Algonquins of Ontario

May 3, 2019

Public Input Coordinator
Ministry of the Environment, Conservation and Parks
Species Conservation Policy Branch
300 Water Street, Floor 5N
Peterborough, ON K9J 3C7

BY ENVIRONMENTAL REGISTRY OF ONTARIO (ERO) SUBMISSION ONLY

To whom it may concern,

Subject: Proposed Changes to Ontario's Endangered Species Act (ERO Number: 013-4143) (Our File CP 252-24)

On March 4th, the Algonquins of Ontario (AOO) submitted comments to the Ministry of Environment, Conservation, and Parks (MECP) regarding the Ministry's review of the Endangered Species Act (ERO number: 013-4143). The submission focused on ways to improve safeguards for Species at Risk under the *Endangered Species Act* and ensure a more meaningful role for AOO and all interested First Nations and our unique traditional ecological knowledge in these efforts. In addition to comments addressing each of the four areas of focus in the discussion paper, we provided comments about the need for legislation and regulations that require true collaboration with AOO and First Nations regarding Ontario's Species at Risk protection and recovery efforts.

We have completed a review of the MECP's proposed changes to the *Endangered Species Act* and are deeply concerned by them. Specifically, we believe that they are regressive in terms of protections for Species at Risk and that **our comments regarding the engagement of the Algonquins of Ontario in the protection of Species at Risk were not addressed in any meaningful way**. We oppose the proposed changes regarding relaxing protections on species and their habitat, elevating Ministerial decision-making power over species listings and mechanisms of protection, and extending timelines for provincial obligations for protection and recovery planning, and are concerned that they will negatively impact our rights.

In light of our above concerns we are resubmitting our comments and urging the MECP to demonstrate more meaningful engagement with Indigenous peoples on this highly important and valued legislation.

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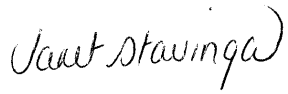
Sincerely,



Janet Stavinga
Executive Director

Attach 1 The Algonquins of Ontario Endangered Species Act Review Written Submission dated March 4, 2019

c.c. Chloe Stuart, Executive Director, Ministry of Environment Conservation and Parks
Kirsten Corrigal, Manager for the Endangered Species Act Review, Ministry of Environment Conservation and Parks
Marni Vance, Stakeholder Engagement Advisor, Species at Risk and Biodiversity Protection Section, Species Conservation Policy Branch, Ontario Ministry of Natural Resources and Forestry

Algonquins of Ontario

March 4, 2019

Public Input Coordinator
Ministry of the Environment, Conservation and Parks
Species Conservation Policy Branch
300 Water Street, Floor 5N
Peterborough, ON K9J 3C7

BY ENVIRONMENTAL REGISTRY OF ONTARIO (ERO) SUBMISSION ONLY

To whom it may concern,

Subject: **10th Year Review of Ontario's *Endangered Species Act*: Discussion Paper (ERO Number: 013-4143) (Our File CP 252-24)**

The Algonquins of Ontario (AOO) are advancing this submission to the Ministry of Environment, Conservation, and Parks (MECP) regarding the 10th Year review of Ontario's *Endangered Species Act*. Our submission focuses on our experiences with the *Endangered Species Act*, particularly as it relates to the American eel (*Anguilla rostrada*) and emphasizes the need to better involve First Nations in species listing and recovery planning efforts through Indigenous Guardians programs, Species at Risk (SAR) planning and recovery, and more effective integration of Traditional Ecological Knowledge (TEK).

Our comments are the result of a unique and rapid engagement process to meet the short deadline for comments provided by the MECP. This engagement process was facilitated and supported our technical experts from Shared Value Solutions Ltd. Along with comments organized in parallel with the four areas of focus in the Endangered Species Act Discussion Paper, we provide a primary comment on the need to have legislation and regulations that require true collaboration with the AOO, and all interested First Nations, regarding Ontario's Species at Risk protection and recovery efforts. Algonquin stewardship activities contributing to the conservation of species should be recognized and supported as an integral element in Ontario's efforts at preventing species from becoming at risk, and helping threatened species recover.

We note, for the record, that notification of the comment period on the *10th Year Review of Ontario's Endangered Species Act* and invitation to an input gathering session towards the 10-year review of such an important Act should **not** be considered in anyway to be consultation with the AOO. The AOO participated in an initial Indigenous engagement session on February 8, 2019, however, in the absence of "pro bono" services from Shared Value Solutions Ltd., we would not have had the capacity to provide further comments toward the review of such an

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important Act within the 45-day comment period. The AOO requires direct engagement on this review by MECP. This engagement cannot occur before the comment window is closed, but rather the MECP must provide sufficient time and capacity for meaningful and thorough engagement. Further, the MECP must provide assurances to the AOO that the Ministry will accommodate and incorporate input from such future engagement sessions within its 10-year review.

