticipated environmental consequences of the proposed changes would be "neutral." The proposal did not explain the basis for this conclusion. In particular, the proposal did not describe the potential environmental effects of reducing the frequency or scope of independent audits, particularly when combined with changes in the *Better for People, Smarter for Business Act, 2019* that limit the Natural Resources Ministry's role in approving annual work schedules, which identify the location and extent of forestry operations, under forest management plans.

8.4 Timing of the Public Consultations and Lack of Information Reduced Opportunity for Ontarians to Provide Meaningful Comments

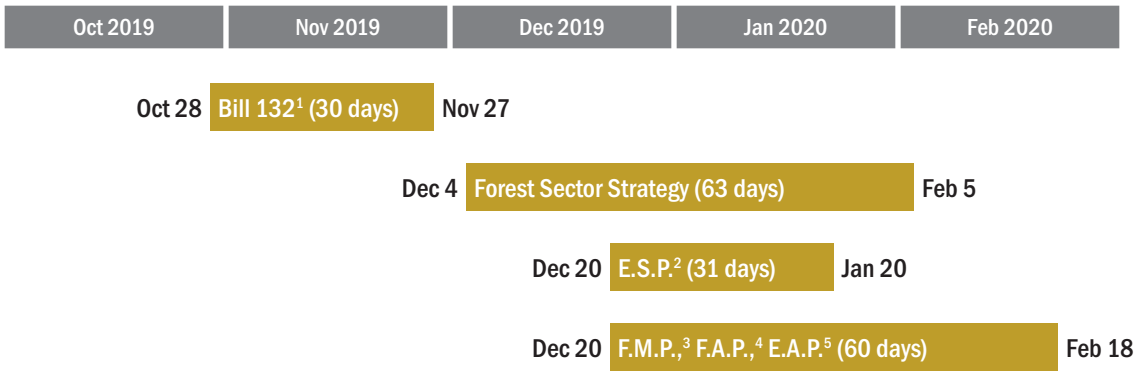
We found that Ontarians were not afforded a meaningful opportunity to review and comment on these proposals, because of the issues we identified.

Even though each proposal affected an aspect of forestry operations on Crown lands (see **Figure 4**), the ministries did not describe, in any of the six notices, the relationships between the various proposals or the collective impact of all the changes being proposed. Not providing adequate information about the relationship between the ministries' proposals makes it challenging for members of the public to understand the full impact, and could affect their ability to provide informed comments for the ministries to consider in making final decisions about the proposals. For example, the Draft Forest Sector Strategy document outlined overall policy direction and stated that actions will be taken to streamline the process for permits and approvals, remove duplication, and modernize the forest management planning process and the approach to independent forest audits—all of which pointed to the other five proposals. However, the Draft Forest Sector Strategy proposal notice did not refer to, or provide a link to, any of the other proposals and did not indicate the anticipated environmental implications of the combined changes.

As shown in **Figure 5**, the comment period for the Draft Forest Sector Strategy commenced on December 4, 2019. Changes to the *Crown Forest Sustainability Act, 1994* were enacted on December 10, and four other proposals were posted two weeks after the Forest Sector Strategy proposal itself was posted. It was not clear that the Forest Sector Strategy proposal was being implemented by the other proposals, at a time when the comment period on the Strategy was still open. The Natural Resources Ministry did not update the Draft Forest

Figure 5: Comment Periods of Forestry-Related Proposals

Prepared by the Office of the Auditor General of Ontario



1. Bill 132, *Amendments to the Crown Forest Sustainability Act, 1994* received Royal Assent on December 10.
2. Endangered Species proposal to amend the *Crown Forest Sustainability Act, 1994*.
3. Forest Manuals proposal to amend regulations addressing manuals governing forestry operations.
4. Forest Audits proposal to amend regulation addressing independent forest audits.
5. Environmental Assessment proposal to amend regulation under the *Environmental Assessment Act* to exempt forestry operations from the Act.

Sector Strategy notice to include a reference or links to the other proposals. For those who wanted to have their comments influence the policies in the Draft Forest Sector Strategy, it was not certain that there was time for their comments to be considered before elements of the strategy were implemented. Several Indigenous communities raised concerns about the need for additional time to adequately respond and were permitted a short extension, but many also stated that they lacked the capacity to evaluate the complex proposals and respond in a timely way.

We found that, between November 2018 and August 2019, the Natural Resources Ministry had conducted additional consultations on the Draft Forest Sector Strategy. While consultation in addition to the Environmental Registry process is normally a good practice, the Ministry's consultations were invitation-only events that did not engage stakeholders from all key sectors. These separate consultations, which took place before the strategy was posted on the Environmental Registry, included representatives from the forestry industry, municipalities and Indigenous communities and organizations, but excluded a range of stakeholders, including conservation and environmental groups, recreational user groups and the public, who were limited to submitting email comments, completing an on-line survey about the future of the forestry industry, or providing input during the Environmental Registry comment periods.

Because of the above-noted issues, members of the public were forced to investigate the connections between the proposals and the combined impacts on their own. Having information about how the multiple proposals fit together and their combined impacts would have aided public understanding and supported more informed public comment.

The Ministry's failure to clearly describe the environmental implications of proposals is not unique to proposed changes to forest management. See **Section 3.5** of **Chapter 2** of this report for other examples.

RECOMMENDATION 7

So that public consultations are open and transparent, we recommend that prescribed ministries, when carrying out stakeholder consultations that are in addition to the Environmental Registry process, engage stakeholders from all key sectors.

ENVIRONMENT MINISTRY RESPONSE

The Ministry agrees with this recommendation and is committed to meeting our legislative obligations under the EBR Act, enabling all Ontarians to participate in important environmental decisions.

The Ministry engages the public, stakeholders, and Indigenous partners through a variety of means, including dedicated outreach, focused consultation sessions, and specialized working groups in addition to posting proposals through the Registry.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry strives to ensure that the public and stakeholders that may have an interest in a proposal are consulted in a meaningful way.

The Ministry may undertake consultations that are additional to the requirements of the EBR Act. In some cases, additional consultations may be tailored to the proposal that is under consideration by the Ministry.

RECOMMENDATION 8

So as to comply with the purposes and provisions of the *Environmental Bill of Rights, 1993* and receive more informed comments from Ontarians, we recommend that the Ministry of Natural Resources and Forestry repost the Endangered Species proposal, Environmental Registry # 019-1020—Proposed changes to the *Crown Forest Sustainability Act, 1994*, on the Environmental Registry for public consultation, with revised wording to address all of the identified deficiencies, including more accurate and complete information on impacts on species at risk.

MINISTRY RESPONSE

The Ministry is committed to meeting its obligations under the EBR Act. Prior to posting the proposal (# 019-1020), the Ministry considered the EBR Act requirements and determined 30 days would provide sufficient time for the public to comment on the proposal. The Ministry is satisfied that its EBR Act obligations for the proposal were met.

More than 1,200 comments were received on the proposal from the public, Indigenous organizations and communities, and a range of other stakeholders. All comments were carefully considered by the Ministry.

AUDITOR GENERAL'S RESPONSE

In reviewing the operation of the EBR Act, our Office considers not just whether a ministry has done the minimum to comply with the EBR Act's requirements, but also whether the ministry's actions have met the purposes of the EBR Act. While the Natural Resources Ministry is not required to do so, reposting the Endangered Species proposal notice now with revised wording, including more accurate and complete information on impacts on species at risk, could enable better public understanding of the proposal and provided the Ministry with the benefit of more informed public comment, demonstrating the Ministry's commitment to meaningful public participation and the purposes of the EBR Act.

RECOMMENDATION 9

So that prescribed ministries can benefit from informed feedback and Ontarians can meaningfully participate in the decision-making process for environmentally significant proposals, we recommend that, when posting a number of interrelated proposals on the Environmental Registry that contribute to a common objective, prescribed ministries:

- describe the common objective that the proposals are intended to achieve, the role that each proposal plays in achieving the common objective, and the implications and anticipated environmental impacts of the proposals, individually and collectively;
- provide an adequate comment period with sufficient time for Ontarians to review and understand the impacts of the proposals;
- include links to all related proposal notices in each posting; and
- if postings are staggered, update the notices to include relevant information and links.

MINISTRY RESPONSE – ENVIRONMENT MINISTRY

The Ministry acknowledges this recommendation, and recognizes the importance of Ontarians' participation in the decision-making process for proposals that could significantly affect the environment, and works with other ministries to co-ordinate postings, where feasible. This also includes considerations to extend comment periods beyond 30 days. The Ministry will consider how best to co-ordinate interrelated postings on a case-by-case basis, for initiatives with common goals and objectives.

MINISTRY RESPONSE – NATURAL RESOURCES MINISTRY

The Ministry agrees with this recommendation, and that interrelated proposals should reference each other. The Ministry will take this recommendation into consideration in the future when posting interrelated proposals on the Environmental Registry.

9.0 Amendments to *Endangered Species Act, 2007* Did Not Meet the Environment Ministry's Objective of Improved Outcomes for Species at Risk

9.1 *Endangered Species Act, 2007*

There are currently 243 species that have been determined to be at some level of risk of disappearing from the wild in Ontario (see **Figure 6**). Wild plants and animals play essential roles in human life and culture and contribute to the health and resilience of ecosystems, but are under increasing threat from human activities that destroy, damage or fragment their habitat; cause pollution; introduce invasive species; lead

Figure 6: Ontario's Species At Risk

Source of data: *Endangered Species Act, 2007*; O. Reg. 230/08

Classification	Description	# of Species
Special concern	Lives in the wild in Ontario, is not threatened or endangered, but may become threatened or endangered due to a combination of biological characteristics and identified threats.	56
Threatened	Lives in the wild in Ontario, is not endangered, but is likely to become endangered if steps are not taken to address threats.	54
Endangered	Lives in the wild in Ontario but is facing imminent extirpation or extinction.	117
Extirpated	Lives somewhere in the world, and at one time lived in the wild in Ontario, but no longer lives in the wild in Ontario.	16
Total		**243**

to over-exploitation; and contribute to a warming climate. The International Union for Conservation of Nature, the leading international organization on the status of species and measures to protect them, has estimated that these factors are contributing to species extinctions at 1,000 times the natural rate. According to the World Wildlife Fund's 2020 Living Planet Report Canada, these factors contributed to a decline in the abundance of 47% of mammals, birds, fish, reptiles and amphibians in Canada from 1970 to 2016. For nationally assessed species at risk, the report found that 68% are decreasing in abundance, with an average population decline of 59% over that period. The report also observed that an assessment covering a longer time period would likely reflect a greater loss of wildlife in Canada, which would be "consistent with the growing evidence that biodiversity, globally, is declining faster than at any time in human history."

The *Endangered Species Act, 2007* (Act), which came into force in 2008 and is administered by the Environment Ministry:

- sets out a process for identifying which species in Ontario are at risk of extinction or extirpation—that is, no longer living in the wild in Ontario—based on best available scientific, community and Indigenous traditional knowledge;
- protects species at risk and their habitats by prohibiting activities that harm or destroy them or their habitats;
- promotes their recovery by removing or reducing threats to improve the likelihood that they can persist in the wild; and
- promotes stewardship activities—such as creating and maintaining new habitat, avoiding nests during the breeding season or building tunnels to keep animals off roads to avoid collisions—to assist in protecting and recovering species at risk.

The Act's purposes are to identify species at risk based on the best available scientific information, protect species at risk and their habitats, promote the recovery of species at risk and promote stewardship activities. **Figure 7** summarizes how the Act works to try to accomplish these purposes.

The protections for species and their habitats in the Act are not absolute because the Minister may permit activities that would otherwise be prohibited by way of various types of authorizations. Since regulatory changes in 2013, most of the authorizations for activities that would otherwise be prohibited under the Act have been permitted through exemptions. Activities by specified sectors (including development and infrastructure, forestry, pits and quarries) or activities affecting certain species at risk, such as bobolink, American ginseng and butternut can proceed without requiring a permit as long as the conditions in the regulation are followed. These conditions can include such things as developing a mitigation plan, keeping activities a specified distance away from critical habitat features or limiting the timing of construction, creating or enhancing habitat elsewhere, monitoring of species and maintenance of habitat features and, in many cases, registering projects with the Environment Ministry.

