

Dec 19, 2020

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 for certain activities that impact species at risk, while maintaining protections for species at risk

Dear Jeff Yurek, Minister of Environment, Conservation and Parks,

I appreciate this opportunity to comment on – “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.”

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 former Environmental Commissioner, Dianne Saxe Ph.D. in Law, “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).

Although the endangered species legislation can be viewed by some as cumbersome and difficult to implement, adequate species protection can only be achieved when strong legislation is in place.

In theory, “The Conservation Fund” could support conservation activities for affected species; however, the species that may be the most harmed by authorized activities may not be the one chosen as the benefiting species, i.e., the species benefiting from the conservation activities. In reality, this increases the possibility that species-at-risk habitat will be damaged or entirely destroyed and never reconstituted.

“The Conservation Fund” as stipulated now, represents the final, fatal blow to overall benefit 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, and no requirement that the benefit be proportionate to or related to the harmful impact.

In this sense, “the Fund” is a gross abandonment of the overall benefit standard and thus of the goal of recovery itself from the following reasons:

- The proposed Conservation Fund sets a far too low bar for protection compared to the destruction it will allow. Actions funded need only be “reasonably likely” to “support” the protection or recovery of species. It also fails to ensure transparency as to whether actions taken by the fund will indeed offset the cumulative harm to habitat of at-risk species that it will allow for.

- 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. The World Bank Group has flagged offsets involving habitat of highly threatened ecosystems or species as, particularly high risk.
- It's not only species that might lose out, but also communities. There's 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.
- The Endangered Species Act was originally designed to give some flexibility for harmful activities, requiring proponents to take actions to provide an "overall benefit" to the species. The fund abandons this standard — with payment proposed as an alternative to overall benefit. There is no link between the fund and the provision of overall benefit, no requirement that conservation actions taken through the fund be proportionate or related to the harm. It also removes the liability from the proponent to ensure overall benefit — it is unclear who will be responsible if fund actions fail to produce the conservation result, nor how these will be assessed.
- Habitat destruction is the key factor in the decline of the whip-poor-will, bobolink, meadowlark and Blanding's turtle, all species proposed to qualify for the fund. The fund will facilitate habitat loss without the provision of overall benefit and will contribute to the decline of these species.
- Fund charges fail to address risk and liability - 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.
- 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 to track cumulative adverse impacts across the ranges of species at risk.

Conclusion

For all the reasons outlined above, I cannot 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 works 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 also fails to ensure transparency with respect to site-specific and cumulative harm to the habitat of at-risk species.

Consequently, I am urging the ministry of the environment to go back to the drawing board to either remove the proposed "Conservation Fund" or make it truly accountable to the intentions of the ESA to protect and recover species-at-risk and their habitat.

All levels of government play an important role in protecting and maintaining the health of our natural environment, which is why the integrity of our provincial legislation in respect to crucial importance of the Endangered Species Act must be restored as we are facing dual crisis of climate and biodiversity.

Sincerely,