Given the rollout of the Discussion Paper, we are approaching the 10-year review with the impression that the MECP may have already predetermined the desired outcome of the *Endangered Species Act* review process – specifically to achieve a relaxed *Endangered Species Act* with longer species listing times, longer time frames in which to develop recovery strategies and government response statements, and more regulatory by-passes and "work arounds" for industry. Moreover, the examples of questions provided in the Discussion Paper that were intended to help guide reviewers in developing comments, appear to be biased to representing industry-first perspectives and possibly the desired outcomes MECP of the *Endangered Species Act* review[1]. We fear that this review, and the potentially desired outcomes of MECP, will be to achieve a streamlined process that will largely benefit industry/economic priorities and have little to no positive gains for the protection of species at risk or their habitats.

The AOO expect that our submission will be thoughtfully considered, and we look forward to meeting with MECP to commence a more effective dialogue on the involvement of the AOO in Species at Risk protection and recovery efforts across Ontario.

Sincerely,

Janet Stavinga

Janet Stavinga
Executive Director

Attach 1 The Algonquins of Ontario Endangered Species Act Review Written Submission

c.c. Chloe Stuart, Executive Director, Ministry of Environment Conservation and Parks
Marni Vance, Stakeholder Engagement Advisor, Species at Risk and Biodiversity Protection Section, Species Conservation Policy Branch, Ontario Ministry of Natural Resources and Forestry

[1] e.g. the examples provided in the second bullet points on page 4, 1 and 3 bullet points on page 5, all bullets point example on page 7.

Introduction

This section of our written submission on the 10th Year review of Ontario's *Endangered Species Act* provides background information on the Algonquins of Ontario (AOO) as well as an overview of several Algonquin practices and teachings. Acknowledging and understanding this information is fundamental to understanding and contextualizing our review comments that will follow. We want to know that you understand who we are, and while you may not agree with all of our comments, this understanding is essential to any meaningful engagement regarding the review of the *Endangered Species Act*.

Who are the Algonquins of Ontario?

Since 1772, when the first Algonquin Petition was submitted to the Crown, the Algonquins have been on a journey of rebuilding and rediscovery.

Algonquins have lived in present-day Ontario for thousands of years before Europeans arrived. Today, the Algonquins of Ontario (AOO) are comprised of ten Algonquin communities. These include the Algonquins of Pikwakanagan First Nation, Antoine, Kijicho Manito Madaouskarini (Bancroft), Bonnechere, Greater Golden Lake, Mattawa/North Bay, Ottawa, Shabot Obaadjiwan (Sharbot Lake), Snimikobi (Ardoch) and Whitney and Area. Based on a Protocol signed in 2004, these communities are working together to provide a unified approach to reach a settlement of the Algonquin land claim.

The Algonquin Negotiation Team consists of the Chief and Council of the Algonquins of Pikwakanagan First Nation, who are elected under the Pikwakanagan Custom Election Code and one representative from each of the nine other Algonquin communities, who are elected by the enrolled Algonquin Voters of each of their communities for a three-year term.

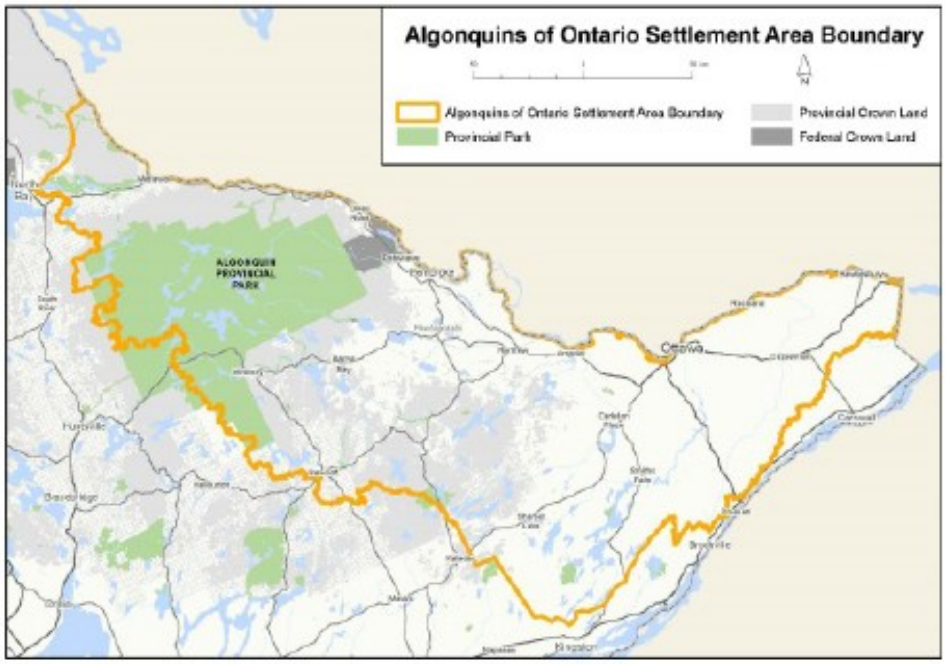
The Algonquins of Ontario claim includes an area of 9 million acres within the watersheds of the Kichi-Sìbì (Ottawa River) and the Mattawa River in Ontario, an unceded territory that covers most of eastern Ontario. More than 1.2 million people live and work within the Settlement Area (Figure 1). There are 84 municipal jurisdictions fully and partially located within the Settlement Area, including 75 lower and single tier municipalities and 9 upper tier counties.