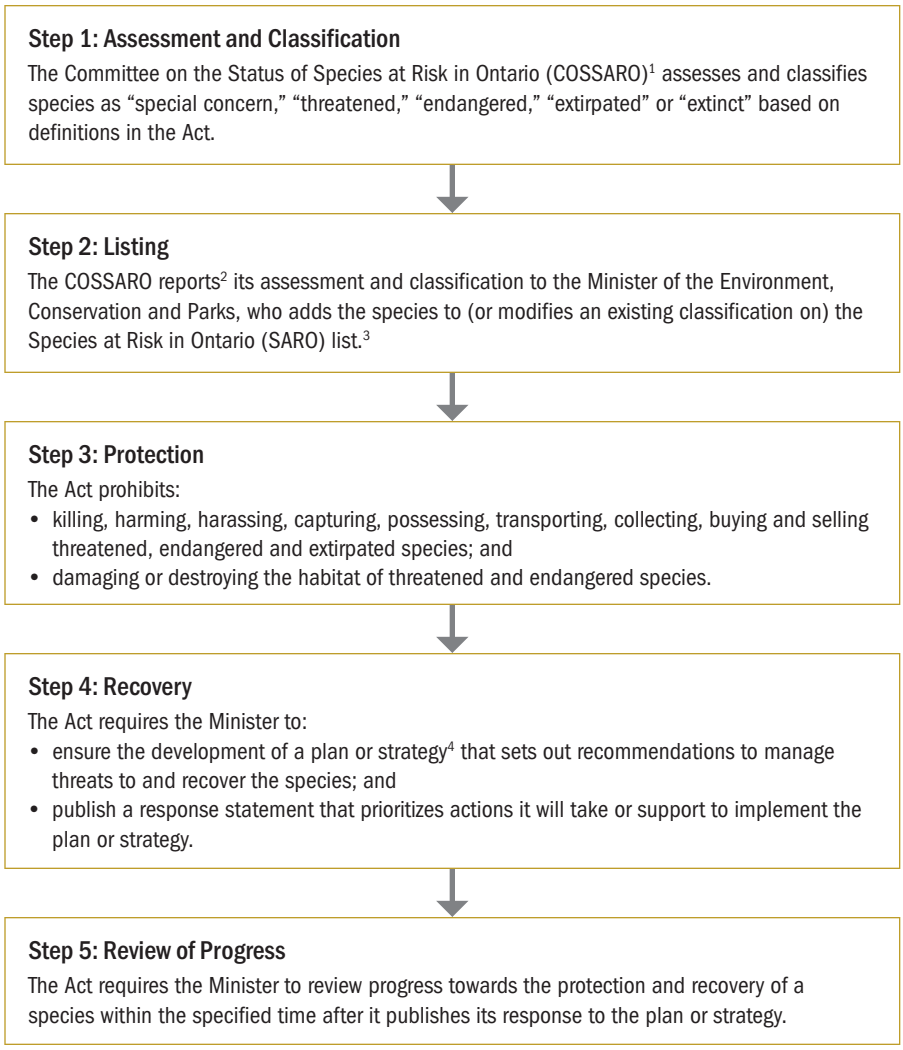
The Act aims to recover species at risk by requiring that a plan or strategy be developed for each species. A recovery strategy for a threatened or endangered species recommends to the Minister objectives and approaches to achieve the objectives, such as actions to reduce threats to the species and reverse the decline in their populations. The Minister must then develop a government response statement, which identifies the actions the government commits to taking and supporting to ensure the recovery of the species. The Act requires the Minister to monitor and report on progress toward protection and recovery after a minimum of five years after the publication of the government response statement.

9.1.1 Environment Ministry's Review of *Endangered Species Act, 2007*

In its November 2018 Made-in-Ontario Environment Plan, the province reaffirmed its commitment

Figure 7: How The *Endangered Species Act, 2007* (Act) Works

Prepared by the Office of the Auditor General of Ontario



1. Established under the authority of the Act, COSSARO is an independent committee of up to 12 members with expertise in scientific disciplines, or community or Indigenous traditional knowledge. Members are appointed by the Lieutenant Governor in Council. COSSARO's assessment is based on nationally and internationally accepted scientific criteria, most of which involve a combination of the species' population numbers and the rate of decline. COSSARO may also provide advice to the Ministry on any matter when requested.
2. The Act requires COSSARO to submit an annual report to the Environment Minister that sets out newly classified species and the reasons for the classification.
3. The SARO list is prescribed in a regulation, O. Reg. 230/08, under the *Endangered Species Act, 2007*. Protections under the Act do not apply until the species is put on the SARO list.
4. The development of a plan or strategy is often contracted out to a person or organization with expertise on the species.

to "protect species at risk and their habitats… [and to] ensuring that the [*Endangered Species Act, 2007*] provides stringent protections for species at risk while continuing to work with stakeholders to improve the effectiveness of the program."

From January to March 2019, the Environment Ministry consulted the public on a discussion paper on how to update the Act to improve its effectiveness. The discussion paper outlined certain challenges and sought the public's input on specific questions aimed at:

- improving protections for species at risk;
- considering modern and innovative approaches to achieve positive outcomes for species at risk; and

- streamlining the issuance of permits and other authorizations and providing clarity to support economic development.

Following this consultation, in April 2019, the Ministry held a second consultation on proposed changes to the Act, which were then included in the omnibus Bill 108, the *More Homes, More Choice Act, 2019* (More Homes Act). The changes to the Act (see **Appendix 10**) came into effect on July 1, 2019.

Neither of the two proposal notices that the Ministry posted on the Environmental Registry about changes it wanted to make to the Act explained the implications of the proposals or how the changes would improve protections for species at risk. As a result, the public did not have the necessary information to help inform the Ministry's decisions regarding the changes. Compounding this lack of information was the inadequate time allotted for the public to review the draft amendments during the comment period. The public would have benefited from more time to provide informed feedback on the amendments. These issues with the Environment Ministry were not limited to these proposals and are discussed in **Sections 2.6** and **2.7** in **Chapter 2** of this report.

Major changes to the Act included:

- new ways to permit activities that harm listed endangered or threatened species or their habitat, such as allowing persons to pay a fee to a new agency instead of taking the conservation measures previously required or to enter into a new kind of agreement known as a "landscape agreement" to allow multiple development activities affecting multiple species across a wide area;
- expanded discretion for the Environment Minister to require reassessment of species, delay protections for species at risk, scope protections, and delay recovery actions and progress reviews;
- a shift for overall benefit permits that would allow proponents to make a payment instead of completing overall benefit actions, and a shift from a focus on individual members of a species to the species as a whole; and
- a mandatory lower risk listing for species whose habitat extends beyond Ontario if their condition outside Ontario is at a lower risk level. This could lead to species losing protection in Ontario and possibly becoming extirpated from Ontario—contrary to the purposes of the Act.

9.2 Changes to the *Endangered Species Act, 2007* Reduce Legal Protection for Species at Risk; No Information to Determine How Changes Will Improve Outcomes

9.2.1 Individuals Can Now Pay to Carry Out Projects That Harm Species at Risk Instead of Taking Steps to Improve Outcomes

The new species conservation charge allows persons carrying out activities that would harm certain species at risk—those designated as "conservation fund species"—or their habitat to pay into the Species at Risk Conservation Fund (Fund) instead of taking beneficial actions, such as restoring the habitat. Persons allowed to pay the charge would have to consider reasonable alternatives to harming the species and carry out some actions to minimize adverse impacts—for example, measures on the site of their authorized activities such as preventing sediment from construction sites getting into waterways—but would not be required to improve the species' condition, or maintain and monitor restoration initiatives. The new Fund will be administered by a new agency, which will disburse the funds to third-parties to undertake larger projects to reduce threats to, secure the habitat of, or collect information about a conservation fund species. Payments from the Fund are to be made in accordance with the purpose of the Fund—which is to fund activities "that are reasonably likely to protect or recover conservation fund species" or support their protection or recovery—as well as guidelines established

by the Minister and the regulations. Paying into the fund instead of taking recovery actions is expected to reduce the time needed for securing permits or negotiating conditions and will relieve persons carrying out authorized activities from having to manage habitat improvements in the future.

Our review identified the following elements of the new conservation charge provisions that, without appropriate safeguards, could likely reduce protection for species at risk:

- **No criteria in the Act guide the collection and use of conservation charges:** The Minister is authorized to use the conservation charge for a wide range of activities—in the context of landscape agreements, permits, regulatory exemptions, Indigenous agreements and harmonization instruments. The changes also grant the Minister broad discretion to prescribe which species are appropriate to designate as conservation fund species. The proposal did not provide the public with details on how much the charge will be; how it will be calculated; whether the types of activities, timing or location for which the charge can be paid will be restricted; or how priorities for species recovery actions will be determined. These details will be prescribed by regulation, but the amendments to the Act did not include criteria to guide these regulations.
- **The species harmed by a project may never benefit from recovery actions funded by the charge:** The intention is to use the Fund to support larger-scale actions that are reasonably likely to benefit a conservation fund species, but the amendments to the Act did not require that the benefiting species be the same as the one that was harmed. In addition, charges will be pooled in the Fund before paying third parties to carry out habitat compensation actions; this allows those actions to be undertaken at a different location from where the harm occurred and at a later time.
- **The use of a conservation charge is a first in Canada:** It is uncertain if the use of conservation charges can recover species at risk and what parameters should be adopted to improve the chances of success. No other jurisdiction in Canada uses the concept for species recovery. In fact, the Ministry's review of practices in other jurisdictions around the world found that similar payments have primarily been used to rebuild wetlands or streams destroyed for development, not for species at risk.

On November 3, 2020, after the conclusion of our review, the Environment Ministry posted a proposal on the Environmental Registry for new regulations to enable the use of the Fund and to establish a provincial agency to administer the Fund.

RECOMMENDATION 10

So that the species conservation charge is used to improve outcomes for species at risk, consistent with the purposes of the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks consult with the Committee on the Status of Species at Risk in Ontario and with the public through the Environmental Registry when developing the applicable regulations and guidance.

MINISTRY RESPONSE

The Ministry intends to consult with the public, Indigenous communities and relevant stakeholders, including through the Environmental Registry, on any regulations to enable use of the Species at Risk Conservation Fund and to prescribe conservation fund species and associated charges. The content of any future regulations will be recommended to Cabinet for deliberation and a final decision.

RECOMMENDATION 11

So that the use of the species conservation charge does not reduce protection of any species, we recommend that the Ministry of the Environment, Conservation and Parks develop principles and standards to guide implementation of the species conservation charge that meet the purposes of the *Endangered Species Act, 2007* and that address issues such as:

- limiting the use of the charge to activities that do not harm species listed as endangered;
- limiting the use of the charge to circumstances where the proponent demonstrates that harm will come to the species or its habitat regardless of measures the proponent takes to avoid it, or demonstrates that there are no measures that can be taken to avoid harm;
- requiring that funds be directed to protecting the same species that are harmed; and
- the timing and location of habitat protection and enhancement (for example, requiring that measures be carried out as near as possible to the damaged or destroyed habitat and before or as soon as possible after the habitat is damaged or destroyed).

MINISTRY RESPONSE

The Ministry will consider these recommendations in developing the criteria for the use of the Species at Risk Conservation Fund. After receiving and incorporating input from stakeholders, including consultation under the EBR Act, the regulations will be recommended for approval by Treasury Board and Cabinet.

9.2.2 Protection and Recovery Actions Could Be Delayed for Five or More Years

The changes to the Act could result in a species and its habitat not being protected under the Act for up to five years after the species is first assessed as at-risk and in delays in recovery actions. Particularly for an endangered species, which by definition is one facing "imminent" extinction or extirpation, any delay in the processes set out in the Act for protection and recovery could undermine its condition. The changes were as follows:

- The time between the Committee on the Status of Species at Risk in Ontario providing a report to the Minister classifying a species as at-risk (**Step 1** in **Figure 7**) and the Minister listing the species in the Species at Risk in Ontario List (**Step 2** in **Figure 7**) was extended from three to twelve months.
- The prohibitions in the Act do not apply for one year from the time a species is listed for persons with existing permits or authorizations relating to other species.
- The Minister has discretion to order that, once listed, a species will not be protected for up to three years, if specified criteria are met. In the proposal, the Ministry stated that it intended to amend the General Regulation to the EBR Act to exempt these orders from requirements for public notice and consultation. As of October 31, 2020, this amendment had not been made.
- The Minister has discretion to indefinitely delay publishing the government response statement (**Step 4** in **Figure 7**) and ensuring the review of progress toward recovery (**Step 5** in **Figure 7**). A significant delay in identifying priority actions, taking actions and reviewing progress could result in missed opportunities to adapt actions to be more effective and improve conditions for species at risk.

RECOMMENDATION 12

So that the protection and recovery of species at risk under the *Endangered Species Act, 2007*, are not unduly delayed or adversely affected by significant delays, we recommend that the Ministry of the Environment, Conservation and Parks:

- consult with the Committee on the Status of Species at Risk in Ontario and with the public through the Environmental Registry on any proposal to suspend protections, prior to adopting a suspension order; and
- complete recovery strategies, government response statements and the review of progress within the statutory deadlines.

MINISTRY RESPONSE

The Ministry will consider these recommendations if circumstances arise where the Minister is proposing to suspend protections, in accordance with the criteria prescribed in the legislation. The Ministry endeavours to meet the legislative timelines for completing recovery strategies, government response statements and reviews of progress.

9.2.3 Legal Standard Changed to Minimizing Harm Instead of Improving Conditions for Species at Risk

The changes in the More Homes Act modified the standards that apply to permits issued under the *Endangered Species Act, 2007* (Act). One type of permit is known as an "overall benefit permit," where permit holders were previously required to take measures to provide an "overall benefit" for the species at risk. With the changes, permit holders can now opt to pay the species conservation charge instead and are only required to consider reasonable alternatives, including avoidance, and minimize the adverse effects of their project. Overall benefit means an improvement from the species' current condition. In contrast, minimizing adverse effects allows some degradation from the current condition.

