



Public Input Coordinator  
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Submitted on line and emailed to MOECP SAR policy staff

December 19, 2020

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

To whom it may concern:

Thank you for the opportunity to provide comments on ERO 019-2636 *A proposal under the Endangered Species Act to enable use of the Species at Risk Conservation Fund...*, which I am doing in my capacity as a wildlife biologist with expertise in species at risk recovery and listing, and as Senior Scientist for Wildlife Conservation Society Canada. My remarks herein are limited to Part A of the ERO notice, "Enabling the Species at Risk Conservation Fund". I was grateful to be invited to a special 1:1 session with MOECP policy staff earlier this month, which was constructive and informative, although there was insufficient time for discussion.

While I do believe the work being led by MOECP staff to set up this Conservation Fund is genuine in its intent, the efficacy of this instrument -- as far as recovering species at risk in Ontario is concerned -- is already seriously compromised by its role as specified in the *Endangered Species Act (2007) (ESA)* following the major amendments in 2019. In this letter, I describe my most significant concerns with the proposed approach, and provide some recommendations that, if implemented, may help increase chances for some success within the context of a profoundly weak regime for species at risk protection and recovery in Ontario. I begin with two practical elements of the Conservation Fund -- the calculations of charges and the operation of the Agency --- and end with some remarks about the role of the Fund within the provincial species at risk regime at large.

### **1) Calculations of "species conservation charges"**

A central component of this new ESA instrument is the fees ("species conservation charges") that will be paid into the fund by proponents. There are numerous risks associated with having these charges be insufficient: First, having developers get away cheaply with degrading or destroying habitat can actually incentivize others to do the same if all they have to do to procure authorization is pay into a fund. Second, charging too little at the outset may lead to long delays and/or insufficient total funding for meaningful actions down the line, i.e., for carrying out the conservation mandate of the Fund.

Having reviewed the accompanying document providing formulae and costing associated with species charges, it is my assessment that the methods for calculating species charges as presented in this ERO notice carry with them a significant risk of underestimating development costs in most circumstances. My major concerns are as follows:

- Basing the costs on those that “a proponent may have otherwise incurred in fulfilling conditions of an ESA authorization” is severely challenged by an absence of understanding about the efficacy of recovery actions that have been taken so far. The shift to the permit-by-rule system in 2013 and overall lack of monitoring attention have together resulted in an absence of learning about the extent to which various actions have successfully ameliorated threats. For barn swallows, for example, we do not even understand the extent to which other threats (like pesticides associated with agricultural intensification) are driving population declines, let alone whether nest cups are beneficial to recovery. With Blandings turtles, what does “establish habitat” mean when it comes to recovery actions? Is this meant to represent the cost of restoring habitat, and if so what is the basis for those cost calculations and what constitutes success from a recovery perspective?
- I have never seen such a low benefit ratio as 1.5, but even more importantly, it is impossible to tell either how that sum was arrived at as proposed in this ERO Notice or why it is the same for all six species in all circumstances. No rationale is provided in any of the accompanying documentation. We should be extremely cautious about any one-number multiplier standards unless the method is transparent and based on empirical evidence of performance, risk, time lags, etc.
- A 10% administrative fee is insufficient. If the desire is for the agency administering the fund to be self-funded and supportive to the work of the agency board members (see below), the administrative fee should be at least 15%.
- Generic formulae in regulation for each species may result in a regime that is too rigid and poorly suited to particular situations. Even if these formulae were based on empirical evidence (which appears largely not to be the case, based on the documentation provided), they would be averages, and not applicable to particular contexts. There are many context-dependant factors that dictate the strength of impact of a development on a species at risk and must inform costs or changes. These include, but are not limited to, the importance of the area to the population (is it an area of particularly high density, important for breeding, etc.), the cumulative impact from other activities in the area, and how productive is the habitat in that location, etc.
- The proposed species charges are being calculated in relation to immediate costs, yet any benefits that eventually come about through Conservation Fund activities may be considerably later (perhaps years). Moreover, it is more likely than not that the negative impacts to species from the development may continue beyond the time of payment, which would not have factored this in at the outset. And on top of this there is of course a good chance that no benefits will ever be forthcoming to offset the original (and continuing) costs to the affected species and their habitat, because any activities eventually funded by the Conservation Fund may not even take place in the area or benefit of the originally-harmed species.
- While I support monitoring being part of the cost calculations, it is impossible to evaluate the basis of the calculations. How can this cost dimension be converted to a monitoring benefit later on?

