

ONTARIO FEDERATION OF ANGLERS & HUNTERS

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Ontario Conservation Centre

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Public Input Coordinator
Species at Risk Branch
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SUBJECT: ERO #019-2636: A proposal under the Endangered Species Act to enable use of the Species at Risk Conservation Fund and to streamline authorizations for certain activities that impact species at risk, while maintaining protections for species at risk

On behalf of the Ontario Federation of Anglers and Hunters (OFAH), its 100,000 members, supporters, and subscribers, and 725 member clubs, we have reviewed this proposal and offer the following comments for consideration.

Enabling the Species at Risk Conservation Fund

Despite being envied by other jurisdictions, Ontario's species at risk program is nonetheless flawed. However, we are encouraged by the government's willingness to acknowledge these challenges and propose new and innovative tools to protect and restore species at risk (SAR). In reality, the government has never had the resources to implement the Endangered Species Act in the way it was intended. We must therefore focus our efforts on species, habitats, and regions where it can have the greatest positive impact on biodiversity. We believe that the proposal to establish the Species at Risk Conservation Fund (hereafter "the Fund") and the Species at Risk Conservation Trust (hereafter "the Agency") marks an important step towards this goal and we support their implementation.

Biodiversity is almost universally in decline and infrastructure development has been identified as a key threat. We recognize the need for and inevitability of infrastructure development, and we therefore must find a balance between development and the conservation of biodiversity. Indeed, businesses around the world are coming to the realization that social licence to operate can benefit greatly from environmental stewardship and contributions to biodiversity conservation (Richert et al., 2015).

Biodiversity offsetting seeks to compensate for losses to biodiversity in one place and time by creating equivalent or better gains elsewhere. It is a widely-used tool for addressing the environmental impacts of development. But offsetting often occurs in isolation from broader conservation goals. It has always been difficult to evaluate the contribution of project-level compensatory actions to broader conservation and recovery goals.

Species to be eligible under the Fund

The OFAH supports the designation of Butternut, Barn Swallow, Bobolink, Eastern Meadowlark, Eastern Whip-poor-will, and populations of Blanding’s Turtles in the Canadian Shield as conservation fund species. Starting with a small subset of SAR will enable the government to test-drive the new system. What is the proposed process and timeline for reviewing other species at risk for designation as conservation fund species? Will aquatic species at risk be considered for designation in the future?

Calculation of species conservation charges

We appreciate the detailed supplementary materials provided by the Ministry. In principle, the species conservation charge should be commensurate with the level of impact on the species and take into consideration: the importance of the impacted biodiversity feature to the life history of the species and Ontario’s overall biodiversity; the state of the biodiversity feature relative to the target state listed in Recovery Strategies and Government Response Statements; the geographic location of the impact; the species’ designation on the Species at Risk in Ontario List (SARO); and a species-specific benefit ratio required to achieve a net positive impact for recovery.

Benefit ratios are necessary to help achieve no net loss or net positive impact for conservation. An adequate benefit ratio takes into account biodiversity objectives, risk of the biodiversity offset failing, time lags between impacts and gains, and the degree of protection provided to the offset itself. However, there is often a significant gap between the proposed and realized benefit ratios due to a variety of factors, including partial or complete failure of the offset and a disparity between the permanence of the impact and the permanence of the conservation action. For example, a new road permanently impacts habitat, but what is the lifespan of the conservation actions undertaken to offset its impact? The government should consider providing a level of protection to any offset that is created, otherwise we risk creating a shell game whereby an offset is created then is itself impacted by development in the future.

While we acknowledge that the proposed economic instrument isn’t a typical biodiversity offsetting system, we recommend the government consider higher proposed benefit ratios to help achieve net positive impact for biodiversity. We also question the logic and ecological validity of applying a standard benefit ratio (1:1.5) across such diverse species. We recommend that species and habitat specific benefit ratios be calculated (as has been done for the various Categories of Butternut trees). Have the proposed costing formulas been validated with information from past projects? We also recommend ensuring that these formulas can be adapted based on new knowledge and experience from the first few years of the Agency’s work.

The formula for Butternut includes various benefit ratios depending on the size of the tree and the type of impact (harm versus removal). Does the Ministry have scientific information to support these benefit ratios? Do the ratios take into consideration the range of values that a Butternut tree provides, including carbon sequestration?

The land costs listed in each species formula appear to be fixed, unlike the beneficial actions that are linked to the Consumer Price Index. As such, land costs will need to be frequently updated to keep pace with rising land costs in Ontario. Without frequent updates, it will not be long before there is a significant disparity between the land costs listed in Appendix A and current market prices, particularly in areas like Toronto where prices are increasing rapidly. The proposal states that the Ministry intends to update the land costs periodically, but we recommend an annual update of land costs to avoid this disparity.