The changes to the Act also shifted the focus when minimizing adverse effects from individuals of a species to the species as a whole. According to the Environment Ministry, this change is intended to allow the Ministry to focus conservation efforts and funds where they will achieve the most benefit and to provide flexibility for permit holders. Unless closely monitored, allowing individuals of certain species to be killed or harmed—for example, where there are a limited number of individuals of breeding age or where there is a small, localized population—could have indirect and cumulative impacts on the success of a species that may not become known until it is too late.

Together, these changes significantly reduce the level of legal protection for some species at risk, contrary to the purposes of the Act.

RECOMMENDATION 13

So that implementation of the changed standards does not reduce the level of protection for species at risk, we recommend that the Ministry of the Environment, Conservation and Parks:

- develop quantitative and qualitative measures relevant to the protection and recovery of the species at risk affected by permits and other authorizations;
- monitor implementation of the different types of authorizations to determine progress toward meeting those measures; and
- publicly report, at a minimum, every five years on that progress.

MINISTRY RESPONSE

The Ministry acknowledges this recommendation and will consider these recommendations as it continues to work with stakeholders to avoid impacts to species at risk, where possible.

9.2.4 New Landscape Agreements May Not Protect All Listed Species

Changes in the More Homes Act allow the Minister to enter into agreements that permit multiple activities affecting multiple species at risk within a large geographic area. These "landscape" agreements could be used for activities such as highway construction. In the Discussion Paper, the Environment Ministry discussed a landscape approach as an alternative to the existing approach that focuses on protecting individual species, on the grounds that it can sometimes be difficult to achieve positive outcomes for all listed species, for example where actions to protect different species conflict. Under a landscape agreement, the person would be permitted to harm one or more endangered or threatened species and/or their habitat—the "impacted species"—but would be required to minimize adverse effects on the impacted species and to undertake beneficial actions that assist in the protection or recovery of one or more listed species—the "benefiting species." One of the impacted species, but not all, must also be a benefiting species. Before entering into a landscape agreement, the Minister must form the opinion that the benefits to the benefiting species outweigh the adverse effects on the impacted species, among other requirements.

A landscape agreement would permit flexibility in the timing and location of the beneficial actions, permitting beneficial compensation actions to be taken before they are needed and then later credited toward a harmful activity to offset its adverse impacts. This approach is known as "conservation banking." The Environment Ministry's review of international jurisdictions to determine their experience with conservation banking found that conservation banking has had mixed success in other jurisdictions and may entail significant administrative burdens.

Because the Act is intended to protect and recover all listed species, permitting harm to one listed species in exchange for benefits to another listed species appears to permit actions that may not conform to the purposes of the Act.

RECOMMENDATION 14

So that landscape agreements are consistently used to improve outcomes for all species at risk, consistent with the purposes of the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks consult with the Committee on the Status of Species at Risk in Ontario and with the public through the Environmental Registry when developing the applicable regulations and policy statements.

MINISTRY RESPONSE

The Ministry is committed to transparency and accountability – we recognize the importance of consulting with the public on decisions that affect the environment. We will consult with the public, Indigenous communities and relevant stakeholders, including through the Environmental Registry, on any regulations and policies developed related to landscape agreements. The content of any future regulations will be deliberated and decided by Cabinet.

This includes engaging with the Species at Risk Program Advisory Committee (SARPAC), a committee established under the *Endangered Species Act, 2007* comprised of members from a variety of fields with experience in implementing the Act, whose mandate is to make recommendations to the Minister on various matters related to species at risk, including the development of policy and regulation.

The Committee on the Status of Species at Risk in Ontario is an independent, science-based committee whose primary focus is to assess and classify species at risk in Ontario. As a result, the Ministry feels it is more appropriate to consult with SARPAC on these matters.

AUDITOR GENERAL'S RESPONSE

The Species at Risk Program Advisory Committee can provide useful input into future regulations and policies under the *Endangered Species*

Act, 2007 given that it is currently composed of representatives of many stakeholders. However, the Environment Ministry also needs to receive well-informed input from independent scientists in order to reach evidence-based decisions. There is a significant difference between input from a stakeholder advisory group and independent scientists. The Committee on the Status of Species at Risk in Ontario (COSSARO) is a body that can provide independent, science-based advice to the Ministry as set out in the *Endangered Species Act, 2007*. While COSSARO's current primary role is in assessing and classifying species at risk, the Act clearly provides for the Ministry to reach out to COSSARO's experts for input on other important matters affecting the protection and recovery of species at risk. This also applies to **Recommendations 10** and **12** above.

RECOMMENDATION 15

So that the implementation of landscape agreements improves outcomes for all species at risk, we recommend that the Ministry of the Environment, Conservation and Parks review the principles and standards for species at risk compensation in other jurisdictions and develop principles and standards to guide the implementation of agreements that meet the purposes of the *Endangered Species Act, 2007* and address issues such as:

- the goal to be achieved by agreements (for example, "net gain" or "no net loss" of species and habitats);
- whether measures such as conservation banking will be permitted only after measures to avoid and minimize impacts have been taken;
- whether agreements should be limited to circumstances where species listed as endangered will not be affected;
- requiring beneficial actions for all affected species at risk;
- effective timing of habitat protection or enhancement measures;
- the development of qualitative and quantitative performance measures for affected species at risk; and
- monitoring and regular reporting to the public on progress toward meeting those measures (for example, reporting, at a minimum, every five years).

MINISTRY RESPONSE

The Ministry will consider these recommendations in developing landscape agreements pursuant to the *Endangered Species Act, 2007*.

9.3 Amendments to the *Endangered Species Act, 2007* Removed Requirements to Post Notices on the Environmental Registry

Prior to the amendments, the *Endangered Species Act, 2007* required that notices of certain actions by the Environment Minister be published on the Environmental Registry. These included posting notices that:

- additional time was required for the preparation of a recovery strategy for threatened or endangered species;
- additional time was required for the preparation of a management plan for species of special concern;
- additional time was required for the preparation of a habitat regulation for threatened or endangered species; and
- the Minister was of the opinion that a habitat regulation was not required.

The amendments changed these requirements. Notices of additional time for preparation of recovery strategies and management plans must still be published, but can now be published on a separate "website maintained by the Government of Ontario" instead of the Environmental Registry.

Notices that habitat regulations will either be delayed or not made are no longer required to be published anywhere.

Similarly, in making changes to the Forest Management Planning Manual (see **Figure 4** and discussion in **Section 8.0** of this Chapter), the Natural Resources Ministry also removed the requirement to give notice on the Environmental Registry of public consultation opportunities at each stage of the development of a forest management plan. The Natural Resources Ministry stated that it will give these notices through social media instead of the Registry. Social media is good way to communicate information, as long as it is supplemental to the Registry.

The Environmental Registry was established under the EBR Act. Its purpose is to provide a "means of giving information about the environment to the public." The Environmental Registry has become a well-established and broadly accessible platform for Ontarians across the province who are interested in a range of environmental issues; in 2019/20 alone, the Environmental Registry received over 445,000 visits. For 26 years, it has served as a central point for the public to learn about proposals and actions of the government that might affect the environment, including those that are required by law to be posted and others that are posted voluntarily by a ministry. A "one-window" approach to informing Ontarians about environmental proposals and decisions is convenient and transparent.

The use of other linked websites and platforms to provide more detailed information than what is contained in an Environmental Registry posting is often appropriate. However, a move by prescribed ministries to transfer some types of notices away from the Environmental Registry entirely could limit the public's ability to find important environmental information. Given the Environmental Registry's already well-established reputation and extensive use as a source of information about government environmental decisions, it makes sense for prescribed ministries to continue to use the Environmental Registry as a central site for informing the public about all important environmental activities regardless of whether more detailed information is provided elsewhere.

RECOMMENDATION 16

So that Ontarians can readily find information about all environmental proposals and decisions, we recommend that prescribed ministries continue to use the Environmental Registry as the central website for all environmental notices regardless of whether more detailed information is provided elsewhere.

ENVIRONMENT MINISTRY RESPONSE

The Ministry agrees with this recommendation and will continue to use the Environmental Registry as the central website for posting notices as required under the EBR Act and other Ministry legislation, so that Ontarians can readily find information about environmental proposals and decisions.

NATURAL RESOURCES MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Ministry is committed to full compliance with its legal obligations under the EBR Act. The Ministry will use the Environmental Registry to provide notice about environmentally significant proposals and decisions under the EBR Act, and to give notice of environmentally significant matters under other legislation, such as the development of forest management plans.

The Ministry may also use additional communication tools, including websites, to communicate with the public in general, or to support Environmental Registry postings. Other communication tools may have different purposes or capabilities than the Environmental Registry.

Appendix 1: Review Criteria and Criteria for Assessing Prescribed Ministries' Compliance with the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario

Review Criteria

1. Processes are in place to periodically review the lists of ministries, acts and instruments (permits)* prescribed under the Act, and where needed, update the general and classification regulations so that they include all ministries whose activities are environmentally significant, and all acts and instruments (permits) that could have a significant effect on the environment.
2. Processes are in place for prescribed ministries to ensure that significant environmental decisions made by the ministries accord with the requirements and purposes of the Act, its regulations and other relevant legislation.
3. Prescribed ministries have complied with the requirements of the Act and its regulations, consistent with the purposes of the Act, in accordance with the table below. Prescribed ministries have processes in place to achieve compliance.

Criteria for Assessing Prescribed Ministries' Compliance

Criterion	Requirement in *Environmental Bill of Rights, 1993*	What Our Office Looks For to Assess Compliance
1. Statement of Environmental Values (Statement)		
a. Statement is up-to-date	The ministry must have a Statement that explains how it will apply the purposes of the Act when making decisions that might significantly affect the environment, and how it will integrate consideration of the purposes of the Act with other considerations, including social, economic and scientific considerations. The ministry may amend its Statement from time to time. (**Sections 7-10**)	The ministry has a Statement that reflects its current values, priorities and responsibilities.
b. Statement is considered when making decisions	The ministry must take every reasonable step to consider its Statement whenever it makes a decision that might significantly affect the environment. (**Section 11**)	The ministry documents its consideration of its Statement when making decisions that might significantly affect the environment.
2. Use of the Environmental Registry (Registry)		
a. Appropriate notice of proposals is given	The ministry must give notice on the Registry, for at least 30 days, of each proposed: • act or policy if the Minister considers that the proposal could have a significant effect on the environment and the public should have an opportunity to comment on the proposal before implementation (**Sections 15** and **27(1)**); • regulation under a prescribed act if the Minister considers that the proposal could have a significant effect on the environment (**Sections 16** and **27(1)**); and • classified instrument (permit) (**Sections 22** and **27(1)**), unless: • an exception applies to the proposal under Sections 29 or 30, and the ministry decides not to give notice of the proposal; or • an exception applies to the proposal under Sections 15(2), 16(2), 22(3), 32 or 33. (**Sections 15(2), 16(2), 22(3), 29, 30, 32** and **33**). If the ministry decides not to post a proposal on the Environmental Registry for public consultation because an exception under Section 29 (emergencies) or Section 30 (other processes) applies to the proposal, the ministry must give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made. The notice shall include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate. (**Sections 29, 30 and 31**).	The ministry posts proposal notices for all of its environmentally significant proposals on the Registry in the manner required under the Act, providing at least 30 days for public consultation, unless there is a valid exception under the Act. Where the ministry decides not to post a proposal notice for public consultation based on an exception in **Section 29** or **30**, the ministry posts an exception notice on the Environmental Registry.

* The term "instrument (permit)" in this document has the same meaning as "instrument" in the Act and includes any document of legal effect issued under an act and includes a permit, licence, approval, authorization, direction or order issued under an act.