On October 18, 2016, the Algonquins of Ontario and the Governments of Ontario and Canada reached a major milestone in their journey toward reconciliation and renewed relationships with the signing of the Agreement-in-Principle (AIP). The signing of the AIP is a key step toward a Final Agreement, and a modern-day Treaty, that will clarify the rights of all

concerned and open up new economic development opportunities for the benefit of the Algonquins of Ontario and their neighbours in the Settlement Area in eastern Ontario.

It should also be noted that in this review, where there is reference to the Algonquin Traditional Territory, only the Ontario side of the ancestral territory of the Algonquin Nation is included. As you may know Algonquins also used and occupied territory in the watershed of the Ottawa River in what is now Quebec. Nothing in this correspondence should be construed as being on behalf of the Algonquin First Nations that are based in Quebec.

Algonquins of Ontario Settlement Area Boundary



Algonquin Values and Teachings

Today, the Algonquins in Ontario share a history of common interests, traditions and needs arising from our common heritage. In the following section, we will outline several Algonquin practices and teachings that are fundamental to understanding the review comments that will follow. This understanding is essential to any meaningful engagement on this matter.

In developing these comments, we have been guided by the spirit and intent of the Teachings of the Seven Grandfathers. These teachings have been passed down from generation to generation and continue to be practiced today:

- Honesty (Gwayakwaadiziwin): Honesty in facing a situation is to be brave;
- Humility (Dabaadendiziwin): Humility is to know yourself as a sacred part of Creation;
- Respect (Minaadendamowin): To honour all Creation is to have Respect;

- Bravery (Aakode'ewin): Bravery is to face the foe with integrity;
- Wisdom (Nibwaakaawin): To cherish knowledge is to know Wisdom;
- Love (Zaagi'idiwin): To know Love is to know peace; and
- Truth (Debwewin): Truth is to know all of these things

Our survival on this land for thousands of years required us to apply our teachings to ensure the protection of the lands and waters upon which we rely. These teachings serve as the original instructions or "natural laws" that were built into our way of life. "Sustainability" is a modern term, but sustainability was long in practice by our people and our ancestors. There were consequences that occurred when we strayed from our natural teachings, instructions, and laws. We were constantly monitoring the environment and if changes occurred, we would adapt. It was (and is) a matter of survival. We had, and continue to have, deep connections to the land.

Some examples of teachings related to the protection of the environment of today and yesterday include the following:

- *Harvest one area for one season then move on elsewhere so the area that has been recently harvest can replenish.*
- *Be conscious of where your feet touch the ground (even as an individual, we can have impacts on the land).*
- *You are stewards of the land.*
- *Show love for all aspects of the environment, down to the smallest part.*
- *We are part of nature – we are all equal.*

Protection and interaction with the lands and waters of our territory have been central to our existence for thousands of years. We maintained this connection to the land in spite of the arrival of Europeans to our territory. However, this arrival dramatically impacted our way of life.

Harvesting of flora and fauna for food and trade has been integral to the Algonquin way of life since time immemorial. These practices embody an inherent respect for the environment and a fundamental commitment to the sustainable management of resources which have been passed from generation to generation.

The rights of Aboriginal people in Canada to engage in traditional activities, including the harvesting of wildlife, fish, migratory birds and plants, is recognized by the *Constitution Act, 1982* and upheld by the Supreme Court of Canada. As stewards of our ancestral lands, the AOO recognize the importance of exercising this right in a responsible manner.

In 1991, the Algonquins of Golden Lake (Pikwakanagan) took a ground-breaking step with the establishment of its first Hunting Agreement which lead into the development of today's AOO

Harvest Management Plan (HMP) for Algonquin Park and the Wildlife Management Units (WMU) within the Algonquin Territory in Ontario. The HMP is a living document, which is reviewed annually and updated as new information becomes available. Its primary purpose is to clearly articulate the framework in which the Algonquin harvest is conducted by Algonquin harvesters. In particular, the HMP contains clear provisions which specify the season and the geographic locations in which harvesting can occur, what the Sustainable Harvest Target is to be and who is eligible to participate.

Each year, the AOO establishes its Sustainable Harvest Targets for moose and elk for both Algonquin Park and each WMU for the Algonquin Harvest. These Sustainable Harvest Targets are established with input from the Ontario Ministry of Natural Resources and Forestry (MNRF) and are based upon data that addresses wildlife conservation and the sustainability of wildlife populations. The AOO is the one of the first Aboriginal groups in Canada that has voluntarily enacted these types of harvest management practices.

