March 1, 2019

**Re: ERO #013-4143** **10th Year Review of Ontario’s Endangered Species Act: Discussion Paper**

To Whom it may concern,

The Quetico Foundation, established in 1954, is dedicated to the protection of wilderness in Ontario, with a particular focus on Quetico Provincal Park. Biodiversity in general, and the protection of species at risk and their habitat in particular, are of critical importance in maintaining healthy ecosystems across the province’s wilderness and other natural areas. Therefore, we view a strong and properly implemented provincial Endangered Species Act as a top priority.

**Introduction**

The Endangered Species Act, 2007 (ESA), when adopted, was considered to be a major step towards the protection and recovery of species at risk. Unfortunately, since that time the Act has been seriously compromised, especially in 2013, with the introduction of a permit-by-rule system with exemptions from the prohibition on harming species at risk or their habitat for many industrial users and developers. At that time, the Quetico Foundation joined many other environmental organizations in opposing those exemptions.

In 2013, the Environmental Commissioner of Ontario (ECO) discussed the new permit-by-rule system in a special report, titled ***Laying Siege to the Last Line of Defence: A Review of Ontario’s Weakened Protections for Species at Risk***. The report outlined serious concerns with reduced protection for species at risk, lack of enforcement and reduced public consultation.

In 2017, the ECO’s Environmental Protection Report, titled ***Good Choices, Bad Choices. Environmental Rights and Environmental Protection in Ontario,*** re-examined the effectiveness of the ESA. The Report states that “*The wellbeing and survival of Ontario’s species at risk has been dramatically undermined by the MNRF’s ‘modernization’ of its ESA approvals. Instead of individualized permits that require an “overall benefit” to species, the MNRF now allows many harmful activities under a permit-by-rule system that requires proponents only to minimize (not eliminate or compensate for) harm. To make matters worse, the MNRF turns a blind eye to whether proponents comply with these weakened rules and to the impact of the new system on species at risk. Meanwhile, the MNRF keeps the public in the dark about what activities it allows to harm species at risk, making it difficult to hold the ministry to account for this critically important program*.” The report concludes that the ESA is generally sound but that “*the MNRF has utterly failed to implement the law effectively*”, the ministry is “*failing to not just protect species at risk as intended* *under the law, but also to lead effective recovery programs*”, and “*the ministry’s compliance monitoring and enforcement actions for activities affecting species at risk are deficient*”.

Also, in 2017, the David Suzuki Foundation, Ontario Nature and Ecojustice issued a joint report, titled **Without a Trace? Reflecting on the 10th anniversary of Ontario’s Endangered Species Act, 2007.** It describes how the “*regulatory exemptions fundamentally change the way the ministry addresses harm to species at risk. Circumventing the permitting process, which requires government assessment and approval of harmful activities, the exemptions allow activities to proceed without government review or approval, as long as development proponents register online and meet the conditions set out in regulation. There is no requirement, unlike permits, to provide an overall benefit to the species harmed and thus promote its recovery*”. It concludes that “[a]*s the regulatory exemptions indicate, MNRF has chosen to put the interests of industry first, over the recovery of Ontario’s most imperilled species*”.

The ECO’s most recent (2018) Environmental Protection Report, titled **Back to Basics,** issues a stark overall assessment, stating that “*Ontario’s species are under tremendous pressure from habitat destruction, invasive species, overexploitation, pollution, disease and parasites, and climate change*”.

In summary, the ESA remains a powerful law for the protection of species at risk and their habitat, but it has been seriously compromised by the introduction of exemptions, a lack of proper implementation by the Ministry, and inadequate compliance monitoring and enforcement. These deficiencies must be addressed during the 10th Year Review.

**The ESA and its 10th Year Review**

The purposes of Ontario’s ESA are listed in the Introduction to the Act:

*1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.*

*2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.*

*3. To promote stewardship activities to assist in the protection and recovery of species that are at risk.*

The Quetico Foundation fully supports these aims. The current 10th Year Review of the ESA presents the opportunity to ensure that the Act is able to achieve its stated purposes and that it is fully implemented.