Criterion	Requirement in *Environmental Bill of Rights, 1993*	What Our Office Looks For to Assess Compliance
b. Time to comment is extended based on the factors in the Act	The ministry must consider allowing more time to permit more informed public comment. In determining the length of time, the ministry must consider the proposal's complexity, the level of public interest, the period of time the public may require to comment, any private or public interest, and any other factor the minister considers relevant. (**Sections 17**, **23** and **8(6)**)	Ministry considers extending time to comment for all proposals for policies, acts, and regulations, and for all Class II instruments (permits), and extends the time to comment when warranted based on the factors set out in the Act.
c. Proposal notices for policies, acts, and regulations are informative	Each notice must include a brief description of the proposal. (**Section 27(2)**)	The proposal notice includes a brief description of the proposal, including its purpose and its potential environmental implications, so that the public has the information needed to understand and meaningfully comment on the proposal.
d. Proposal notices for permits, approvals and orders are informative	Each notice must include a brief description of the proposal. (**Section 27(2)**)	The proposal notice includes a brief description of the proposal, including its purpose and its potential environmental implications, so that the public has the information needed to understand and meaningfully comment on the proposal.
e. Prompt notice of decisions is given	The ministry must give notice on the Registry of its decision on each proposed policy, act or regulation "as soon as reasonably possible" after it is implemented (**Sections 36(1)** and **1(6)**). The ministry must give notice on the Registry of its decision whether or not to implement a proposal for an instrument (permit) "as soon as reasonably possible" after a decision is made. (**Sections 36(1)** and **1(7)**) If the ministry decides not to post a proposal on the Environmental Registry for public consultation because an exception under Section 29 (emergencies) or Section 30 (other processes) applies to the proposal, the ministry must give notice of the decision to the public and to the Auditor General as soon as reasonably possible after the decision is made. (**Section 30(3)**)	The ministry posts a decision notice on the Registry no more than two weeks after making a decision, unless extenuating circumstances prevent it from doing so. The ministry posts an exception notice on the Environmental Registry and gives notice to the Auditor General within two weeks of making the decision.
f. Decision notices for policies, acts and regulations are informative	Each notice must advise the public what was decided. The ministry must take every reasonable step to consider all relevant comments received from the public, and include a brief description in the notice of the effect (if any) of the comments on the ministry's decision. (**Sections 35** and **36**)	The decision notice enables the public to understand what was decided and the effect of public comments.
g. Decision notices for permits, approvals and orders are informative	Each notice must advise the public what was decided. The ministry must take every reasonable step to consider all relevant comments received from the public, and include a brief description in the notice of the effect (if any) of the comments on the ministry's decision. (**Sections 35** and **36**)	The decision notice enables the public to understand what was decided and the effect of public comments.
h. Proposal notices are up-to-date	The Environmental Registry is to provide a means of giving information about the environment to the public, which includes information about decisions that could affect the environment. (**Section 6**)	The ministry identifies proposals that have remained open on the Registry for over two years, and posts: • decision notices on decided proposals (including proposals that were withdrawn, cancelled or abandoned); and • updates for proposals that remain under consideration by the ministry, with information about the status of the proposal.
i. Prompt notice of appeals and leave to appeal applications is given	The Environment Ministry shall promptly place on the Environmental Registry notices of appeals and applications for leave to appeal that it receives from an appellant or applicant related to certain decisions to issue, amend or revoke instruments (permits) classified under O. Reg. 681/94. (**Section 47(3)**)	The Environment Ministry posts a notice for each appeal and leave to appeal application it receives. The notice is posted by the later of five business days after the ministry receives the appeal or leave to appeal application, or one business day after the close of the leave to appeal period.

Criterion	Requirement in *Environmental Bill of Rights, 1993*	What Our Office Looks For to Assess Compliance
j. The Environmental Registry platform is maintained effectively	The Environment Ministry shall operate the Environmental Registry, the purpose of which is to give information about the environment to the public, including, but not limited to, information about: • proposals, decisions and events that could affect the environment; • actions brought under Part VI; and • things done under the Act. (**Sections 5 and 6, and O. Reg. 73/94, section 13**)	The Environment Ministry maintains and operates the Environmental Registry in a manner that enables the public to obtain information about, but not limited to: • proposals and decisions that could affect the environment; • legal actions brought under Part VI; and • things done under the Act, such as: decisions to not consult the public based on an exception under section 29 or 30 of the Act; appeals and applications for leave to appeal related to certain decisions about instruments (permits) classified under O. Reg. 681/94; and information posted voluntarily by a ministry under section 6 of the Act. Information in the Environmental Registry should enable members of the public to meaningfully exercise their rights under the Act.
3. Applications for Review and Applications for Investigation		
a. Ministry reviews all matters to the extent necessary	The ministry must consider each application for review in a preliminary way to determine whether the public interest warrants the review. The ministry may consider: • its Statement of Environmental Values; • the potential for environmental harm if the review is not done; • whether the matter is already periodically reviewed; • relevant social, economic, scientific or other evidence; • submissions from other persons with a direct interest; • the staffing and time to do the review; and • how recently the ministry made or reviewed the law, policy, regulation or approval in question, and whether the ministry consulted the public when it did so. (**Section 67**)	Where the ministry denies a request for review, it provides a statement of reasons to support its conclusion that a review is not warranted. Where the ministry decides to conduct a review, the ministry reviews the matter to the extent necessary. The ministry states what action, if any, the minister has taken or proposes to take as a result of the review.
	The ministry must deny a request to review a decision that was made in the last five years if the ministry had consulted the public on that decision in a manner consistent with the Act, unless there is evidence that significant environmental harm will occur if the review is not done and that evidence was not taken into account when the decision was made. (**Section 68**)	
	The ministry must provide a brief statement of reasons for its decision to accept or deny the review. (**Section 70**)	
	For undertaken reviews, the ministry must give notice of the outcome that states what action, if any, the ministry has or will take as a result of the review. (**Section 71**)	
b. Ministry investigates all matters to the extent necessary	The ministry must investigate all alleged contravention(s) set out in the application "to the extent that the ministry considers necessary." The ministry may deny a request for investigation if: • the application is frivolous or vexatious; • the alleged contravention is not serious enough to warrant an investigation; • the alleged contravention is not likely to cause harm to the environment; or • the requested investigation would duplicate an ongoing or completed investigation. (**Section 77**)	Where the ministry decides not to investigate, it provides reasons to support its conclusion that an investigation is not necessary. Where the ministry undertakes a requested investigation, the ministry investigates the matter to the extent necessary. The ministry states what action(s) the minister has taken as a result of the investigation.
	The ministry must provide a brief a statement of the reasons for its decision not to investigate. (**Section 78(1)**)	
	For completed investigations, the ministry must give notice of the outcome that states what action, if any, the ministry has or will take as a result of the investigation. (**Section 80**)	

Criterion	Requirement in *Environmental Bill of Rights, 1993*	What Our Office Looks For to Assess Compliance
c. Ministry meets all timelines	The ministry must acknowledge receipt of the application to the applicants within 20 days of receipt. (**Section 65** for reviews and **Section 74(5)** for investigations)	The ministry also notifies the Auditor General that it has received the application within 20 days of receipt.
	The ministry must notify the applicants and the Auditor General of its decision to undertake or deny the requested review within 60 days of receipt. (**Section 70**)	
	The ministry must conduct each undertaken review "within a reasonable time." (**Section 69(1)**)	The ministry provides an anticipated completion date to applicants and the Auditor General, and if this date changes, the ministry communicates the new date, with an explanation for the delay. The ministry completes the review within a reasonable time based on the complexity of the matter.
	The ministry must give notice of the outcome of the review to the applicants and the Auditor General within 30 days of completing the review. (**Section 71(1)**)	
	If the ministry decides not to investigate, it must notify the applicants, the alleged contraveners and the Auditor General of this decision within 60 days of receiving the application. (**Section 78(3)**)	
	If the ministry undertakes an investigation, it must, within 120 days of receiving the application, either: • complete the investigation; or • give a written estimate of the time required to complete it, and then complete the investigation within the estimated timeframe or provide a new estimated timeline. (**Section 79**)	
	The ministry must notify the applicants, the alleged contraveners and the Auditor General of the outcome of the investigation within 30 days of completing the investigation. (**Section 80(1)**)	
4. Providing educational programs and information about the Act (Environment Ministry only)		
a. When requested, Environment Ministry helps other ministries provide educational programs	At the request of a minister, the ministry shall assist the other ministry in providing educational programs about the Act. (**Section 2.1 (a)**)	If requested, the Environment Ministry provides information to enable the requesting ministry to provide educational programs about the Act including information about the public's rights and prescribed ministries' obligations, and how members of the public can exercise their rights.
b. Environment Ministry provides educational programs about the Act to the public	The ministry shall provide educational programs about the Act to the public. (**Section 2.1 (b)**)	The Environment Ministry provides educational programs about the Act, such as online materials, public presentations, and dissemination of written materials about the Act. The educational programs should inform members of the public about the Act, including: • the public's rights under the Act, and how to exercise those rights; and • prescribed ministries' obligations under the Act. The educational programs are accessible and reach a broad range of Ontarians, enabling members of the public to access the information needed to meaningfully exercise their rights under the Act.

Criterion	Requirement in *Environmental Bill of Rights, 1993*	What Our Office Looks For to Assess Compliance
c. Environment Ministry provides general information about the Act to those who wish to participate in a proposal	The ministry shall provide general information about the Act to members of the public who wish to participate in decision-making about a proposal as provided in the Act. (**Section 2.1 (c)**)	The Environment Ministry provides general information about the Act, in accordance with Ontario government standards, including how the public can participate in decision-making about a proposal as provided in the Act. At a minimum, the information should be available online. In responding to inquiries from members of the public who wish to participate in decision-making about a proposal as provided in the Act, the Ministry: • provides general information in response to the inquiry; and • provides a complete response in accordance with Ontario government service standards.

Appendix 2: The Environmental Registry

Prepared by the Office of the Auditor General of Ontario

The Environmental Registry is a website that provides the public with access to information about environmentally significant proposals put forward by prescribed ministries. It also enables public engagement in the government's environmental decision-making. Through the Registry:

- Prescribed ministries post notices about environmentally significant policies, acts, regulations and instruments (permits and other approvals) they are proposing to put into effect or issue. This requirement does not apply to proposals that are mostly financial or administrative. There are also some exceptions to the posting requirement; for example, ministries are not required to post notices for proposals for permits and approvals that represent a step to implement a decision under the *Environmental Assessment Act*, or for environmentally significant measures found in budget bills.
- Prescribed ministries provide the public a minimum of 30 days to comment on proposals, or longer in cases where the matter is complex, the level of public interest is high or other factors warrant more time for informed public input. Notices for policies, acts and regulations are often of broad interest to all Ontarians, while notices for site-specific permits to authorize activities or orders to require actions are typically of greatest interest to nearby residents who may be directly impacted by the activities.
- The public can submit comments, and the ministries consider these comments when making a decision on a proposal.
- Prescribed ministries post notices of their decisions on whether or not to proceed with their proposals as soon as reasonably possible after making a decision. These notices include an explanation of how the public comments affected the final decision. In 2019/20, ministries posted decision notices on the Registry for proposals about which members of the public had submitted 80,034 comments (77,226 related to proposals for policies, acts and regulations, and 2,808 related to site-specific permits, licences and approvals).

The Environment Ministry is responsible for operating and maintaining the Environmental Registry. In 2016, the Ministry began modernizing the Environmental Registry to make it easier for the public to understand and navigate. This work was completed in April 2019, and the new Environmental Registry officially replaced the old Registry as of April 24, 2019.

Since the modernized Registry was not yet fully operational for all notice types during the first 23 days of our reporting year of April 1, 2019, to March 31, 2020, reference to Environmental Registry notices in this report refer to notices posted on the old Registry from April 1 to April 23, 2019, and to notices posted on the new Registry as of April 24, 2019.

In 2019/20, the Environmental Registry received 445,361 visits. The following table describes the types of notices that are posted on the Registry, and the numbers of notices posted in 2019/20.

Types and Numbers of Notices Posted on the Environmental Registry, 2019/20

Source of data: *Environmental Bill of Rights, 1993* and Environmental Registry

Type of Notice	Requirements for Posting on the Environmental Registry under the *Environmental Bill of Rights, 1993*[1]	# of Notices Posted on the Environmental Registry in 2019/20[2]
Policy, act or regulation notice	Ministries are required to give notice of and consult on: • environmentally significant proposals for policies (s. 15); • environmentally significant proposals for acts (s. 15); and • environmentally significant proposals for regulations made under a prescribed act (s. 16).	77 proposal notices
	Ministries must post notice of their decisions on these proposals, including an explanation of the effect of public comments (s. 36)	106 decision notices[3]
Instrument notice	Five ministries must give notice of and consult on all proposals to issue, amend or revoke an instrument that is classified under Ontario Regulation 681/94 (s. 22).	1,415 proposal notices
	Ministries must post a notice of their decisions on all instrument proposals, including an explanation of the effect of public comments (s. 36).	1,339 decision notices
Exception notice	In four circumstances, a ministry can forgo consulting the public on a proposal in the usual way. For two of these four situations it must instead post an "exception notice" to inform the public of the decisions and explain why it did not post a proposal notice and consult the public. The two circumstances are: • where the delay in waiting for public comment would result in danger to public health or safety, harm or serious risk to the environment, or injury or damage to property (s. 29); and • where the proposal will be, or has already been, considered in another public participation process that is substantially equivalent to the public participation process required under the *Environmental Bill of Rights* (s. 30).	7
Appeal notice	The Environment Ministry[4] must post notices to inform the public of any appeal of an instrument, including both direct appeals (where such right is given by a law other than the *Environmental Bill of Rights*) and applications to seek leave to appeal by third parties under the *Environmental Bill of Rights* (s. 47).	1 direct appeal and 1 application for leave to appeal
Bulletins (formerly referred to as Information Notices)	This is a notice type that is not required. These notices were called "information notices" on the old Registry and are now called "bulletins" on the new Environmental Registry. Ministries can choose to post bulletins on the Environmental Registry to share information that does not fall into any of the above notice categories—for example, a ministry's annual report. Ministries also use bulletins to fulfill requirements of other laws to provide information to the public. Bulletins are not used for public consultation (s. 6).	123
Voluntary consultation notices	This is another notice type that is not required. Ministries can choose to use the Environmental Registry to consult with the public on any proposal that is not subject to the public consultation requirements of the *Environmental Bill of Rights*. These voluntary consultations are posted using regular proposal notices and decision notices, but include a banner explaining that the consultation is not subject to the requirements of the *Environmental Bill of Rights*.	27 proposal notices and 8 decision notices[5]

1. The section of the *Environmental Bill of Rights, 1993* is indicated in parentheses at the end of each stated requirement.
2. The new Environmental Registry of Ontario launched on April 24, 2019. The numbers reported in this figure include notices posted on the old Environmental Registry from April 1 to April 23, 2019, and notices posted on the new Environmental Registry of Ontario from April 24, 2019 to March 31, 2020.
3. Of 106 decision notices, 35 of them were also posted as proposals during the reporting year.
4. The responsibility to post appeal notices was transferred to the Environment Ministry as of April 1, 2019; these notices were previously posted by the Environmental Commissioner of Ontario.
5. Of the eight decision notices, five of them were also posted as proposals during the reporting year.

