

Species at Risk Branch
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December 19, 2020

RE: Comments from the Canadian Environmental Law Association regarding proposed Species at Risk Conservation Fund (ERO No. 019-2636)

The Canadian Environmental Law Association provides the following comments to the Ministry of Environment, Conservation and Parks (MECP) pertaining to the proposed new regulations to enable a Species at Risk Conservation Fund (the Fund) and further exemptions to O Reg 242/08 under the *ESA*.¹

For the reasons set out below, CELA remains opposed² the government's planned Fund as it allows proponents engaging in activities which harm threatened or endangered species and their habitat to pay into a conservation fund in lieu of compliance with the *ESA*'s prioritization of species protection and recovery. The Fund approach also reduces accountability and facilitates harm to species at risk and their habitats, with no guarantee that tangible benefits to species at risk will occur. Establishing a fund to protect species instead of conditions on permits, which is resourced by activities that directly harm species and their habitat, is contrary to the intent of the *ESA* - which is protect and facilitate the recovery of species at risk and their habitat – and should not be advanced. In short, any action which provides a 'get out of jail free card,' allowing proponents to pay a fee to act contrary to the *ESA* should not be permitted.

About Us

CELA is a non-profit, public interest organization established in 1970 for the purpose of using and improving existing laws to protect public health and the environment.² For nearly 50 years, CELA has used legal tools, undertaken ground-breaking research and conducted public interest advocacy to increase environmental protection and the safeguarding of communities. CELA works towards protecting human health and the environment by actively engaging in policy planning and seeking justice for those harmed by pollution or poor environmental decision-making

¹ Online: <https://ero.ontario.ca/notice/019-2636>

² Online: <https://cela.ca/wp-content/uploads/2019/07/Schedule5Bill108-EBRNo013-5033.pdf>

Comments on Proposed Species at Risk Conservation Fund

In describing the proposed Fund, the Environmental Registry of Ontario (ERO) posting notes:

Instead of completing beneficial actions for species impacted by those activities, proponents will have the option of contributing to a fund that allows a new provincial agency to pool the resources and determine how best to implement long-term, large-scale and strategic protection and recovery activities that benefit eligible species.

For the following reasons, we opposed this proposed Fund. *First*, logic dictates that if it becomes easier to obtain an authorization for harmful activities which pose a threat to a species or their habitat, *more* destructive activities are likely to occur. We are of the view that the fund makes it easier to cause harm, indeed the province has promised ‘shorter timelines and reduced burdens’ for proponents seeking authorization for harmful activities. This approach is diametrically opposed to the fundamental purposes of the *ESA* – namely, the protection and recovery of listed species and their habitat - and instead, this Fund must flow from the Act, uphold its values, objectives and goals.

Second, the proposed Fund provides an alternative to the prior option of demonstrating an ‘overall benefit’ to the species. Formerly, a proponent had to demonstrate it would compensate for damage to species or their habitat and thus, provide an ‘overall benefit’. Removing this key safeguard means the Fund is not upholding the *ESA*’s stated purposes of species protection and recovery.

Third, of the species that are proposed to benefit from this Fund, including the bobolink, eastern meadowlark, barn swallow, butternut, eastern whip-poor-will and Blanding’s turtle, four are already subject to regulatory exemptions meaning proponents do not need a permit to harm, destroy or kill the species or their habitat. This is deeply concerning as the proposed Fund, read in line with already in place exemptions, does not prioritize the halting or lessening of these species’ number one threat: habitat destruction.

Fourth, the structure of the Fund itself demonstrates the province is noncommittal to long term species protection. For instance, the MECP expects that after the first year, the agency overseeing the administration of the fund will be financially independent. Thus, we question what funds will remain for protective actions when instead the fund will be needed to cover staff salaries, per diems for board members, administration overhead and research. Resources to support much needed, robust species at risk research and recovery efforts are critical. Diverting funds supposedly intended for these purposes to staff and administration is not sufficient.

Fifth, it remains ambiguous to what extent the province will study the use of the Fund in tandem with cumulative effects or habitat-wide impacts of development. For instance, the notice provides that an annual report will provide “information about funded activities” but it is silent on whether the report will track, document and analyze species trends or level of overall habitat destruction.

Canadian Environmental Law Association

For these reasons, we do not support the Fund. Our position is also informed by recommendations we have previously provided to the MECP on this topic, including:

- Submission on Bill 229, Schedule 8 regarding proposed amendments to *Crown Forest Sustainability Act* and *Endangered Species Act* (November 2020)³
- Submission on Bill 132, Schedule 16 regarding the proposed amendments to the *CFSA* (Nov 2019)⁴
- Submission on Bill 108, Schedule 5 regarding proposed amendments to the *ESA* (May 2019)⁵
- Submission on the 10th Year Review of Ontario's *Endangered Species Act* Discussion paper (Feb 2019)⁶

Given the MECP's existing responsibility for the protection and conservation of species listed as at-risk under the *ESA*, we urge you to consider your accompanying responsibility to safeguard their habitat when implementing new policies and regulations of the *ESA*. We also find this proposal does not adequately address nor respond to the findings of the Auditor General which just last month reported that Ontario's wild plants and animals are under increasing threat from human activities.⁷ In our view, the Ministry has continued to not meet its objective of improving outcomes for species at risk.

Sincerely,



Kerrie Blaise
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CANADIAN ENVIRONMENTAL LAW ASSOCIATION

³ See online: <https://cela.ca/wp-content/uploads/2020/12/CELA-Speaking-Notes-Bill-229-Schedules-6-8.pdf>

⁴ See online: <https://cela.ca/submissions-on-bill-132/>

⁵ See online: <https://cela.ca/submission-regarding-legislative-amendments-to-the-endangered-species-act-bill-108-schedule-5-environmental-registry-no-013-5033/>

⁶ See online: <https://cela.ca/10th-year-review-of-ontarios-endangered-species-act/>

⁷ See online: https://www.auditor.on.ca/en/content/annualreports/arreports/en20/ENV_conservingthenaturalenvironment_en20.pdf

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