In order to harvest moose and elk under the auspices of the AOO, eligible Algonquins have agreed to participate in a draw-based tag system that is coordinated by the ten individual AOO communities.

Our tradition of collectively sharing food and resources has been practiced by the Algonquins for millennia. In preservation of this long-held tradition, the sharing of food and resources continues to be commonly practiced today providing meat to Elders and other community members that are unable to participate in the harvest.

Despite such efforts as the Harvesting Agreement, we are now in great competition with many others on this land for the resources that are here.

Industrial developments such as mines, hydroelectric dams and nuclear power developments have significantly impacted the lands and waters upon which we rely. The American Eel (*Anguilla rostrata*) is considered sacred to the Algonquin people and has been an essential part of Algonquin culture for thousands of years. Recently the number of eels in the St. Lawrence Basin has been reduced significantly, falling approximately 99% from local populations in the 1980s, a span of only 30 years, until we are left with a remnant population in Ontario. Recently it has become apparent that the American Eel may be close to being extirpated from huge areas of Ontario and consequently traditional Algonquin territory.

The American Eel of the Ottawa River is referred to as Kichi-sibi Pimisi, Kichi-sibi meaning ‘big river’ and being the original name given to the Ottawa River by the Algonquins and Pimisi being the Algonquin name for eel. The eel is a source of spirituality and is considered sacred by the Algonquin people. Historically the Algonquins were a people who were skilled at adapting to changing environments and conditions and they identify strongly with the eel’s characteristics. The eel is a prayer-carrier of the waters because it travels farthest, through salt and fresh waters, and can travel in wetlands according to TEK. It connects all of Mother Earth (Katherine Cannon, Algonquin Negotiation Representative and Chief of Algonquin Nation Kijicho Manito Madaouskarini pers. comm. September 23, 2011).

Hydroelectric dams have caused a catastrophic decline of this culturally significant species in our traditional watershed of the Ottawa River. For thousands of years the eel travelled up and down the Ottawa River unimpeded. The American Eel was plentiful during that time and was an important source of spirituality, food, and medicine for the Algonquin people. In the past century this has changed: the eel is now rarely seen and since 2007 is listed as Endangered under the Ontario Species at Risk program.

The Sharing and Welcome Belt reflects the ancient wisdom embodied in the understanding of Ginowaydaganuc, or the interconnectedness of all things animate and inanimate, and the sacred responsibility to the quality of relationships within that interconnectedness. Further, the belt articulates our gratitude to the Creator and Mother Earth for providing us with our lives within Ginowaydaganuc and recognizes our knowledge of the love our Creator shares with us.

We must share this love for all of creation and Mother Earth's capacity to support life on Earth by accepting the responsibility to care for her if we take from her. The belt holds the Algonquin as the centre figure with the French and English on each side, agreeing to "share the grand resources of the land" conditional under natural law, to the full commitment to the sacred responsibility to care for the land as guided by the ancient wisdom of the Algonquin.

Prior to contact we did not need laws and government to understand environmental health, the introduction of chemicals (pollution) brought the need for outside laws and monitoring. This history and context guides the comments that follow.

The *Endangered Species Act*'s Failure to Protect the American Eel in AOO Territory

As mentioned above, the American Eel is considered sacred to the Algonquin people and has been an essential part of Algonquin culture for thousands of years, yet it is facing extirpation from large areas of Ottawa River watershed. Prior to the announcement of this review, Ontario had already undermined the credibility of the *Endangered Species Act* (ESA) by ceasing to adequately address protection of the American eel in the Ottawa River Watershed. Protecting endangered species has often been treated from a cost savings and limiting impacts to industry prioritization perspective and the discussion paper being advanced by the Ministry of Environment, Conservation, and Parks (MECP)offers little hope that anything else will change to make this a stronger Act for the benefit of Species at Risk in Ontario and within Algonquin Traditional territory.

We have witnessed first-hand several ways in which the ESA has failed to protect the American Eel and we are concerned that the potential outcome of this review will exacerbate these circumstances. This is perhaps most prevalent in Ontario's continued delay to produce a Government Response Statement (GRS) for the American Eel. Area of Focus 3, Challenges, Bullet Point 1 states that the 9-month time limit is too short for the government to develop response statements, and that there is no option under the Act to extend this timeline when needed, but this is incorrect. There is already an implement in the act to extend this timeframe

for complex species and impacts. Ontario has continually extended its legal timeline for developing a GRS for the American Eel for this reason. The GRS for the American Eel should have been completed in Spring of 2014. The AOO feel that Ontario has used the ESA timelines and exemptions to the benefit of industry and to the demise of the eel. For 5 years, Ontario has not been able to produce a final GRS or commit to implement actions to recover and protect eel in the Ottawa River. Year after year Ontario continues to allow the endangered eel to be killed and prevented access at hydro dams. If the hydro industry is currently permitted to continue to kill and impact the endangered eel (which is critically in peril in the Ottawa River) under the ESA, how can the AOO or any Indigenous group feel positive that the review of the ESA would do anything but continue to place species at risk such as the American eel, at further risk?

