



December 18, 2020

Dear Public Input Coordinator, Species at Risk Branch,

**Re: ERO 019-2636 A proposal under the Endangered Species Act to enable use of the Species at Risk Conservation Fund and to streamline authorizations**

Thank you for the opportunity to review the proposal to enable use of the Species at Risk Conservation Fund (hereafter “the Fund”). This submission is on behalf of Ontario Nature, the David Suzuki Foundation, Earthroots, Ecojustice, Environmental Defence, Ontario Rivers Alliance and Birds Canada.

Overall, the material presented makes clear that the Fund mechanism will make it easier for habitat destruction to occur at the hands of industry and developers. Indeed, according to the proposal the main purpose of the Fund is to give operators a quicker and less cumbersome alternative to completing actions to provide an overall benefit for the species negatively impacted by their activities. The Fund is a part of a package of damaging amendments to the *Endangered Species Act, 2007* (ESA), passed in June 2019 that, taken together, represent a gross weakening of the ability of the Act to fulfill its purpose to recover Ontario’s at-risk species. Our primary concerns with the Fund are outlined below.

**1. The Fund provides a perverse incentive to destroy habitat**

The easier it is to obtain an authorization for harmful activities, the more likely they are to occur. This was a lesson learned, for example, when the government introduced sweeping regulatory exemptions for proponents of harmful activities back in 2013. According to the Environmental Commissioner of Ontario, the total ESA authorizations for harmful activities “drastically increased” after the introduction of the 2013 exemptions ([ECO 2017 report](#), p. 227).

There is little doubt that the Fund will make authorizations easier. The Ministry of Environment, Conservation and Parks (MECP) is explicit about its intent to “shorten timelines, reduce burdens and provide cost certainty” for proponents of harmful activities.

Indeed, what could be more certain than cutting a cheque and walking away? The ministry anticipates that regulatory amendments associated with the Fund will “enable more proponents to register their activities rather than seek permits or agreements from the ministry.” This means that more proponents will be inclined to have their harmful activities exempted from ESA requirements, rather than meet the more stringent requirements of permits or agreements.

## 2. Overall benefit standard abandoned

The ESA was originally designed to provide some flexibility for harmful activities to occur, based on the premise that the proponent would undertake actions that would more than compensate for the damage done. They were required to provide an “overall benefit” to the species, a standard intended to uphold the purpose of the ESA in protecting and recovering species at risk by achieving a net gain as opposed to merely mitigating damage (making activities less harmful).

The 2013 exemptions were the first disastrous setback to the overall benefit standard. According to the Environmental Commissioner, “few activities now are proceeding under the overall benefit approach – the vast majority of activities are proceeding under exemptions that only ask proponents to minimize harm” (ECO 2017 report, p. 236).

The Fund represents another serious blow to the overall benefit approach because, as set out in the amended ESA (sec. 17(2)(c)(i)), payment into the Fund is an alternative to the provision of overall benefit. There is no link in the amended ESA between the Fund and the provision of overall benefit. In this sense, the Fund is a gross abandonment of the overall benefit standard and thus of the goal of species at risk recovery itself.

It is important to note that habitat loss and degradation are key factors in the decline of whip-poor-will, bobolink, meadowlark and Blanding’s turtle and thought to be a factor in the decline of barn swallow. To the extent that the Fund will facilitate and accelerate habitat loss through exemptions or permits without the provision of overall benefit, it will contribute to the decline of these at-risk species.

## 3. Funds only loosely tied to species and communities negatively impacted

Payments to the Fund are proposed to be pooled and may be used to benefit any Fund species, not necessarily the one that is impacted. As a result, it is not only the impacted species that might lose out, but also the human communities where the harmful activities take place. There is no requirement that Fund monies be used to compensate for negative environmental or social impacts in the watersheds, municipalities or Indigenous traditional territories where the harm occurs. Some communities will see valued natural areas destroyed or degraded, possibly with no local reparation whatsoever for the loss of ecological, cultural, spiritual, recreational, aesthetic or economic values.

Once the funds are collected, there is no direct link between the harm inflicted (the species or the degree and location of the negative impact) and the remedy provided through the Fund.

Depending on political priorities or on the availability or convenience of compensating activities, there is a distinct possibility that some species or parts of their range will be sacrificed to the benefit of others. There is no stated intention to connect any remedy back to the recovery strategies for the Fund species, nor to monitor the overall results as they pertain to meeting the population objectives for the impacted species.

