KFN LOGO

***CONFIDENTIAL DRAFT***

***FOR DISCUSSION***

The Honourable Rod Phillips

Minister of the Environment,

Conservation and Parks

Government of Ontario

Toronto, Ontario

Dear Minister Phillips:

**RE: 10th Year Review of Ontario’s *Endangered Species Act* -- ERO 013-4143**

 **Kingston Field Naturalists Submission**

The Kingston Field Naturalists (KFN) has been active in conservation, education and citizen science for over 70 years. Our membership includes over 500 residents and families actively involved in protecting the environment and quality of life in the Kingston area. The KFN also owns and manages a number of properties selected for their conservation value and to provide habitat and protection for species at risk. For 70 years our members have monitored plants and wildlife and contributed to environmental stewardship in the Kingston area.

**Comments on the Discussion Paper:**

The KFN is pleased to have the opportunity to comment on the Minister of Environment, Conservation and Parks (MECP) Discussion Paper: “10th Year Review of Ontario’s Endangered Species Act” (the “Discussion Paper”). We are encouraged by the Ontario Government’s indication that it wishes to “consider modern and innovative approaches to achieving positive outcomes for species at risk.”[[1]](#footnote-1) There is compelling evidence of increasing threats to biodiversity in Canada and a clear need for enhanced and more effective protection of species at risk.[[2]](#footnote-2) Improvements to species at risk protection in Ontario are an important step towards addressing these challenges.

The Discussion Paper identifies a list of desired outcomes which are expressed at a high and very general level.[[3]](#footnote-3) The KFN supports the general objectives for this Review.

Neither the Discussion Paper nor the supporting documents made available on the Environment Registry of Ontario (ERO), however, provide any clear linkage between these desired outcomes and the “Areas of Focus” set out for the Review. The unfortunate result is that KFN is left with no framework to evaluate and respond to the Challenges set out in the Discussion Paper. This leaves KFN unable to systematically correlate its experience with *Endangered Species Act* (ESA) implementation in the Kingston area with either the Challenges or Discussion Questions.

Reviews of ESA implementation are, however, available as a backdrop to the Discussion Paper. The Environment Commissioner of Ontario (ECO) conducted extensive reviews of changes to and the implementation of the ESA in 2013[[4]](#footnote-4) and 2017.[[5]](#footnote-5) An independent 2017 analysis of the first 10 years of ESA implementation conducted by Ontario Nature, Ecojustice and the David Suzuki Foundation concluded:

 “The current lack of transparency, exemptions, and delays in recovery strategies are indicative of a grossly inadequate approach to recovering Ontario’s at-risk species. It’s time to prioritize the protection and recovery of species at risk in Ontario.”[[6]](#footnote-6)

In light of this evidence, it is clear that ESA implementation must be improved. The KFN supports those changes which will enhance protection for species at risk, result in clarity for all parties affected by ESA implementation and ensure timely decision-making by government. Such changes should reduce uncertainty and establish protection for species at risk as soon as possible after listing. The current system has become extremely complicated and is characterized by delays in species at risk protection. It is not transparent and detracts from the potential for sustainable development in Ontario.

Below we set out KFN comments in relation to the Challenges and Discussion Questions set out in the Discussion Paper.

**Areas of Focus and Discussion Questions:**

Landscape Approaches - Assessment and listing can only be done species by species. It is not clear to KFN that a “landscape approach” can or should play any role in that process. The basic protections provided by the legislation for listed species must continue to include protection of both the members of the species and important habitats. Recovery of listed species is not otherwise possible.

The exemptions provided for in regulation[[7]](#footnote-7) are already complex and overbroad. Moving from exemptions based on activity type – for example forestry or aggregate extraction etc., to authorizations based on a landscape approach – presumably based on species ranges or habitats, could be equally if not more confusing to affected parties. The Discussion Paper begs the question of whether a landscape authorization system is going to replace the current exemption system or represent a new level of approvals for activities which might adversely affect listed species and habitats?

There is simply not enough detail in the Discussion Paper for KFN to understand the mechanisms contemplated by MECP for use as part of a landscape approach. It is thus not possible for us to comment on whether this approach would improve the effectiveness of the legislation. KFN does not support further weakening of species or habitat protections.

MECP should provide a better description of its proposed landscape approach and how it might be implemented for public comment.