We are deeply concerned that the government and industry will turn its back altogether on species integral to Algonquin culture such as the eel. Using the ESA to delay developing recovery strategies and GRS on principles that the species is complex, that additional engagement is required with businesses, indigenous peoples, landowners and conservation groups among others must not continue to be used as scapegoat technique. There is no shortage of consultation or engagement that has occurred with any group regarding this species. The AOO submitted substantial comments on the Draft Government response Statement, including 42 recommendations for eel recovery action prioritization, on February 21, 2018. To date the AOO have yet to receive a fulsome response from Ontario and furthermore Ontario has still not produced a Final GRS for the eel.

Primary Comment: Legislative and Regulatory Requirements for First Nations Collaboration in Species at Risk Recovery and Protection

As the above makes clear, there is a pressing need for true collaboration with First Nations regarding Ontario's Species at Risk protection and recovery efforts. True collaboration begins with meaningful communication, notification, consultation, and leads to joint planning and work to protect Species at Risk and related habitat. Currently there are no legislative or regulatory requirements for such collaboration or engagement to occur in Ontario. This is a major deficit in protection for species at risk given the fact that First Nations peoples have been caring for the wellbeing of all species from time immemorial, have unique knowledge of the habitat and characteristics of species at risk, and have a high abundance of species at risk within Traditional Territories.

Ontario's Species at Risk recovery and protection legislation must include legislative and regulatory requirements for Ontario agency staff to directly engage and collaborate with First Nations in recovery and protection programs. Such legal requirements are best co-developed between regulators and First Nations. Failure to take this initial step could lead, at best, to weak integration of Indigenous knowledge and perspectives, and at worst, to a continual decline in Species at Risk through missed opportunities for implementing joint Ontario-Indigenous recovery efforts. This is made clear in a recent study conducted by Hill, Schuster, and Bennett

in 2019[1] where the authors found that despite federal legal requirements, the Government of Canada is repeatedly missing opportunities to improve the status of listed species at risk by failing to co-ordinate recovery efforts with Indigenous partners, or accessing traditional knowledge that could aid in the understanding of species' traditional ranges and current status.

Our experiences with Ontario mirror what Hill, Schuster, and Bennett found with federal government Species at Risk programs.

The Province of Ontario needs to look to the Hill, Schuster, and Bennett study to learn from the findings, and do better at working with First Nations to develop a Made in Ontario Treaty Lands approach to Species at Risk recovery efforts and actions. In practice, we recommend the following set of mechanisms as methods to be included in legislation and regulations for improving the province's relationship with First Nations on SAR recovery efforts. Please note that this is not an exhaustive list and that decisions ought to be made in consultation with First Nation peoples. The mechanisms we recommend for consideration are:

- Significant, cross-Ontario Indigenous Knowledge Holder Membership on the Committee on the Status of Species at Risk in Ontario (COSSARO).
- Include a standing item on the meeting agendas of COSSARO and the Program Advisory Committee (PAC) regarding the inclusion of Traditional Ecological Knowledge (TEK).
- Develop guidance documents with First Nations peoples for:
    - how to effectively incorporate Indigenous knowledge in Species at Risk protection and recovery;
    - how to assess, evaluate and provide inclusive consideration for species considered to be at risk by First Nations people due in relation to food security, harvesting, teaching, medicine and spiritual needs; and
    - how to collaborate effectively with Indigenous Guardians on Species at Risk monitoring, protection, and recovery.
- Adapt the structure of species recovery teams to create a team dedicated to Traditional Ecological Knowledge integration AND move to have Traditional Knowledge holder representatives on all species recovery teams.
- When developing or updating species recovery strategies and government response statements include a First Nation engagement and collaboration component that

[1] Cassandra J.Hill, Richard Schuster, and Joseph Bennett, 2019. Indigenous involvement in the Canadian species at risk recovery process. Environmental Science & Policy. Volume 94, April 2019, Pages 220-226. https://www.sciencedirect.com/science/article/pii/S1462901118310906

includes travelling to communities to learn and transfer species at risk knowledge allowing the *braiding* of Indigenous and western science.

- As part of the development, updating, and/or evaluating the success of a species recovery strategy and government response statements, include conducting Species at Risk inventories for those species on First Nation traditional territories, including reserve lands. This should be done in full collaboration with First Nations and include the involvement of local Indigenous monitors and/ or guardians.
- Continue to administer the Species at Risk Stewardship Fund (SARSF), especially to support Indigenous-led Species at Risk recovery efforts, which also generates the added benefit of local employment and capacity building within First Nations across the province of Ontario.