Appendix 3: Applications for Review and Applications for Investigation, 2019/20

Prepared by the Office of the Auditor General of Ontario

Background

The *Environmental Bill of Rights, 1993* (EBR Act) gives Ontarians the right to submit an application to a prescribed ministry asking it to:

- review an existing law, policy, regulation or instrument (such as a permit or approval) or review the need to create a new law, policy or regulation in order to protect the environment ("application for review"); and
- investigate an alleged contravention of an environmental law ("application for investigation").

There must be at least two persons resident in Ontario making an application. Applicants can act on their own behalf as individuals or as representatives of organizations or corporations. Applicants can range from community residents to students to environmental activists to not-for-profit organizations to corporations or industry groups. A ministry that receives an application must consider the request according to the requirements of the EBR Act, determine whether to undertake or deny the requested review or investigation, and provide a notice of its decision with the reasons to the applicants and our Office. When a ministry agrees to undertake a review or investigation, it must also provide a notice of the outcome of that review or investigation to the applicants and our Office.

In the five years prior to 2019/20, members of the public submitted an average of 17 applications each year. In 2019/20, only four applications were submitted.

Applications for Review

The EBR Act prescribes nine ministries to accept applications for review (see **Appendix 5**). Specific laws must be prescribed under Ontario Regulation 73/94 in order for them and their regulations to be subject to applications for review (see **Appendix 6**). Similarly, permits and other approvals must be prescribed under Ontario Regulation 681/94 to be subject to applications for review (see **Appendix 7**).

The EBR Act directs ministries to consider the following factors to determine if a requested review is warranted:

- the potential for environmental harm if the ministry does not do the review;
- whether the government already periodically reviews the matter;
- any relevant social, economic, scientific or other evidence;
- the staffing and time needed to do the review; and
- how recently the ministry made or reviewed the relevant law, policy, regulation or instrument, and whether the ministry consulted the public when it did so.

The number of applications for review submitted varies widely from year to year. In the five years prior to this reporting year, the average number of applications for review submitted per year was 10, and ministries agreed to undertake 37% of the requested reviews (as shown in the bar graph on the next page).

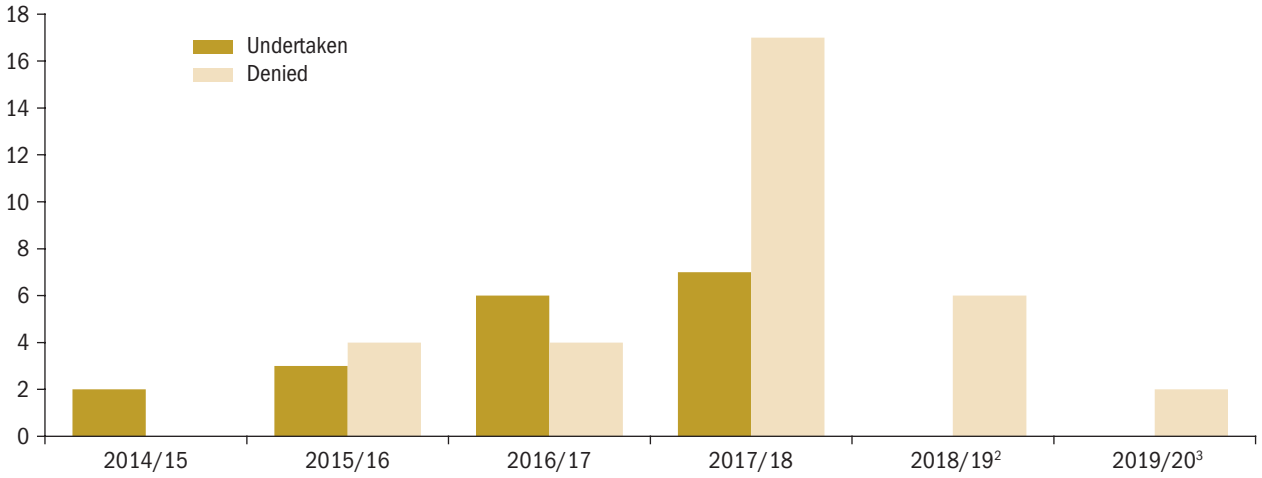
Ministries received two applications for review in 2019/20, and concluded (denied or completed) three applications for review in 2019/20, including one that was submitted in a previous year (as shown in the table on the next page). Our Office reviewed the ministries' handling of those applications for review and concluded that the ministries met our criteria in all these cases.

For a summary of the applications for review that were concluded in 2019/20, see the section in this Appendix titled **Concluded Applications for Review in 2019/20**.

Over the last 10 years, residents of Ontario have submitted 98 applications for review to eight

Applications for Review by Reporting Year Received and the Ministries' Decision to Undertake or Deny,[1] 2014/15–2019/20

Prepared by the Office of the Auditor General of Ontario



1. Some applications for review were sent to multiple ministries. An application is recorded here as "undertaken" if any of the ministries to which an application was sent undertook the review.
2. Three of the six applications for review received in 2018/19 (the first year for which the Auditor General of Ontario was responsible for reporting on the operation of the EBR Act) were inappropriately denied according to the requirements of the EBR Act.
3. Both of the applications for review received in 2019/20 were appropriately denied according to the requirements of the EBR Act.

Applications for Review Concluded[1] in 2019/20

Prepared by the Office of the Auditor General of Ontario

	Applications Submitted in 2019/20		Applications Submitted in Previous Years		Total Applications Concluded in 2019/20
Ministry	Denied	Undertaken	Denied	Undertaken	
Environment	1	0	0	1	**2**
Municipal Affairs	1	0	0	0	**1**
Total	**2[2]**	**0**	**0**	**1**	**3**

1. An application has been "concluded" when the ministry has either (a) decided not to undertake the requested review (denied the application) and given notice of its decision to the applicants, or (b) decided to undertake the requested review, completed its review and given notice of the outcome of its review to the applicants.
2. Both applications were appropriately denied according to the requirements of the EBR Act.

ministries. In 17% of the applications, the request involved more than one ministry. The Environment Ministry received 69% of the applications. Our review of the details of all applications found the following:

- Two-thirds of all applications were related to: contaminants (15%); energy generation (11%); land use planning and environmental assessment (11%); agriculture (10%); waste (10%); and water management (8%).
- In 22% of the applications, Ontarians requested that ministries review the need for new acts, regulations or policies to address certain issues related to, for example, agriculture, contaminants and energy generation.
- In 58% of the applications, Ontarians requested the ministries review existing acts, regulations or policies related to energy generation, contaminants and pesticides. These laws include the *Environmental Protection Act*, *Ontario Water Resources Act*, and the *Pesticides Act*.

- In 20% of the applications, Ontarians requested that ministries review existing permits and approval related contaminants, aggregates and waste.
- Applicants were most concerned about biodiversity conservation (i.e., harm to species at risk, wildlife populations and their habitat) and water quality citing these as the reasons for requesting the review in 36% and 35% of the applications, respectively. Other reasons cited were transparency and public consultation, air quality and climate change.

Applications for Investigation

Applications for investigation are a way for members of the public to help ensure that the government upholds its environmental laws. Ontarians can formally request an investigation if they believe that someone has broken an environmental law. Generally, members of the public make this request when they believe that the government is not doing enough—or anything—about a problem.

Ontarians can request an investigation of an alleged contravention of any of 19 different prescribed laws, or of a regulation or prescribed instrument (e.g., permit or other type of approval) under those laws. To date, most of the public's requests for investigation have been made under the *Environmental Protection Act*.

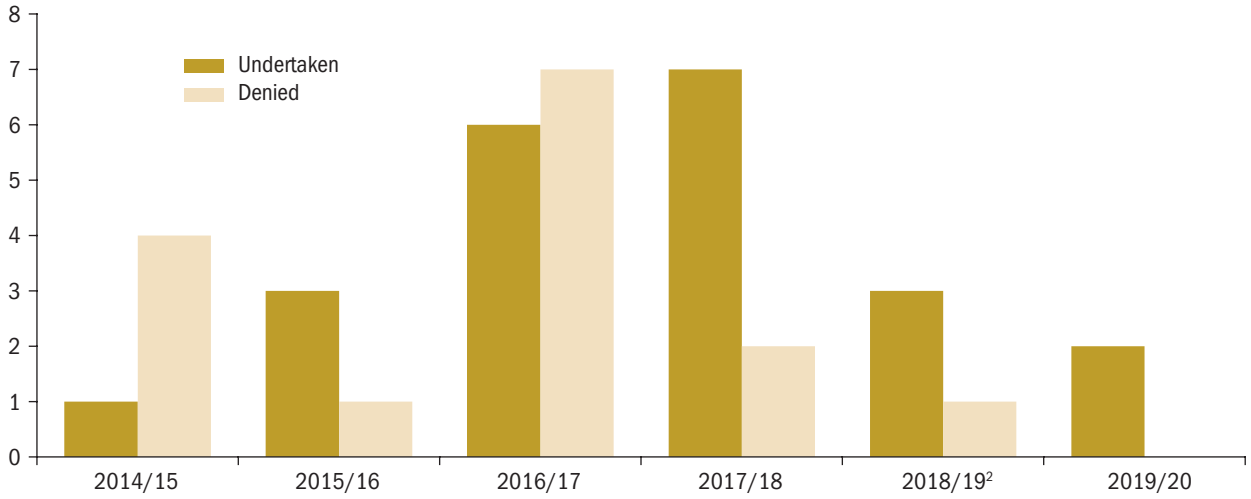
A minister has a duty to investigate all matters raised in an application for investigation to the extent the minister considers necessary. A minister is not required to investigate where an application is frivolous or vexatious, the alleged contravention is not serious enough to warrant an investigation, or the alleged contravention is not likely to cause harm to the environment. The minister is also not required to duplicate an ongoing or completed investigation.

Similar to applications for review, the number of applications for investigation submitted varies widely from year to year. In the five years prior to this reporting year, the average number of applications for investigation submitted per year has been seven, and ministries have agreed to undertake 57% of the requested investigations (as shown in the following bar graph).

In 2019/20, the Environment Ministry received two applications for investigation, and both were

Applications for Investigation by Reporting Year Received and Ministries' Decisions to Undertake or Deny,[1] 2014/15–2019/20

Prepared by the Office of the Auditor General of Ontario



1. Some applications for investigation were sent to multiple ministries. An application is recorded here as "undertaken" if any of the ministries to which an application was sent undertook the investigation.
2. In 2018/19 (the first year for which the Auditor General of Ontario was responsible for reporting on the operation of the EBR Act) one application for investigation was appropriately denied according to the requirements of the EBR Act.

ongoing at the end of the reporting year. The Environment Ministry received one additional application for investigation, but it was returned as incomplete because it was missing information required under the EBR Act. Ministries did not conclude any applications for investigation in 2019/20.

Over the last 10 years, residents of Ontario have submitted 58 applications asking four ministries to investigate alleged contraventions of prescribed laws, regulations and prescribed instruments (e.g., permits of or other types of approval) under those laws. Our review of the details of all applications found that:

- The Environment Ministry received 88% of the applications asking to investigate alleged violations of the *Environmental Protection Act* and *Ontario Water Resources Act*.
- The majority of the alleged contraventions were occurring in eastern Ontario (34%) and the Greater Golden Horseshoe area (28%).
- Applicants requested that ministries investigate industrial operations in 26%, aggregate operations in 16% and commercial operations in 14% of applications.
- Three-quarters of the applications related to aggregate operations were from eastern Ontario.
- Applicants were most concerned about water quality and air quality, citing these as the reasons for requesting the investigations in 50% and 26% of the applications, respectively. Other reasons cited were noise and odour, soil contamination, and harm to species at risk, wildlife populations and habitat.

Concluded Applications for Review in 2019/20

The following is a summary of each of the three applications for review that was concluded (i.e., the review were either denied or, if undertaken, was completed) between April 1, 2019, and March 31, 2020.

Our Office concluded that the ministries responsible for handling these applications met the criteria in all three cases. For the details of our review, see the ministry reports cards in **Figure 4** (Environment Ministry) and **Figure 6** (Municipal Affairs Ministry) in **Chapter 2** of this Report.

1. Review of the Need for Water Quality Protection for Muskrat Lake

What the Applicants Asked For

In June 2017, the applicants requested a review of the need for new policy and legislation to address poor water quality in Muskrat Lake. Specifically, the applicants requested a review of the need for a Muskrat Lake Protection Act and a Muskrat Lake Protection Plan to mitigate the amount of phosphorus and nutrients in the lake water. The applicants were concerned that algal blooms that appear on the lake each summer could make drinking water for the nearby community of Cobden unsafe, discourage recreational activity in the lake, negatively impact tourism and property values, and negatively affect lake trout habitat. The applicants stated that Muskrat Lake has the poorest water quality in Renfrew County, and that nearby agricultural operations are contributing to the problem. They also stated that total phosphorus levels in the lake have exceeded the Provincial Water Quality Objective.