Further, there is also a strong likelihood of significant delays between when the harmful activity takes place and any reparative action that is taken; this time-lag can further drive the decline of species that are already imperiled.

Payment into the Fund means merely that someone, somewhere, at some point will undertake activities to provide some level of benefit to the species for the harm done. And activities supported by the Fund need only be “reasonably likely” to benefit the species harmed.

All in all, there’s no certainty for the species or communities impacted, but the proponent gains the certainty of being able to destroy habitat and walk away scot-free regardless, once they pay into the Fund.

#### 4. Fund charges fail to address risk

MECP has provided formulas to calculate the fee to be charged to proponents of harmful activities. These charges include costs for the compensating activities (including monitoring), land (where applicable), administration (10 percent) and inflation. The amount of the benefit to be generated is to be based on a 1:1.5 ratio, so that, for example, the loss of 1 hectare of habitat requires the provision of 1.5 hectares of new habitat. The quality or functions of the replacement habitat are not considered. The replacement ratio is roughly based on the costs incurred by proponents to date in meeting the conditions of their ESA permits. Whether these expenses have been sufficient to achieve the required outcomes is unknown, due to a lack of monitoring and testing for efficacy, indicating a weak rationale for the ratio.

While it is good to see monitoring, land values and inflation factored into the charges, these tidy formulas fail to take into account the significant risk associated with offsetting the harm done. According to the International Union for the Conservation of Nature, biodiversity offsets generally have very limited success and net gains have rarely been realized in practice ([IUCN, 2014](#), p. 10). The World Bank Group has flagged offsets involving habitats of “highly threatened ecosystems or species” as particularly high risk ([World Bank Group, 2016](#), p. 14).

Risks outlined by the World Bank Group include: impacts that may be hard to measure directly; the failure or only partial success of the offset; potential lower quality or conservation value of the replacement habitat; and temporal lags between the harm done and the full realization of the compensation provided (World Bank Group, p 20). No assessment of, or compensation for, these risks is factored into the proposed Fund charge formulas.

Overall, based on the formulas, the fees to be charged to proponents of harmful activities are demonstrably too low, especially considering that the Fund is expected to pay for itself within a year.

#### 5. No long-term government financial support

In light of the significant responsibilities that the agency is expected to undertake, a key concern is whether the Fund will pay for itself, as assumed, and whether the 10 percent administration fee is likely to fully cover administration costs (e.g., staff salaries, per diems for board members, secretarial support, overhead). If 10 percent is not sufficient, and funds are diverted from the compensatory actions to cover these costs, conservation outcomes will be diminished.

Another concern is whether the Fund will displace current government investments in species at risk research, protection and recovery, including staffing and other government funds (e.g., the Species at Risk Stewardship Program). It is unclear whether the government will continue to invest its own money at previous rates, or is looking at the Fund as a cost-avoiding measure.

#### 6. Lack of transparency and public accountability

In administering the Fund, the agency responsible is “to publicly communicate its focus for funding, by submitting to the ministry and publishing a plan for each conservation fund species before any funds are disbursed for the species.” It will also release annual reports that document “information about funded activities.”

There is no requirement or expressed intent, however, to share with the public information about the specific or cumulative impacts of the harmful activities undertaken by proponents (e.g., where the harm occurs, what type of activity or impact, who is responsible, the total area damaged or destroyed). This missing information will make it impossible for the public to assess whether the Fund actions are commensurate with the level of habitat destruction caused by the authorized activities. Similarly, it will make it impossible for the public or government oversight agencies such as the Auditor General to track cumulative adverse impacts across the ranges of species at risk.

#### **Concluding comments**

For the reasons outlined above, Ontario Nature, the David Suzuki Foundation, Earthroots, Ecojustice, Environmental Defence, Ontario Rivers Alliance and Birds Canada do not support the government’s plan to proceed with implementing the Fund. It will lead to an increase in habitat loss and degradation, a primary threat to most of the Fund species. Insofar as the Fund circumvents the overall benefit standard, it will work against the protection and recovery of at-risk species. It fails to account for adverse environmental, cultural and economic impacts on communities or for significant additional risks to species already threatened with extinction. It proposes to collect fees that are likely to be wholly insufficient to undertake meaningful habitat creation and restoration actions for the species whose habitat is destroyed. Finally, it fails to ensure transparency with respect to site-specific and cumulative harm to the habitat of at-risk species.

Thank you for taking our comments into consideration.

Respectfully,



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