Area of Focus 1: Landscape Approaches

A landscape-level approach could better integrate Indigenous worldviews into the Endangered Species Act and harmonize with existing federal processes, if it were implemented in tandem with single-species approaches.

It is not a coincidence that you often find concentrations of Species at Risk on First Nation surveyed reserve lands and traditional territory lands managed by First Nations across Ontario. First Nation peoples have roles and responsibilities to manage the land base within the surveyed reserve lands, and traditional territories. Doing so upholds our rights to the continued existence of all species and habitats.

Populations of Species at Risk in Ontario have continued to decline over the past decade. A landscape-level approach will protect multiple species will provide a more effective way to reach Ontario's conservation targets, with the result of more effectively preserving habitats and species that are of significance to Indigenous peoples in Ontario. For instance, protecting habitats on a landscape-scale will benefit Species at Risk across traditional territories, and non-listed species that are also important to First Nations, such as moose and deer.

Federal, provincial and territorial governments have agreed to a set of principles in the Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada [2] to guide collaborative work and to operationalize the transformation to multi-species and ecosystem-based approaches, building on existing collaboration through the Accord for the Protection of Species at Risk[3], and federal-provincial/territorial bilateral agreements on species at risk conservation. Through the Accord, Ontario has made a commitment to ensure multi-jurisdictional cooperation for the protection of species through the development and

[2] Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada, 2018. https://www.canada.ca/content/dam/eccc/documents/pdf/species-risk/pan-canadian-approach-transforming-species-risk-conservation-canada.pdf

[3] Federal, Provincial and Territorial Accord for the Protection of Species at Risk, 2014. https://www.canada.ca/en/environment-climate-change/services/species-risk-act-accord-funding/protection-federal-provincial-territorial-accord.html

implementation of recovery plans, and we understand this multi-jurisdictional cooperation must include First Nations.

The eight guiding principles in the Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada include, “Principle 4: Indigenous Engagement:

- Planning and implementation approaches will aim to renew relationships and strengthen collaboration between our governments and Indigenous peoples, by:
    - Recognizing and respecting the role of Indigenous peoples in the conservation of species at risk and biodiversity more broadly;
    - Increasing capacity for Indigenous-led community stewardship planning and action; and
    - Co-developing stewardship agreements.

Harmonizing the Federal, Provincial, *and* Indigenous approaches for protecting species and habitats will leverage the benefits of joint planning and implementation, maximize the ability to protect and recover species at risk.

We stress that a landscape-level approach could better integrate Indigenous worldviews into the Endangered Species Act and harmonize with existing federal processes, if it were implemented in tandem with single-species approaches recognized by the in the Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada, *and* if it avoids development approvals that impact species at risk with no oversight or consideration for species-specific habitat requirements, and lowering the standard of protection.

Area of Focus 2: Listing Process and Protection for Species at Risk

A) Improve the process of species listing by the Committee on the Status of Species at Risk in Ontario (COSSARO) by ensuring the incorporation of Traditional Ecological Knowledge (TEK) into western science-based decision-making in practice, not just on paper.

The *Endangered Species Act (2007)* c.6, s.5(3) states that “COSSARO shall classify species based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge”, however there is no clear information on the mechanisms for retrieving, adequately considering, and incorporating aboriginal traditional knowledge (ATK) or traditional ecological knowledge (TEK) into the listing process. For example, none of COSSARO’s current members are identified as Indigenous or identified as experienced in braiding TEK with western science. Further, there is no formal COSSARO ATK subcommittee dedicated to addressing these shortcomings. Finally, Ontario has no publicly available written guidelines for incorporating ATK into the species assessment

process. As recently shown by Hill, Schuster and Bennett (Ibid), there is a distinct lack of Indigenous involvement in species at risk legislation and decision-making at the federal level – and we know at the provincial level. First Nation involvement in species at risk legislation and decision-making at the provincial level will only improve through the provision of "clearer and more precise guidelines for the inclusion of Indigenous knowledge and perspectives [… and] transparency in the way Indigenous involvement is documented" (Ibid, p. 225).

We recommend that the Ministry of Environment, Conservation, and Parks (MECP) review the *Endangered Species Act* with the goal of improving the process of assessing and classifying species by providing more transparency on the retrieval, adequate consideration, and incorporation of ATK and TEK. This can be done using a number of strategies including, but not limited to:

- providing COSSARO membership spots to First Nations people or ATK and TEK holders, and adequate capacity funding to facilitate their participation;
- creating written guidelines on how ATK and TEK are retrieved, adequately considered, properly protected, and incorporated into braided science-based and Indigenous Knowledge based species assessments;
- establishing a formal COSSARO TEK subcommittee responsible for retrieving ATK and TEK and assisting western scientific experts with its inclusion in species assessments;
- ensuring there is a standing agenda item for discussion of ATK and TEK at all COSSARO meetings; and
- requiring COSSARO members (with western scientific expertise) to attend TEK learning sessions or workshops with knowledge holders.