Listing Process and Protections for Species at Risk - Improved notice periods and greater transparency in relation to the evidence used for assessment and listing decisions would benefit both proponents of species protection and those affected by such listings. In the KFN view, however, these improvements should not require extensions of the timelines for government decisions already set out in legislation. Considerable delays in ESA implementation already take place in relation to both species and habitat protection.[[8]](#footnote-8) In a number of instances, the Ontario government has not met its obligations to produce recovery strategies and response strategies within legislated timelines.[[9]](#footnote-9)

KFN supports improvements to notice provisions which will give all parties affected by listing better information sooner, so that they can plan their activities in a way that is consistent with protection of listed species and habitats. These improvements do not, however, require extension of government decision-making timelines.

Species Recovery Policies and Habitat Regulations – The ESA makes provision for specific regulations,[[10]](#footnote-10) which among other things, define listed species’ specific habitats, including its location and such matters as, protections for this habitat, recovery strategy preparation and exemptions for activities in these areas. These regulations are not mandatory.

Where the development of a specific regulation would benefit a listed species and provide greater certainty about the management of its habitat in relation to a recovery strategy -- KFN suggests that the regulation will benefit all affected parties. Generic protections found in the ESA may not ensure listed species recovery or provide the detail needed to clearly indicate what other activities are permitted in these areas.

If timing for delivery of Government Response Statements is too short in some instances, then KFN agrees that an extension could be provided for in legislation. Such extensions should not, however, become the rule. Ministerial permission should be required for an extension and the reasons why the extension is requested and the Minister’s reasons for granting one should be made public. In addition, such an extension should not be an occasion for delay of either a Response Strategy or habitat protection regulations. Government delays have characterized ESA implementation and affected listed species protections.[[11]](#footnote-11) Consideration should be given to committing additional time and government resources to this work.

Authorization Process –The rules in regulation system created in 2013 was layered on to provisions in the statute[[12]](#footnote-12) which already provided for flexibility in the application of the Act. The result is a complex system of rules, exemptions, authorizations and regulations. A comprehensive review and rationalization of this framework could reduce administrative burdens, delays and costs for all affected parties.

The touchstone for any review of the authorization process, however, must be the purposes set out in section 1 of the ESA.

**Conclusion:**

KFN appreciates the opportunity to set out its views in relation to the Discussion Paper. Once the MECP has a clearer plan for changes to the ESA or regulations we suggest that specific proposals be set out for comment on the ERO. The ESA is the last line of defence for a number of species which are of central importance to our heritage. Any changes made to this legislation should ensure that this rich ecological endowment is passed on to future generations unimpaired.

Yours truly,

Anthony Kaduck

President, Kingston Field Naturalists

Copy to: Ian Arthur, MPP Kingston and the Islands

1. ERO 013-4143 Proposal Summary. [↑](#footnote-ref-1)
2. “Living Planet Report Canada: A national look at wildlife loss” World Wildlife Fund Canada 2017. This report found that half of monitored species in Canada (491 of 903) declined by an average of 83 percent between 1970 and 2014. [↑](#footnote-ref-2)
3. Page 2 of the Discussion Paper – bulleted list. [↑](#footnote-ref-3)
4. Environment Commissioner of Ontario 2013. “Laying Siege to the Last Line of Defence – A Review of Ontario’s Weakened Protections for Species at Risk”. [↑](#footnote-ref-4)
5. Environment Commissioner of Ontario, 2017. “Good Choices, Bad Choices, Environmental Rights and Environmental Protection in Ontario”- Chapter 7 p.216 – Getting Approvals Wrong: The MNRF’s Risk-Based Approach to Protecting Species at Risk. [↑](#footnote-ref-5)
6. “WITHOUT A TRACE? – Reflection on the 10th anniversary of Ontario’s Endangered Species Act, 2007” by Ecojustice, David Suzuki Foundation and Ontario Nature, paragraph 6 page 21. [↑](#footnote-ref-6)
7. Ontario Regulation 242/08. [↑](#footnote-ref-7)
8. *Supra*, note 4 at pages 17 to 19. [↑](#footnote-ref-8)
9. *Supra,* note 4 at pages 38 and 39. [↑](#footnote-ref-9)
10. Section 55 of the *Endangered Species Act*, S.O. 2007, Chapter 6. [↑](#footnote-ref-10)
11. *Supra,* note 4. [↑](#footnote-ref-11)
12. See sections 16 to 19 for example. [↑](#footnote-ref-12)