

January 19, 2020

Mr. Troy Anthony
Crown Forests and Lands Policy Branch
Ministry of Natural Resources and Forestry
70 Foster Drive, Suite 400
Sault Ste. Marie, ON P6A 6V5

via email: cfsaspeciesatrisk@ontario.ca

Re: *Proposed changes to the Crown Forest Sustainability Act, 1994, ERO #019-1020*

Dear Mr. Anthony,

Please find herein our comments on the “proposed changes” to the Crown Forest Sustainability Act, 1994 (CFSA), which we are submitting as experts in wildlife ecology, management, and conservation and as former members of the Provincial Forest Technical Committee (IDT) and the Provincial Caribou Technical Committee (JCR and IDT) under MNRF. We are fully familiar with both the CFSA and the Endangered Species Act, 2007 (ESA); we both engaged frequently with MNRF staff and several Ministers over the course of several years on the perennial issue of reconciling the two statutes on matters of species at risk, particularly boreal caribou.

Our remarks are organized into 1) concerns about the consultation process on forestry-related matters and 2) comments on the proposed changes to the CFSA. We point out a number of reasons why the public consultation process for the proposed Forest Sector Strategy and related proposals is both confusing and disingenuous. As for the proposed changes to the CFSA themselves, we provide an explanation for why these are based on a false premise, i.e., that this statute is duplicative with the ESA, and why they simply reinforce the weakening of protection for species at risk and raise important doubts about the current state of sustainable forest management in Ontario.

1. Consultation process

Before commenting on the substance of the ERO posting, we wish to emphasize on record, the chaotic and confusing process of consultation on changes this government is making to forestry-related policies and legislation unveiled over the past several months:

- Releasing a Forest Sector “Strategy” for public consultation on December 4, 2019, on the same day Omnibus Bill 132, *Better for People, Smarter for Business Act, 2019*, which already included several amendments to the CFSA, was ordered for third reading. The bill received Royal Assent 6 days later;
- Releasing five separate “Proposals to Support the Draft Forest Sector Strategy” two weeks later and prior to the end of the comment period for the strategy itself;

- Having the comment period for all these documents straddle the new year when almost everyone is on extended holiday;
- Providing no explanation for why the comment period for this ERO notice on changes to the CFSA was only 1 month, whereas comments for the Forest Sector Strategy are open for another 2 weeks, and the other four notices are open for an additional month;
- Providing almost no details in this ERO notice on the actual legislative changes being “proposed” to the CFSA in a confusing narrative that seemed to be most intent on persuading readers in lofty language that Ontario has a world-class “sustainable forest management system” that effectively protects species at risk; and
- Providing no explanation for the relationship between CFSA-related amendments already passed in Bill 132 and this set of proposed changes, some of which overlap.

Regarding the last two points, we are grateful for your personal diligence in responding to our email requests for details and explanations.

Overall, this fragmented style of release of documents with minimal substantive content suggests a disingenuous mode of consultation with the public and abrogation of authentic outreach prior to decision making, as is required by the Environmental Bill of Rights, 1993.

2. Proposed changes to the CFSA

The action of amending the CFSA is based on a false premise that has perpetuated for years, namely that this statute is duplicative with the ESA.

The purposes of the two statutes are entirely different, with the CFSA devoted to sustainable forest management, while the ESA was explicitly designed to prioritize considerations for species at risk. This means that while the CFSA seeks to mitigate impacts on species at risk during timber extraction activities (i.e., making them less bad than they otherwise would be), the target of the ESA is recovery of species at risk and their habitat (i.e., improving their status and condition of their habitats). We note that although the dramatic ESA amendments included in Bill 108 in mid-2019 weakened the legislation considerably, the purpose of the Act did not change.

Given the ESA amendments that have already been enacted, the proposed changes to the CFSA in this notice simply reinforce the weakening of protection for species at risk in Ontario.

The proposed change to eliminate forest management consideration of the ESA is based on the assumptions that: 1) the FMP under the CFSA will protect species at risk and 2) the second-growth forest will provide the same benefits, in future, that the primary forest, i.e., one derived through natural processes, currently does. The latter has been termed “the grand assumption” (Thompson and Welsh 1989) and has been tested with only a few species by this point. While work on American marten has suggested that species can recover only in some old second-growth forests in some areas, other species such as boreal caribou and olive-sided flycatchers have remained absent. In a comprehensive review paper led by Canadian Forest Service (CFS)

scientists, Venier et al. (2014) noted that this assumption remains of considerable concern for sustaining all of Ontario's biodiversity in managed boreal forests in the long term. Those authors especially singled out boreal caribou as a species of concern.