B) Make information on species listing as well as automatic species and habitat protections more accessible to, but not open for debate by, the public.

In the "10th Year Review of Ontario's *Endangered Species Act*: Discussion Paper", the MECP attributes many of the asserted "challenges" associated with the Act to uncertainty, a lack of information, or lack of transparency. However, the Discussion Paper simultaneously suggests processes that would further muddy the waters. For example, revising the Act to allow for Ministerial discretion on whether or not to apply species or habitat protections (versus automatic provisions upon listing) would only contribute to a further lack of transparency and confidence in the process. To uphold the purpose and spirit of the *Endangered Species Act*, decision-making regarding the status of at-risk wildlife in Ontario (and their subsequent level of protection) should be left to an independent panel, whose members base decisions on evidence-based science and ATK/TEK, and a process that is straightforward and objective. Ontario should absolutely avoid a process where special interest lobbyists are given the opportunity to contest species listing and automatic protection, or to put political pressure on the Minister to do so.

Lack of transparency should not be used as an excuse to have special interest lobbyists assert undue political influence over a science and ATK based process. If there is a perceived lack of

information or lack of transparency that is perceived to create barriers for the public or industry to pursue recreational or economic development pursuits in a way that respects and accounts for the *Endangered Species Act*, the MECP should explore ways to better ***educate*** those lacking understanding on species listing and automatic protection clauses so they may avoid harm to at-risk wildlife in their pursuits. This may include, but should not be limited to:

- Hiring more ministry staff, including First Nation staff, dedicated to responding to public inquiries about the *Endangered Species Act; or*
- Establishing more public-friendly interfaces (e.g. website, infographics, help telephone line or email address, etc.) to improve knowledge and understanding of the Endangered Species Act, including the approaches to braiding ATK/TEK with western science as we advocate here.

Area of Focus 3: Species Recovery Policies and Habitat Regulations

Species at Risk do require habitat protections and effective recovery activities do ensure the species can both survive and thrive for generations to come. Species recovery strategies, government response statements, and habitat regulations must be carried out in a way that promotes species protection, survival, and recovery. It is not about the timelines of the recovery strategy and government response statement, but rather ensuring these tools contain activities and mechanisms that truly enable SAR recovery.

The Discussion Paper rightfully points out that the development of Government Response Statements and Recovery Strategies, as well as the progress evaluations of these tools, are a sometimes time consuming and complex process. However, the main issue with these tools is not the timeline but rather **the ability for these tools to effectively deliver on species recovery outcomes**. A key component to ensuring effective delivery on recovery actions is a collaborative approach between the Government of Ontario, scientists, and First Nations peoples with knowledge of the species in question that leverages the unique knowledge, resources, and talents of all parties involved. This includes ensuring Indigenous ATK/TEK is included, and an inventory of the SAR in question is conducted on Indigenous lands, involving local Indigenous knowledge holders and leaders who are carrying out recovery efforts in those areas. The some of the complexity and much of the time involved in developing Government Response Statements can be eliminated once effective collaborative tables, with Government of Ontario, scientists, and First Nations peoples are established, resourced and supported through legislation and regulation.

The Discussion Paper states that the 9-month time limit is too short for the government to develop Government Response Statements, and that there is no option under the Act to extend this timeline when needed. This not correct. There is already a measure in the Act to extend this timeframe for complex species and impacts. For example, Ontario has continually extended its legal timeline for developing a Government Response Statement for the important and

valued American eel for this reason. Using the Act to delay developing recovery strategies and Government Response Statements on principles that the species is complex, that additional engagement is required with businesses, Indigenous peoples, landowners and conservation groups etc. must not continue to be used as scapegoat technique.

In terms of habitat regulations, it is incredibly problematic that the Discussion Paper suggests that habitat regulations should not be warranted when said regulations impact the certainty of business interests. The purpose of habitat regulations is to protect Species at Risk habitat. It has been argued that these regulations are not necessary and could be replaced by key habitat descriptions. However, this argument has been made without an evaluation of the effectiveness of key habitat descriptions in lieu of habitat regulations. As a result, we recommend that habitat regulations continue to be a requirement until an evaluation of the effectiveness of key habitat descriptions has been conducted. In addition, we wish to note that development has the potential to occur within areas under habitat regulations: the key is that the development is a designed in a manner that avoids impacts to the Species at Risk within the habitat regulations. The above considerations together lead us to recommend that habitat regulations continue to serve as the mechanism for protecting Species at Risk, and that when development in these areas occurs the appropriate mitigation and impact reduction measures are taken, in collaboration with impacted Indigenous communities.

Area of Focus 4: Authorization Processes

A) While economic development is important and necessary in Ontario, the purpose of the Ontario Endangered Species Act is not to promote or ease economic development in Ontario but to protect and recover Species at Risk and ensure that authorized development activities do not negatively impact Species at Risk or their habitats.