The applicants provided a proposed remediation plan developed by the Muskrat Lake Association, which includes in-lake chemical treatment, stormwater management measures, drainage ditch redirection, controlled tile drainage, implementing best management practices for nearby agriculture, septic tank inspections, and an effluent remediation plan. The applicants noted that there is a provincial act and plan to remediate nutrient and phosphorus loading in Lake Simcoe, and since Muskrat Lake has even greater amounts of nutrients and phosphorus loading, a Muskrat Lake Protection Act and Plan is warranted. The applicants stated that the provincial government and local and regional governments have delegated remediation of Muskrat Lake to the Muskrat Lake Watershed Council—a volunteer organization that the applicants said does not have the authority or expertise to resolve the problem.

Review Undertaken by the Environment Ministry

In August 2017, the Environment Ministry informed the applicants that it would undertake the review. The Ministry stated that it would focus its efforts "on examining whether existing environmental policy, legislation, regulations, tools, programs, and plans are able to address the issues related to water quality in Muskrat Lake (i.e., phosphorus contamination) in accordance with the Ministry's mandate." The review consisted of the Ministry's assessment of the applicability of over 13 acts, regulations, policies, plans, programs, and tools to address the water quality issues in Muskrat Lake.

The Ministry provided the results of its review to the applicants in June 2019. The Ministry concluded that the existing legislation, policies, tools, programs, and plans were sufficient to help address water quality issues in Muskrat Lake. The Ministry stated that the largest sources of phosphorus in the lake were from internal legacy phosphorus in lake sediments, agriculture and septic systems, which would require collaboration with other partners and local communities to combat. Accordingly, the Ministry committed to: 1) continue to monitor Muskrat Lake's water quality and to participate on Muskrat Lake's Watershed Council's science committee; and 2) reach out to local municipalities and stakeholders to "gain a better understanding of issues and interests; and to discuss potential community-based solutions."

The Environment, Agriculture and Natural Resources ministries continue to engage with the Muskrat Lake Watershed Council and local municipalities on the water quality issues in Muskrat Lake. The three ministries participate on the Muskrat Lake's Watershed Council's science committee and the Environment Ministry monitors nutrient levels in Muskrat Lake and its tributaries. When there is the potential for blue-green algal blooms, the Environment Ministry works with Renfrew County to collect and analyze samples. The Agriculture Ministry provides technical support and funding to better understand nutrient sources, management solutions, and small-scale best management practices pilots. In 2013, the Natural Resources Ministry co-sponsored the Muskrat Lake Water Quality Symposium with Whitewater Region; the symposium led to the establishment of the Muskrat Lake Watershed Council.

In November 2019, staff from the Environment Ministry met with one of the applicants as well as staff from local townships. Staff from the Agriculture Ministry were also in attendance. At the meeting, Environment Ministry staff informed attendees of two application-based funding opportunities—the Canadian Agricultural Partnership through the Place to Grow Agri-food Innovation Initiative (provincial) and the Investing in Canada Infrastructure Program—that could be used to address water quality issues. A subsequent letter from the Environment Ministry to one of the applicants listed organizations and groups identified by the Agriculture Ministry with which the residents' association might wish to collaborate to achieve common goals, and the Ministry stated that the Agriculture Ministry could identify local contacts at those organizations for the Muskrat Lake Association if requested.

Note that this application was also sent to the Natural Resources Ministry. The Natural Resources Ministry denied the requested review in August 2017 because the Ministry administers neither legislation nor plans that address water quality in lakes.

2. Review of the *Clean Water Act, 2006*

What the Applicants Asked For

In December 2019, two applicants requested a review of the *Clean Water Act, 2006* in order to extend source protection to non-municipal drinking water systems such as private wells, and well clusters that serve individual residences, public and institutional buildings. The applicants also stated that the *Clean Water Act, 2006* should be reviewed to determine how to better facilitate the optional inclusion of drinking water systems serving First Nations communities under the *Clean Water Act, 2006* and to otherwise assist First Nations in developing, implementing and funding their own source water protection measures.

The applicants were concerned that approximately 30% of Ontario's population obtains drinking water from private wells that are not part of the protective regulatory regime of the *Clean Water Act, 2006* and source protection planning, but that are nevertheless vulnerable to contamination. They stated that these populations are at risk of experiencing a tragedy on the scale of the contaminated drinking water crisis in Walkerton in 2000 that killed seven people and sickened thousands of others.

The applicants provided numerous examples of communities in which a significant proportion of the population rely on non-municipal drinking water sources that are vulnerable to contamination because of surrounding agricultural and industrial land use.

The applicants also provided quotes from the chairs of several source protection committees who are concerned about the lack of protections for vulnerable populations in southern Ontario and communities in Northern Ontario served by non-municipal systems. They also noted that the current regulation of private wells under Regulation 903 is widely regarded as inadequate to protect drinking water users from contaminated well water.

The applicants stated that although the *Clean Water Act, 2006* contains provisions that enable municipalities to voluntarily bring non-municipal sources of drinking water under a source protection plan, no municipalities have done so.

Similarly, the applicants acknowledged that First Nations band councils can pass resolutions to include drinking water systems for their communities in source protection plans, but only three First Nations drinking water systems have been included in plans to date, and the vast majority of systems and private wells in First Nations communities are not protected under the *Clean Water Act, 2006* regime. Numerous communities in the province remain under boil water advisories that are years or decades old.

The applicants noted that tools under the *Planning Act* and *Municipal Act* are not adequate to ensure mandatory protection of drinking water, because they can only be applied when there are proposed changes to land uses, and cannot be used to protect drinking water sources from threats from current land uses.

The applicants requested a number of specific amendments to the *Clean Water Act, 2006* including:

- requiring municipalities to apply the source protection planning process to all eligible or prescribed non-municipal systems; and
- requiring that the Minister exercise his power to require source protection committees to consider any existing or planned drinking water systems within the source protection area at the request of municipalities, First Nations communities, members of the public, or the source protection committee itself.

The applicants cited recommendations from the Auditor General in 2014 and the former Environmental Commissioner in 2018 that the Environment Ministry consider protecting drinking water sources currently not included in a source protection plan under the *Clean Water Act, 2006*. In 2014 the Auditor General of Ontario recommended the Ministry "consider the feasibility of requiring source protection plans to identify and address threats to sources of water that supply private wells and intakes and threats that abandoned wells may pose to sources of groundwater," in addition to making several other recommendations related to protecting sources of drinking water.

Review Appropriately Denied by the Environment Ministry

The Ministry denied this application for review in February 2020 on the basis that it is already working to implement the Auditor General's 2014 recommendation to "consider the feasibility of requiring source protection plans to identify and address threats to sources of water that supply private wells and intakes," and anticipates completing this "in the coming months." The Ministry stated in its response to the applicants that the public interest

does not warrant the resources required to conduct a separate, parallel review.

The Ministry told our Office that it plans to complete a two-part assessment: firstly to consider "the feasibility of requiring, under the *Clean Water Act, 2006*, inclusion of private wells and intakes within established source protection areas in provincially-approved source protection plans," and second, to consider "the feasibility of requiring, under the *Clean Water Act, 2006*, inclusion of abandoned wells as prescribed threats to sources of groundwater within established source protection areas in provincially-approved source protection plans." The Ministry offered to share the outcome of the process it is currently undertaking with the applicants once the outcome has been communicated to the Auditor General.

The Ministry also told the applicants that it intended to conduct consultations in spring 2020 on source protection guidance for municipalities, local communities, First Nations on reserve, and individual property owners. The Ministry has developed draft guidance documents aimed at private residents, private drinking water systems providers, businesses and facilities, and First Nations communities to help them learn more about source protection and how they can protect their drinking water sources.

3. Review of Provincial Land Use Planning and Natural Heritage Policies

What the Applicants Asked For

In August 2019, two applicants submitted an application asking the Municipal Affairs Ministry to review Natural Heritage policies in the Provincial Policy Statement 2014 and policies for Settlement Boundary Expansion and Rural Areas in A Place to Grow: Growth Plan for the Greater Golden Horseshoe. The applicants also asked the Ministry to review a regulation under the *Planning Act* that confers authority on prescribed single-tier municipalities to approve plans of subdivision.

The applicants did not agree with the approval of a plan of subdivision in the Township of Douro-Dummer in Peterborough. The applicants stated that they believed the plan of subdivision will adversely affect area habitat, species at risk, wetlands, hydrology and natural and cultural heritage. The applicants also stated they did not believe the Township adequately considered potential negative effects of the construction of the subdivision on neighbouring properties.

The applicants provided supplemental documents that illustrated their ongoing opposition to the plan of subdivision and the Township's position that conditions and measures are in place to minimize negative effects to natural heritage features.

Review Appropriately Denied by the Municipal Affairs Ministry

In October 2019, the Municipal Affairs Ministry denied this review. The Ministry stated that the public interest does not warrant a review of the requested policies and legislation because the Ministry has recently undertaken extensive public consultation on changes to the land use planning and appeals system, including amendments to the *Planning Act* and a new Growth Plan for the Greater Golden Horseshoe. In addition, the Ministry stated that it was at that time conducting public consultation on the Provincial Policy Statement 2020. The Ministry encouraged the applicants to submit comments through the Environmental Registry for the proposed new policy statement.

The Township's decision to approve the plan of subdivision is not reviewable under the EBR Act.

The applicants also submitted the application to the Environment and Agriculture Ministries. However, both of those ministries forwarded the application to the Municipal Affairs Ministry under section 64 of the EBR Act on the basis that those ministries were not the appropriate ministries to review the matters raised in the application, as the Municipal Affairs Ministry is responsible for land use policies and legislation.

Appendix 4: Appeals, Court Actions and Whistleblowers, 2019/20

Prepared by the Office of the Auditor General of Ontario

Appeals

Many laws provide individuals and companies with a right to appeal government decisions affecting them, such as a decision to deny or amend permits and other approvals that they applied for or had previously obtained. A few laws also give other people ("third parties") the right to appeal ministry decisions about instruments (permits, orders, licences and other approvals) issued to others (for example, to appeal a decision to grant a renewable energy approval under the *Environmental Protection Act*). The *Environmental Bill of Rights, 1993* (EBR Act) expands on these rights by allowing broader third-party appeal rights.

The EBR Act allows any resident of Ontario to "seek leave to appeal" (i.e., permission to challenge) decisions on many types of instruments. For example, a member of the public could use this right to challenge a decision by the Environment Ministry to allow an industrial facility to discharge contaminants to air.

Ontario residents who wish to appeal a ministry's decision must submit an application for leave to appeal to an independent, impartial appellate body, typically the Environmental Review Tribunal, within 15 days of the decision's posting on the Environmental Registry. To be granted leave to appeal, the applicant must successfully demonstrate that it appears that "there is good reason to believe" that the decision was not reasonable and that it could result in significant harm to the environment. If an applicant is granted leave to appeal by the tribunal, the decision is "stayed" (put on hold), and the matter can proceed to a hearing, after which the tribunal will make a decision.

The number of applications for leave to appeal varies from year to year. In the 10 years prior to this reporting year, Ontarians submitted, on average, five applications for leave to appeal each year, and were granted leave to appeal 20% of the time. In 2019/20, six new applications for leave to appeal filed under the EBR Act by members of the public came to our Office's attention (as seen in the table).

These applications challenged the following environmental compliance approvals: to conduct a pilot to process biosolids at a waste facility; for air emissions at a metal recycling facility; for air and noise emissions at a batch mix asphalt manufacturing plant and a portable aggregate crushing plant; for sewage works to serve recreational vehicle sites; for air and noise emissions at a ready-mix concrete batching plant; and for air and noise emissions at a poultry processing and production plant. The Environmental Review Tribunal denied five of the six applications—those related to the waste facility, the asphalt plant, the poultry plant,the metal recycling facility and the recreational vehicle sites—while the application related to the concrete plant was withdrawn.

In 2019/20, the Environmental Review Tribunal also issued decisions about three leave to appeal applications that were filed in 2018/19 but remained outstanding at the end of that reporting year; one application related to a permit for a concrete company to take water, and two related to approvals for a poultry processing facility. Leave to appeal was denied in all three of those cases.

Lawsuits and Whistleblower Protection

The EBR Act provides rights for Ontarians to take court action against anyone harming a public resource or to seek damages for environmental harm caused by a public nuisance. The Act also provides protection for employees ("whistleblowers") who suffer reprisals from their employers for exercising their environmental rights or for complying with, or seeking the enforcement of, environmental rules. The Ontario Labour Relations Board received one case related to the EBR Act in 2019/20, which is the third case in the last five years. That case was terminated as abandoned by the applicant.