In discussion with Ministry staff, we became aware that the work funded by the Agency does not have to be specific to the species that is impacted. For instance, if a proponent pays a fee as a result of impacting Butternut, the Agency is not required to provide that funding for Butternut conservation actions - it only needs to be spent on one of the conservation fund species and on an activity that is reasonably likely to protect or recover one of the fund species or support their protection or recovery. How will the government reconcile conservation charges that include a fee for land (e.g. for the erection of barn swallow nesting structures) in cases where the recovery work does not require the purchase or repurposing of land? Will this create a mismatch between the basis for a conservation charge and the recovery work that is carried out and funded by the Agency?

Providing funds to the Agency

The OFAH supports the requirement for a proponent to remit species conservation charges to the Agency prior to the start of any activities predicted to impact SAR and/or their habitats. When submitting payment, the proponent would be required to provide several pieces of information to the Agency, including the amount due, payment deadline, and location of the impact to the conservation fund species. Regarding this last requirement, how will the Agency and/or the government verify the accuracy of the species conservation charge? Will most of the supporting information be described in detail in the initial permit/agreement? The calculation of conservation charges is entirely proponent-driven, and we therefore recommend the government include an auditing step to confirm that conservation charges are accurate and complete.

Establishing the Species at Risk Conservation Trust

The OFAH supported the 2019 proposal to establish the Species at Risk Conservation Trust to administer the Fund, and we are pleased to see the details of its structure. We recognize the desire to keep the board of directors of the Agency small and efficient. However, we are concerned that the proposed size (3-5 members) could be insufficient to capture the breadth of knowledge and experience required to simultaneously administer the Fund and evaluate candidate projects related to the six conservation fund species. Will each board member be permitted to appoint an alternate? Will the board be able to seek expert advice from outside the Agency regarding specific species conservation measures?

The proposal also includes a requirement for the Agency to draft and submit an operational policy to the Ministry within 18 months of being established. Will the Agency be able to collect fees during this period, prior to the finalization of this policy?

It is proposed that the Agency be bound by several reporting requirements, including publicly communicating its focus for funding to the Ministry prior to disbursing funds, submission of annual reports, and a report after every five years on the effectiveness of the Fund in achieving its purpose. The OFAH supports this requirement as it is an important component of ensuring that proponent fees and Agency decisions are adequately contributing to beneficial outcomes for species at risk as dictated by the conditions of the proponent’s original ESA permit. However, it is our experience that many provincial ministries often fail to meet self-imposed reporting requirements. Will there be consequences for non-reporting? Will the Agency be subject to review by the Auditor General?

Figuratively, this process involves the conversion of tangible biodiversity features (e.g. hectares of land, nests, etc.) into dollars and cents. The Agency will then transform these dollars and cents back into biodiversity features or research that contribute to established recovery goals for conservation trust species. The reporting requirements in this proposal appear to be limited to the Agency. While we support strict reporting and transparency for the Agency and its decisions, we notice a distinct lack of requirements to report on realized benefits for the six species. The OFAH is ultimately concerned about positive outcomes for species at risk, so how does the government intend to demonstrate these on-the-ground benefits? Will it become part of the regular species reporting process (COSSARO review, State of the Resource Reporting, etc.) or will it be part of the Agency’s reporting requirements? For example, if the Agency provides funding for the creation of barn swallow nesting structures, at what point in this process will the public be informed about the monitoring and assessment results of that nesting structure?

Further streamlining ESA authorizations

The OFAH supports this aspect of the proposal.

Closing Remarks

These welcomed amendments will help ensure that protection and recovery activities are undertaken by those who are best suited to it - in some cases that will be the proponent, in other cases it will be another agency or stakeholder group. It will be important for the Agency to operate transparently, but arguable more important for the government to demonstrate the contribution of project-level compensatory actions to broader conservation and recovery goals for species at risk.

While we have raised questions and concerns about some of the details of the proposal, we would like to commend the Ministry for the thoroughness of the information provided, as well as the opportunity to directly communicate with Ministry staff to share our feedback and seek clarity when required. Thank you for providing us with an opportunity to comment.

Yours in Conservation,

A handwritten signature in blue ink, appearing to read "Mark Ryckman".

Mark Ryckman
Manager of Policy

MR/jb

cc: Bette Jean Crews, Chair, Species at Risk Program Advisory Committee
OFAH Board of Directors
Angelo Lombardo, OFAH Executive Director
Matt DeMille, OFAH Manager, Fish & Wildlife Services
OFAH Fish & Wildlife Staff

Richert C., Rogers A, Burton M. 2015. Measuring the extent of a Social License to Operate: The influence of marine biodiversity offsets in the oil and gas sector in Western Australia. Resources Policy 43:121-129.