The assessment, protection and recovery of Species at Risk in Ontario is a complex process that can take significant time and effort to successfully achieve. It is recognized that the process of authorization can be also complex, take time to complete, and conflict with the planned schedules of development projects. It is possible that an increase in government resources to review these applications could speed authorizations times. In addition, several exemptions have already been provided to specific industrial sectors and activities that have streamlined or reduced the complexity and time needed for the authorization process, generally at the expense of consideration for protection to Species at Risk and their habitats. It is possible that a more standardized authorization approach for routine development activities and or more commonly encountered Species at Risk could be employed, provided that these approaches are geared towards species protection and recovery.

Removal of duplication in legislation designed to protect and recover Species at Risk in Ontario would be a good practice to conserve resources, provided the purpose of protecting and recovering these species is met.

Collaborative opportunities with First Nations peoples in Ontario will be beneficial to the authorization process. The Ontario *Endangered Species Act* should include an obligation to consult with First Nation communities that may be impacted by an authorization and proceeding with an authorization should not occur until this happens. In working with First Nations there may also be opportunities to work in harmony with federal agencies responsible for managing Species at Risk that may straddle First Nation reserve lands, and traditional territories found outside of provincial jurisdiction. In addition, we recommend Ontario explore Indigenous Guardians programs as a more strategic and collaborative enforcement mechanism that enhances both the level of participation of First Nations while protecting Species at Risk in more substantive manner rooted in Indigenous knowledge and reconciliation.

B) The ecological complexity needed to sustain Species at Risk in living ecosystems is married to First Nations' cultural relationships to place and is largely incompatible with having businesses paying into a conservation fund dedicated to species at risk conservation or allowing conservation banking to enable addressing requirements for species at risk prior to activities.

The Discussion Paper asks: "What new authorization tools could help businesses achieve benefits for species at risk? (e.g., in lieu of activity-based requirements enable paying into a conservation fund dedicated to species at risk conservation, or allow conservation banking to enable addressing requirements for species at risk prior to activities.)" Some answers to this question may lead to conservation banking where species/habitat losses and gains become assets that are bought and sold as market commodities.

The idea that ecosystem attributes can be identified and made interchangeable does not match our First Nation understanding of the ecological complexity needed to sustain all species, including Species at Risk in living, dynamic ecosystems attached to our cultural relations to place. Conservation banking does not work well with many of the certain uncertainties we have come to know and understand: the uncertainties of future rates of loss; the uncertainties of climate change; the uncertainties of invasive species; the uncertainties of ever increasing cumulative effects of generations of industrial development on species and ecosystems, and; the uncertainties of such changes in the context of the sensitivity of wildlife populations to various new development projects.

Some may claim that conservation banking or "offsetting" will be used only as a "last resort" within a mitigation hierarchy (where avoidance, minimizing adverse effects, and restoration must be considered first). Others may claim that conservation banking will improve areas beyond industrial development, areas that are not of interest to industry that might benefit from conservation activities. Environmental organizations will be keen to support conservation banking because it may improve their financial situations if they become part of the conservation banking system. But we are concerned that even the existence of conservation banking or offsets will lower the threshold for approving projects with significant effects, and the earlier stages of the mitigation hierarchy will simply be passed over if offsetting is better for industry and business.

Any move toward conservation banking by the Government of Ontario should only proceed with the Free, Prior and Informed Consent of First Nation rights-holders to ensure that the many issues we have with this approach, including governance, First Nation oversight, limits to offsetting, equivalence approaches to calculating offsets, and equitable distribution of costs and benefits among affected communities, are fully considered. We have recently seen the previous Ontario government's approach to carbon offsetting, through which First Nations were virtually excluded from determining the methods for the approach, and virtually excluded from receiving any economic benefits. The current Ontario government recognized the myriad of issues with a banking approach to carbon offsetting (and hopefully understood those issues from the perspective of First Nations) and moved to quickly cancel the program. We urge the current Ontario government to reflect carefully on this experience before advancing down the path toward conservation banking.

Closing Remarks

The AOO expect to be meaningfully engaged by the Ministry on the 10 -year Review of the ESA and these comments are to be treated as preliminary until such as time that the Ministry has arranged to meet with the AOO to discuss our concerns in depth. More specifically, we expect the Government of Ontario to take progressive steps towards enhancing the involvement of Indigenous knowledge holders and land users through meaningful integration of TEK and collaboration with Indigenous guardians in SAR recovery efforts across the province, and especially within the Algonquins of Ontario Settlement Area. Given the unique connection we have to our lands and waters, and the species that inhabit them, we are well positioned to collaborate with Ontario to enhance SAR recovery efforts. Ontario must continually engage and inform the AOO in Species at Risk recovery efforts.

The AOO expect that these comments will be thoughtfully considered and we look forward to meeting with MECP to commence a more effective dialogue on the involvement of the AOO in Species at Risk protection and recovery efforts across Ontario.