Leave to Appeal Applications Filed Under the *Environmental Bill of Rights, 1993* in 2019/20

Source of data: Environmental Registry and Environmental Review Tribunal

Leave to Appeal Subject	Environmental Registry Number	Outcome
Amendment to an Environmental Compliance Approval for a 12-month pilot program to process biosolids	013-3734	Leave to appeal denied by the Environment Review Tribunal
Environmental Compliance Approval for air emissions at a metal recycling facility	013-4572	Leave to appeal denied by the Environment Review Tribunal
Environmental Compliance Approval for air and noise emissions at a batch mix asphalt manufacturing plant and a portable aggregate crushing plant	013-4759	Leave to appeal denied by the Environment Review Tribunal
Environmental Compliance Approval for air and noise emissions at a ready mix concrete batching plant	019-0211	Application withdrawn by the applicant
Amendment to an Environmental Compliance Approval for air and noise emissions at a poultry processor and producer	019-0231	Leave to appeal denied by the Environment Review Tribunal
Amendment to an Environmental Compliance Approval for sewage works to serve seasonal recreational vehicle sites	013-4986	Leave to appeal denied by the Environment Review Tribunal

Appendix 5: Responsibilities of Each Prescribed Ministry, 2019/20

Source of data: O. Reg. 73/94 and O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993*

Ministry	Prepare and Consider Statement of Environmental Values	Consult on Policies and Acts*	Consult on Regulations under Prescribed Acts*	Consult on Prescribed Instruments (Permits and Approvals)	Respond to Applications for Review	Respond to Applications for Investigation
Environment	✓	✓	✓	✓	✓	✓
Natural Resources	✓	✓	✓	✓	✓	✓
Municipal Affairs	✓	✓	✓	✓	✓	✓
Energy and Mines	✓	✓	✓	✓	✓	✓
Government Services	✓	✓	✓	✓	✓	✓
Agriculture	✓	✓	✓		✓	
Transportation	✓	✓			✓	
Tourism	✓	✓	✓			
Health	✓	✓	✓		✓	
Infrastructure	✓	✓				
Economic Development	✓	✓				
Indigenous Affairs	✓	✓				
Education	✓	✓			✓	
Labour	✓	✓				
Treasury Board	✓	✓				

* If they could have a significant effect on the environment if implemented.

Appendix 6: Prescribed Acts under the *Environmental Bill of Rights, 1993*

Source of data: O. Reg. 73/94 and O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993*

Act	Ministry to Post Notices for Regulations under the Act	Subject to Applications for Review	Subject to Applications for Investigation
Ministry of Agriculture, Food and Rural Affairs			
Food Safety and Quality Act, 2001	Y[1]	N	N
Nutrient Management Act, 2002	Y	Y	N
Ministry of the Environment, Conservation and Parks			
Clean Water Act, 2006	Y	Y	N
Conservation Authorities Act	Y	Y	Y
Endangered Species Act, 2007	Y[2]	Y[2]	Y
Environmental Assessment Act	Y	Y	Y
Environmental Bill of Rights, 1993	Y	Y	N
Environmental Protection Act	Y	Y	Y
Great Lakes Protection Act, 2015	Y	Y	N
Lake Simcoe Protection Act, 2008	Y	Y	N
Ontario Water Resources Act	Y	Y	Y
Pesticides Act	Y	Y	Y
Provincial Parks and Conservation Reserves Act, 2006	Y	Y	Y
Resource Recovery and Circular Economy Act, 2016	Y	Y	N
Safe Drinking Water Act, 2002	Y	Y	Y[7]
Toxics Reduction Act, 2009	Y	Y	Y
Waste Diversion Transition Act, 2016	Y	Y	N
Water Opportunities Act, 2010	Y[3]	Y[3]	N
Ministry of Energy, Northern Development and Mines			
Mining Act	Y	Y	Y
Ontario Energy Board Act, 1998	Y[3]	Y[3]	N
Ministry of Government and Consumer Services			
Technical Standards and Safety Act, 2000	Y[4]	Y[4]	Y[4]
Ministry of Health			
Health Protection and Promotion Act	Y[5]	Y[5]	N
Ministry of Municipal Affairs and Housing			
Building Code Act, 1992	Y[6]	Y[6]	N
Greenbelt Act, 2005	Y[2]	Y	N
Oak Ridges Moraine Conservation Act, 2001	Y[2]	Y	Y[7]
Places to Grow Act, 2005	Y	Y	N
Planning Act	Y	Y	Y[7]
Ministry of Natural Resources and Forestry			
Aggregate Resources Act	Y	Y	Y
Crown Forest Sustainability Act, 1994	Y	Y	Y
Far North Act, 2010	Y	Y	Y

Act	Ministry to Post Notices for Regulations under the Act	Subject to Applications for Review	Subject to Applications for Investigation
Fish and Wildlife Conservation Act, 1997	Y	Y	Y
Invasive Species Act, 2015	Y	Y	Y
Kawartha Highlands Signature Site Park Act, 2003	N	Y	Y
Lakes and Rivers Improvement Act	Y	Y	Y
Niagara Escarpment Planning and Development Act	Y	Y	Y[7]
Oil, Gas and Salt Resources Act	Y	Y	Y
Public Lands Act	Y	Y	Y
Ministry of Heritage, Sport, Tourism and Culture Industries			
Ontario Heritage Act	Y	N	N

1. Limited to disposal of deadstock.
2. With some exceptions.
3. For parts of the Act.
4. Limited to fuel handling.
5. Limited to small drinking-water systems.
6. Limited to septic systems.
7. Limited to certain instruments under the Act.

Appendix 7: Permits and Other Approvals (Instruments) Subject to the *Environmental Bill of Rights, 1993*

Source of data: O. Reg. 681/94, made under the *Environmental Bill of Rights, 1993*

This is an overview summary for information purposes. Some licences, approvals, authorizations, directions or orders (collectively referred to as "instruments") are prescribed in only limited circumstances. For the full list of instruments subject to the *Environmental Bill of Rights, 1993*, see O. Reg. 681/94 (Classification of Proposals for Instruments).

Ministry of the Environment, Conservation and Parks
Conservation Authorities Act
Approval for the sale, lease or other disposition of land by a conservation authority
Endangered Species Act, 2007
Stewardship agreement
Amendment to a stewardship agreement
Permit for activities necessary for the protection of human health or safety
Permit for species protection or recovery
Permit for activities with conditions that should achieve overall benefit or that will result in a significant social or economic benefit to Ontario
Amendment of a permit
Revocation of a permit
Environmental Protection Act
Director's order to suspend or remove a registration from the Environmental Activity and Sector Registry
Approval to use a former waste disposal site for a different use
Director's control order
Director's stop order
Director's approval of a control/preventative program
Director's order for remedial work
Director's order for preventative measures
Environmental Compliance Approval (waste management system/waste disposal site)
Environmental Compliance Order (air)
Environmental Compliance Order (sewage works)
Order for removal of waste
Order for conformity with the Act for waste disposal site
Renewable Energy Approval
Minister's directions in respect of a spill
Minister's order to take actions in respect of a spill
Director's order for performance of environmental measures
Director's order to comply—Schedule 3 standards
Approval of a site-specific standard
Director's order to take steps related to a site-specific standard
Approval of a registration for a technical standard for air pollution (industry standard)
Approval of a registration in respect of an equipment standard
Minister's orders regarding curtailment based on the Air Pollution Index
Declaration of or termination of a sulfur dioxide alert
Certificate of Property Use

Ontario Water Resources Act
Permits to take water
Permit authorizing a new transfer or an increased transfer
Director's order prohibiting or regulating sewage discharges
Director's order for measures to alleviate effects of impairment of quality of water
Director's order for unapproved sewage works
Director's order to stop or regulate discharge of sewage into sewer works
Direction to maintain or repair sewage or water works
Director's report to a municipality respecting sewage works or water works
Direction for sewage disposal
Directions for measures to be taken if a well produces water that is not potable
Director's order designating an area as an "area of public water service" or an "area of public sewage service"
Pesticides Act
Add or remove an active ingredient from a prescribed list
Agreement with a body responsible for managing a natural resources management project that would allow an unlisted pesticide to be used
Emergency notice
Stop order
Control order
Order to repair or prevent damage
Safe Drinking Water Act, 2002
Approval of a municipal drinking water system
Drinking water works permit
Municipal drinking water licence
Order or notice with respect to a drinking water system (drinking water health hazard)
Ministry of Natural Resources and Forestry
Aggregate Resources Act
Approval of a licensee's amendment to a site plan
Revocation of an aggregate licence
Aggregate permit
Written notice of relief to a licensee/permitee from compliance with any part of the regulations under the Act
A Minister's determination of the natural edge of the Niagara Escarpment
Class A or B aggregate licences
Amendment to an aggregate licence to add, rescind or vary a condition of the licence
Amendment to an aggregate licence to vary or eliminate a condition to the licence if the effect will be to authorize an increase in the number of tonnes of aggregate to be removed
Requirement that a licensee amend its site plan
Conservation Authorities Act
Minister's requirement that a conservation authority carry out flood control operations
Minister's requirement that a conservation authority follow the Minister's instructions for the operation of a water control structure
Minister takes over the operation of a water control structure and requires conservation authority to reimburse costs
Minister's requirement for the council of a municipality to carry out flood control operations
Minister's requirement for the council of a municipality to follow the Minister's instructions for the operation of a water control structure
Minister takes over the operation of a water control structure and requires council of a municipality to reimburse costs

Crown Forest Sustainability Act, 1994
Forest resource processing facility licence
Far North Act, 2010
Minister's order approving a land use plan
Order to amend the boundaries of a planning area after a community based land use plan is approved
Exempting order
Exception order
Fish and Wildlife Conservation Act, 1997
Authorization to release wildlife or an invertebrate
Aquaculture licence
Lakes and Rivers Improvement Act
Order to repair or remove dam
Order to rectify a problem
Order to do what Minister considers necessary to further purposes of the Act
Order to provide a fishway
Order to regulate the use of a lake or river or the use and operation of a dam
Order to take steps to maintain, raise or lower the water level on a lake or river
Order to take steps to remove any substance or matter
Niagara Escarpment Planning and Development Act
Declaration that a by-law, improvement or other development or undertaking of a municipality is deemed not to conflict with the Niagara Escarpment Plan
Order amending a local plan to make it conform to the Niagara Escarpment Plan
Approval of an amendment to the Niagara Escarpment Plan
Oil, Gas and Salt Resources Act
Permit to inject a substance other than oil, gas or water into a geological formation in connection with a project for enhancing oil or gas recovery
Amendment, suspension, revocation or addition of a term, condition, duty or liability imposed on a permit
Suspension or cancellation of a permit
Public Lands Act
Designation of an area as a planning unit
Permit to erect a building or structure or make an improvement on private land if the building, structure or improvement will be located within 20 metres of the edge of a body of water
Ministry of Muncipal Affairs and Housing
Building Code Act, 1992
A ruling that relates to the construction, demolition, maintenance or operation of a sewage system
Oak Ridges Moraine Conservation Act, 2001
Minister's order to amend a municipality's Official Plan
Minister's order to amend a municipality's zoning bylaw
Approval by the Minister of an Official Plan amendment
Approval by the Minister of a zoning bylaw amendment
Planning Act
Approval by the Minister of an Official Plan
Approval by the Minister of an Official Plan amendment
Approval by the Minister for a consent in an area where there is no Official Plan in place
Approval by the Minister of a plan of subdivision

Ministry of Energy, Northern Development and Mines
Mining Act
Consent to undertake surface mining within 45 metres of a highway or road limit
Sale or award by the Minister of surface rights
Reinstatement of a licence of occupation that was previously terminated
Permission to test mineral content
Disposition Order directing that buildings, structures, machinery, chattels, personal property, ore, mineral slimes or tailings do not belong to the Crown
Issuance of an exploration permit
Lease of surface rights
Minister's direction to include reservations or provisions
Permission to cut and use trees on mining lands
Approval to rehabilitate a mine hazard
Acknowledgment of receipt by Director of closure plan for advanced exploration or commencing mine production
Acknowledgment of receipt by Director of certified closure plan
Director's order requiring a proponent to file amendments to a closure plan
Director's order requiring changes to a filed closure plan or to amendments to a closure plan
Director's order requiring the performance of a rehabilitation measure
Director's order requiring a proponent to file a certified closure plan to rehabilitate a mine hazard
Proposal for the Crown to enter lands to rehabilitate a mine hazard site
Minister's order directing a proponent to rehabilitate a hazard that may cause immediate and dangerous adverse effect
Minister's direction to employees and agents to do work to prevent, eliminate and ameliorate adverse effect
Minister's decision to alter or revoke a decision of the Mining and Lands Tribunal
Director's order requiring a proponent to comply with the requirements of a closure plan or to rehabilitate a mine hazard in accordance with the prescribed standards
Director's decision to have the Crown rehabilitate after proponent non-compliance with order
Issuance or validation by the Minister of an unpatented mining claim, licence of occupation, lease or patent
Minister's acceptance of a surrender of mining lands
Ministry of Government and Consumer Services
Technical Standards and Safety Act, 2000
Director's variance from section 9 of O. Reg. 217/01 (Liquid Fuels) (permission to use equipment that is not approved)
Director's variance from any of the prescribed clauses of the Liquid Fuels Handling Code