Unfortunately, however, the Discussion Paper that accompanies the ERO posting appears to mainly focus on the interests of developers and the reduction of protection for species at risk in the Act - by eliminating the science-based procedure for identifying and listing species at risk, extending the timelines for producing recovery strategy documents and further simplifying the permitting process for developers. As described below, the Quetico Foundation opposes all such changes.

**Comments on the Discussion Paper**:

*Focus 1 – Landscape Approaches*

The intent of this Focus is unclear. We support recovery strategies that are aimed at *both* the landscape (or ecosystem) level and the individual species level (both of which are available in the present ESA). A landscape approach can be beneficial for many species by, for example, helping to maintain or increase habitat connectivity. An approach aimed at the needs of individual species is also critical if they are to survive and recover. We believe that the landscape approach should augment, but must not replace the individual species approach.

*Focus 2 – Listing Process and Protections for Species at Risk*

The process for listing species at risk is already overly long, threatening their recovery. We oppose any proposal to extend these timelines. Species are currently listed based on the science-based assessment of the Committee on the Status of Species at Risk in Ontario (COSSARO). Species and habitat protection for threatened and endangered species is then applied automatically. We strongly oppose any change toward making these decisions political. The current COSSARO assessments are scientifically rigorous. There is no need for further review or assessment.

*Focus 3 – Species Recovery Policies and Habitat Regulations*

Recovery Strategies and Government Response Documents are often delayed (in some cases for years) to the detriment of the species at risk. We oppose any move to increase the timelines. Instead more resources should be made available to ensure that these documents are completed on time.

Reviews of progress are produced every 5 years and are critical to assessing the progress towards recovery and to identify problems with the recovery strategy in a timely fashion. We oppose any proposal to eliminate these reviews or to extend the timelines.

General habitat descriptions relate to the area currently inhabited by a species, whereas habitat regulations can also include areas that were formerly occupied by a species or where there is potential for the species to become re-established. While we agree that there may be cases where the general habitat descriptions are adequate, it is especially important to develop habitat regulations for any species with a limited range or that needs to expand its range to ensure its long-term survival.

*Focus 4 – Authorization Processes*

The requirements of overall benefits for species at risk are of fundamental importance to protecting species at risk. We oppose any proposal to permit developers to pay into a conservation fund as compensation for harming species at risk or harming or destroying their habitat. We do not support proposals to simplify the process for obtaining authorizations that harm species or their habitat. Compliance monitoring is inadequate, as discussed in the ECO’s 2017 Environmental Protection Report. Therefore, we support proposals to increase monitoring and enforcement.

**Quetico Foundation Recommendation for the 10th Year Review**:

The Quetico Foundation wishes to make the following recommendations to strengthen the ESA and ensure that it better protects the growing list of species at risk in Ontario.

1. Exemptions for forestry, hydro, mining and other industries that were put in place in 2013 must be eliminated, as they are a major threat to the recovery of species at risk and are inconsistent with the aims of the Act to protect and restore endangered species and their habitat.
2. The current science-based nature of the COSSARO listing process must be maintained, and must not be replaced with one based on political decisions (e.g., at ministerial discretion).
3. The COSSARO review and listing process should not be lengthened, in order that protection for species at risk be put in place in a timely fashion.
4. The timelines for development of Recovery Strategies and Government Response Documents are critical to the recovery of a species at risk, and should not be lengthened. Currently, these documents are often late, and more resources must be made available to meet the deadlines.
5. The current 5-year Review of Progress schedule should be maintained, as it is important to closely track the success or failure of a recovery effort over time.
6. Mandatory protection of habitat for threatened and endangered species must be maintained. Habitat protection must not be a political decision (e.g., ministerial discretion).
7. The current requirements of overall benefits for species at risk must be maintained, and developers must not be permitted to pay as compensation for harming species at risk or their habitat.
8. General habitat descriptions only deal with the area currently inhabited by a species, whereas habitat regulations can include areas that were formerly occupied or where there is potential for the species to become re-established. Therefore, it is especially important to develop habitat regulations for species with a limited range or that need to expand their range to ensure their long-term survival.
9. Strategies must be developed and resources allocated to address the currently inadequate implementation of the provisions of the ESA, to ensure adequate compliance monitoring and enforcement, and to increase public consultations.

We ask that these recommendations be incorporated in the 10th Year Review.

Sincerely,

Fraser Reeves

Executive Director

The Quetico Foundation