The CFSA recognizes environmental sustainability as one of the three pillars of SFM. However, the CFSA has been in force for more than 25 years, and during that period boreal caribou have continued to decline in Ontario, based on range retraction data. Although the province has not monitored populations for more than 5 years, the last information recorded in 2014 documented declining populations throughout all forest management units. This is as clear an indication as possible that current practices are not sustainable from an environmental perspective. Since 2008, during which forestry enjoyed an almost uninterrupted exemption to the ESA requirements, disturbance on the ranges within the managed forest has continued to increase. Yet there has been sustained insistence from the forest industry that caribou needs are being met effectively through forest management in Ontario, without any substantiation.

The former Ontario Provincial Caribou Technical Committee, of which we were both members, first alerted MNRF in 2012 that provincial forest management planning addresses neither the requirements of the Caribou Conservation Plan (CCP; as obliged under the provincial ESA) nor critical habitat effective protection (as obliged under the federal Species At Risk Act, SARA). While it was an important step forward in landscape-level management, the insufficiency of the Boreal Landscape Guide (BLG) by itself to manage caribou habitat can be partly explained by the scale mismatch between the Forest Management Units and the size of area (the ranges) required by caribou populations. Secondly, that guide was produced prior to significant research on caribou in Ontario and Quebec, that needs to be addressed to make it relevant and current. Even more fundamentally, however, the BLG provides no consideration of the contribution of forest management activities over time to cumulative disturbances (including roads, railways, mining, hydro, wildfires, etc.) within the ranges, which is a key documented risk to caribou. The absence of any strategic consideration of road development and restoration from a caribou perspective in forest management planning today, is a major flaw in the process. Landscape quality for any wildlife species is not a current consideration in roads planning (except for specific AOCs) at the forest management unit or range levels.

Some local populations, such as Kesagami and Sydney have been shown as having a high probability of extirpation in the analyses done Environment and Climate Change Canada. Recent data demonstrate that almost all of the caribou ranges in Ontario exceed the threshold of 35% disturbance suggested by Environment Canada as necessary for populations to remain self-sustaining. This does not in and of itself indicate that the ranges are insufficient for self-sustaining populations of caribou, but in the face of no better data, a conservative approach (i.e., precautionary) must be maintained. The Ontario caribou research, jointly conducted by OMNR, CFS and the University of Guelph (2013-17), showed that roads are deleterious to caribou populations and confirmed that, in some of the oldest second-growth in Ontario near Nakina, caribou were still mostly absent. In particular, BLG suggests caribou habitat recovery at around 40-60 years (Table 6, p. 44) but we now know that this is incorrect based on work across the country.

The BLG also uses “large landscape patches” (LLP) to safeguard habitat, but in the case of caribou, it is well known that biophysical attributes cannot be considered on their own without attention to the overall condition of the range. Yet the BLG still emphasizes these for boreal caribou, which as indicated, are clearly too small and are focused on too specific habitat criteria, such as calving sites and nursery areas (which no longer conform with the most recent Ontario and Quebec research that shows caribou calving sites are indistinguishable from other used habitats) and wintering habitat, which is important but the proposed LLPs are much too small. The road direction in the BLG does not require road regeneration (it only suggests) and does not specify some upper road density limit that cannot be surpassed during and after logging. Finally, the BLG is applied at the FMU scale, but caribou populations use areas that exceed even the largest FMU, indicating that the BLG is flawed with respect to sustaining this species because of a scale mismatch.

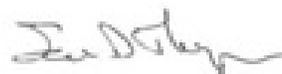
Given that forest management in Ontario has not sustained caribou, not requiring forest management planning to undergo a test through the ESA is a further step backwards and away from sustainable forest management. It is impossible to suggest any other result, given 1) the evidence of caribou decline over 25 years, 2) the lack of monitoring of both caribou populations and the effectiveness of the BLG, and 3) the lack of data to enable forest management planning to adapt to realities on the ground. The proposed changes to the CFSA are not in the best interests of the people of Ontario, and while it may be in the best interests of the forest industry in the short term, it will not be so in the long term, as Ontario reneges on its commitments at the Provincial, National, and International levels to sustain biodiversity and to properly execute sustainable forest management.

We would be happy to discuss any of these points further with you.

Sincerely,



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Ian D. Thompson, Ph.D.
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Literature Cited:

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Venier, L.A., Thompson, I.D., Fleming, R., Malcolm, J., Aubin, I., Trofymow, J.A., et al. 2014. Effects of natural resource development on the terrestrial biodiversity of Canadian boreal forests. Environ. Rev. 22(4): 457–490.