Appendix 8: Glossary of Terms

Prepared by the Office of the Auditor General of Ontario

Act: Also known as a law, legislation or statute, an act is made by the provincial (or federal) government to delineate rules about specific situations.
Application for Investigation: A right under the *Environmental Bill of Rights, 1993* (under Part V), allowing two members of the public to formally ask a prescribed ministry to investigate an alleged contravention of an act, regulation or instrument that has the potential to harm the environment.
Application for Review: A right under the *Environmental Bill of Rights, 1993* (under Part IV), allowing two members of the public to formally ask a prescribed ministry (or ministries) to review (and potentially amend) an existing policy, act, regulation or instrument, or review the need to create a new policy, act or regulation.
Bulletin: Bulletins (called Information Notices on the old Environmental Registry) are used by prescribed ministries to voluntarily share information about any activity or other matter that they are not required to post under the *Environmental Bill of Rights, 1993*. In some cases, Bulletins are also used when legislation other than the *Environmental Bill of Rights, 1993* requires a prescribed ministry to give notice of something using the Environmental Registry (for example, the *Clean Water Act, 2006* requires the Environment Ministry to give notice of approved source protection plans using the Environmental Registry).
Environmental Compliance Approval: A type of approval under the *Environmental Protection Act* and the *Ontario Water Resources Act* issued by the Environment Ministry and obtained by proponents that seek to undertake certain activities related to air, noise, waste and sewage.
Environmental Registry: A website maintained by the Environment Ministry, and used by all prescribed ministries, to provide information about the environment to the public, including notices about proposals and decisions that could affect the environment, pursuant to the *Environmental Bill of Rights, 1993*. The Environmental Registry of Ontario (ero.ontario.ca) became the official Environmental Registry in April 2019. The previous site (ebr.gov.on.ca) remains online for archival purposes.
Exception notice: A notice posted on the Environmental Registry to inform the public about an environmentally significant decision that was made without public consultation, for one of two reasons: 1) there was an emergency, and the delay required to consult the public would result in danger to public health or safety, harm or serious risk to the environment or injury or damage to property; or 2) the environmentally significant aspects of the proposal had already been considered in a process of public participation substantially equivalent to the process required under the *Environmental Bill of Rights, 1993*.
Instrument: A permit, licence, approval, authorization, direction or order issued under the authority of an act or regulation.
Leave to appeal: Permission to challenge. Under the *Environmental Bill of Rights, 1993*, members of the public may seek leave to appeal the decisions of prescribed ministries to issue certain types of instruments. The decision whether to grant or deny leave to appeal is made by the adjudicative body that would hear the appeal, such as the Environmental Review Tribunal.
Notice (general): A posting on the Environmental Registry to inform the public of environmentally significant activities that prescribed ministries are considering or carrying out.
Notice—Proposal: A notice posted on the Environmental Registry by a prescribed ministry to notify the public that it is considering creating, issuing or making changes to an environmentally significant policy, act, regulation or instrument, and to seek the public's comments on the proposal.
Notice—Decision: A notice posted on the Environmental Registry by a prescribed ministry to notify the public that it has made a decision whether or not to proceed with a proposal for a policy, act, regulation or instrument. A decision notice must explain what effect, if any, the public's comments on the proposal had on the ministry's final decision.
Permit to Take Water: An approval under the *Ontario Water Resources Act* that allows a person or organization to take water from the environment.
Policy: A written set of rules or direction by a ministry.
Prescribed ministry: A government ministry that is required under O. Reg. 73/94 to carry out responsibilities under the *Environmental Bill of Rights, 1993*.
Public interest: The welfare or well-being of the general public and society.

Public consultation: Under the *Environmental Bill of Rights, 1993*, a prescribed ministry providing an opportunity for the public to submit comments or feedback on proposed acts, regulations, policies or instruments. A minimum of 30 days must be allowed for this process, and it takes place through the Environmental Registry.
Regulation: A regulation deals with topics related to the act under which it is made; the purpose of a regulation is to provide details to give effect to the act.
Statement of Environmental Values: All prescribed ministries are required under the *Environmental Bill of Rights, 1993* to publicly consult on and implement a policy that guides the ministry when it makes any decision that might affect the environment. A Statement of Environmental Values describes how the prescribed ministry will integrate environmental values with social, economic and scientific considerations when making a decision.

Appendix 9: Number and Type of Proposals for Permits and Approvals Posted during the Exemption Period That Would Ordinarily Be Subject to Leave to Appeal Under the *Environmental Bill of Rights, 1993*

Prepared by the Office of the Auditor General of Ontario

Type of Permit or Approval	Description of Permit or Approval	Relevant Act	# of Proposals
Proposals by the Environment Ministry			
Environmental Compliance Approval	Allows businesses to discharge contaminants and store/transport waste	*Environmental Protection Act*	101
Permit to take water	Allows permit holders to take more than 50,000 litres of water per day from a lake, stream, river, pond or groundwater	*Ontario Water Resources Act*	58
Certificate of property use	Document that states that risk management measures are required at a property to address contaminants present on site	*Environmental Protection Act*	14
Order to prevent discharge of contaminants	Require a person or business to undertake certain actions to prevent or reduce the risk of a discharge of a contaminant into the natural environment	*Environmental Protection Act*	1
Order for financial assurance	Require a person or business to provide financial security to ensure that funds are available to bring a property into compliance with environmental requirements	*Environmental Protection Act*	1
Proposals by the Technical Standards and Safety Authority			
Variance from fuel handling requirements	Allows people or businesses to not comply with specific requirements of the *Liquid Fuels Handling Code*	*Technical Standards and Safety Act, 2002*	15
Proposals by the Municipal Affairs Ministry			
Planning Act approval[1]	Approve amendments to a municipality's official plan Approve, where there is no official plan in place: • a plan of subdivision • consent to a severance of land	*Planning Act*	6
Proposals by the Natural Resources Ministry			
Aggregate licence[2]	Licence to remove over 20,000 tonnes of aggregate annually from a pit or quarry	*Aggregate Resources Act*	1
Total			**197**

1. For these proposals, posted during the exemption period and therefore not subject to leave to appeal under the *Environmental Bill of Rights, 1993*, another appeal route through the *Planning Act* remained available.
2. Ordinarily subject to leave to appeal under the *Environmental Bill of Rights, 1993* if not referred to the Local Planning Appeal Tribunal for a decision.

Appendix 10: Key Changes to the *Endangered Species Act, 2007* (the Act)

Prepared by the Office of the Auditor General of Ontario

Element	The Act pre-More Homes Act[1]	More Homes Act	Implications
COSSARO membership qualifications	Expertise from relevant scientific disciplines or Aboriginal traditional knowledge.	Adds "community knowledge" to qualifications.	Expands qualification for membership. Potential challenge to maintain scientific credibility of COSSARO.
Classification of species	COSSARO not required to classify species at lower risk level if it is at lower risk outside of Ontario	COSSARO required to classify species at lower risk level if it is at lower risk outside of Ontario.	Mandatory direction to COSSARO regardless of condition of species in Ontario or risk of extirpation.
Reconsideration of classification by COSSARO	Minister may order if of the opinion that credible scientific information indicates that the classification "is not appropriate."	Minister may order if of the opinion that credible scientific information indicates that the classification "may not be appropriate."	Less onerous test for Minister to require COSSARO to reconsider classification.
Listing—new listing or reclassification (SARO regulation)	Regulation must be amended within 3 months of Minister receiving COSSARO report.	Regulation must be amended within 12 months of Minister receiving initial COSSARO report or reassessment report.	Extends time before Minister must amend regulation to list species at risk.
Protections (for individuals of species and habitat)	Protections apply upon listing. Application can be exempted by Lieutenant-Governor-in-Council regulation.	1-year automatic suspension of protections for newly listed species for activities already permitted by authorization and Minister may order suspension of protections for up to 3 years if a new listing and Minister of the opinion protections likely to have social/economic implications, suspension will not jeopardize species survival, and one of listed criteria found and By regulation Minister may limit application of protections (areas/times/development stage).	Upon listing, protections no longer apply in all circumstances. Adds discretion for Minister to delay protections (up to 4 years for persons acting under permit/authorization). Ministry intends to amend EBR Act General Regulation to exempt orders suspending prohibitions from notice on Environmental Registry. Recognizes social/economic implications of protections. Discretion to scope protections.
Recovery strategies	Prepared within 1 year of listing if endangered, 2 years if threatened. Minister can extend time on certain grounds if publishes notice on Environmental Registry.	Minister can extend if publishes notice on a government website.	No longer required to use Environmental Registry to give notice.
Management plans (species of "special concern")	Prepared within 5 years of listing. Minister can extend if publishes notice on Environmental Registry.	Minister can extend if publishes notice on a government website.	No longer required to use Environmental Registry to give notice.
Government Response Statement	Published within 9 months of recovery strategy.	Minister can extend if publishes notice on a government website.	Adds discretion to extend time. Notice of extension not required to to be given on Environmental Registry.

Element	The Act pre-More Homes Act[1]	More Homes Act	Implications
Review of progress towards protection/ recovery	5 years from date of Government Response Statement.	As indicated in Government Response Statement (or 5 years if not indicated).	Adds discretion to extend time in specified circumstances.
Landscape agreement		Authorization to carry out multiple activities (that would otherwise be prohibited) throughout an area. Requires "beneficial actions" to assist protection/recovery of at least one listed species (one of the benefiting species must be an impacted species) and/or Pay Species Conservation Charge. Subject to criteria.	New type of authorization/ exemption. Alternative to species-specific protection and recovery actions. Benefiting species can be endangered, threatened or special concern; impacted species can be endangered or threatened. Not all impacted species required to receive corresponding beneficial actions.
Authorization of otherwise prohibited activity—"overall benefit" permit (s. 17(2)(c) permit)	If overall benefit to the species will be achieved within a reasonable time, reasonable alternatives considered, and reasonable steps taken to minimize adverse effects on individuals of species.	If overall benefit will be achieved within reasonable time or Pay Species Conservation Charge, and best alternative, minimize adverse effects on the species.	Allows payment of Charge as alternative to proponent taking actions to achieve overall benefit within a reasonable time. Shifts focus from effects on individuals of species to species as a whole.
Authorization of otherwise prohibited activity—significant social/economic benefit permit (s. 17(2)(d) permit)	Activity is of significant social/ economic benefit and Minister has consulted expert, no jeopardy to survival of species, reasonable alternatives considered, minimize adverse effects on individuals.	Activity of significant social/ economic benefit and pay Species Conservation Charge, minimize adverse effects on the species, no jeopardy to species survival.	Removes need to consult expert. Allows payment of Charge as alternative to proponent taking beneficial actions. Shifts focus of adverse effects from individuals of species to species as a whole.
Harmonization with approvals under other legislation	Activity that is approved under another act but would be prohibited under the Act permitted if: • there is an overall benefit to species; • reasonable steps taken to minimize adverse effects on individuals of species.	Activity approved under another act but prohibited under the Act permitted if: • activity prescribed; • species prescribed; • activity complies with prescribed conditions; • Species Conservation Charge is paid.	Removes overall benefit standard. Criteria will be prescribed by regulation.
Species at Risk Conservation Fund and Trust		Establish agency to collect and administer funds from the payment of charges. Payments to persons carrying out protection/recovery activities.	Fund administered by new agency; new agency's costs paid out of fund. Third party paid out of fund to carry out activities reasonably likely to protect or recover conservation fund species. Guidelines for use of funds to be developed; will be published on government website.

Element	The Act pre-More Homes Act[1]	More Homes Act	Implications
Species Conservation Charge		Can be made a condition of an agreement, authorization, permit or regulatory exemption, paid in addition to or in lieu of taking beneficial actions.	New charge as alternative to taking beneficial actions. Eligible species, amount of charge to be prescribed. Will be paid into the new Fund.
Enforcement officers	Identified in the Act. Inspect for compliance with provisions of act and permits.	To be appointed by Minister. Enforce compliance with Act, authorizations and regulations.	Allows for enforcement officers to be appointed. Authority for inspections/ enforcement of regulatory exemptions.
Species Protection Order		If activity will have/has significant adverse effect on species. If not yet listed or prohibitions do not apply because of Minister's suspension.	Emergency order (result of loss of automatic protections).
Habitat Regulations	Made by Lieutenant-Governor-in-Council. Must be adopted within 2 years of listing for endangered; within 3 years for threatened. Notice on Environmental Registry required if determined that habitat regulation not required.	Made by Minister. No deadline.	Changes regulation–making authority from Lieutenant-Governor-in-Council to Minister. Removes deadline for adopting habitat regulation. Eliminates requirement to post notice on Environmental Registry if determined habitat regulation not required.
Exemption regulations	Made by Lieutenant-Governor-in-Council. If would jeopardize survival or have significant adverse effects, Minister must consult with an expert, consider alternatives before recommending to Lieutenant-Governor-in-Council.	Made by Lieutenant-Governor-in-Council. If regulation will jeopardize survival of species or cause significant adverse effects, must post on Environmental Registry for 2 months.	Eliminates requirement to consult with expert, consider alternatives.
COSSARO reports	Can submit report on classifications to the Minister at any time.	Annual report on classifications to be submitted in January. Made public within 3 months of submission.	Date of report more certain. Extends time public has notice of COSSARO classifications before Minister must amend the SARO list.

1. *More Homes, More Choice Act, 2019*

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