Recommendations:

- Commence operations of the Conservation Fund with a significant base funding prior to collection of charges from proponents, so as to minimize the delay of funded recovery actions.

- Reduce pressure to have the fund be self-reliant for at least the first 3-5 years of operation.
- Use the current scheme that is based on costs associated with fulfilling ESA authorization conditions as a base from which to build true costs, but place significant and transparent focus on multipliers that build in considerations of uncertainty, delayed benefits and other aspects as per Bull et al. (2017)<sup>1</sup>.
- Increase administrative costs to at least 15%, incorporating full cost accounting associated with running of the Agency.
- Ensure that any formulae include transparent documentation of the empirical basis of calculations, and acknowledgement of uncertainty and risks. The current documentation does not come close to what is needed to instil confidence that species charges are not being seriously underestimated.

## 2) The Conservation Trust (Agency)

The legislated purpose of the fund is “to provide for the funding of activities that are reasonably likely to protect or recover conservation fund species or support their protection or recovery”, and the plan is to put in place a board of highly-qualified individuals to carry out these purposes.

I am in support of the board member qualifications as articulated in the ERO Notice.

However, I have major concerns about the Ministry’s significant expectations of these board members, as detailed in the ERO notice. These individuals will not only be ultimately responsible for carrying out the purposes of the fund, but will be charged with significant reporting and planning responsibilities, including the development of an operational policy within 18 months. An additional expectation of board members that receives even more emphasis in this ERO notice than protecting and recovering species (the purpose of the fund) is the requirement for efficiency and demonstration of “value for money”.

Based on my experience, this collective set of responsibilities and expectations for board members who are effectively volunteers, appears to be unusually high, and will have to come with significant ministry support to best ensure success. I am concerned that the emphasis on efficiency (not a legislated requirement), the lack of mention of secretariat support, and the expectation for revenue into the fund to come solely from the charges collected from proponents, will make it very challenging to recruit members with the required skillsets. Moreover, drawing revenue from the Fund to pay for sufficient support for these members to carry out their responsibilities could diminish the Fund’s power to pay for actions and activities that protect and recovery species at risk.

Recommendations:

- Provide the Agency with regular base funding, so that Agency board members have adequate financial support to conduct their duties and meet expectations, e.g., to “employ or otherwise engage persons for the proper conduct of its activities” (s. 20.4[4]).
- Ensure there is dedicated secretariat support to the Board of Directors of the Agency from qualified Ministry staff, who can, among other things, facilitate contracting and financial transactions and provide writing and research support to the Board.

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<sup>1</sup> <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12335>

- During the recruitment process, make clear and transparent the type of support that the Ministry will provide to help board members be successful.
- Focus on recruiting board members who meet the stated qualifications, and trust that it will be in the best interest of well-qualified members to conduct their affairs efficiently.

### 3) The Conservation Fund in the Context of a Weakened Species at Risk regime

It appears that the efforts being made to design the Conservation Fund are occurring in isolation, i.e., absent much if any consideration for its role in the broader species at risk regime, and particularly in light of the 2019 amendments that left a considerably weakened ESA to fulfill its purpose to recover Ontario's species at risk. Even on its own, the bar for success of the Conservation Fund has already been set pretty low regarding its value as a recovery tool. The purpose is only "reasonably likely", the actions don't carry with them any obligation to be tied to the original harm, there appears to be undue concern about efficiency of operations of the Agency, and success is measured by "expected" (rather than realized) outcomes.

A key reason I am skeptical about the value of this Conservation Fund for species at risk recovery relates to the selection of the Conservation Fund species. The ERO notice indicates that three criteria for determining Conservation Fund species were "considered", but the weight of each criterion is not made clear, nor are any details provided on how comprehensively other species were evaluated for their eligibility. For example, there are few, if any, species at risk that would not benefit from "a strategic and coordinated protection and recovery approach." On the other hand, it is debatable whether any species at risk (with the potential exception of butternut tree) has sufficient data available to inform conservation charges (as discussed above). In the end, it seems clear that the principal driver for this instrument is the demand for authorizations, given the oft-stated interest by the Ministry in the ERO notice and everywhere else to streamline processes, shorten timelines for authorizations, cut red tape, and so forth.

The fact remains that if there were a genuine interest by the current Ontario government in a mechanism to fund "strategic actions" that benefit species at risk in Ontario, the Conservation Fund would not be designed as it has been, i.e., as an alternative option or off ramp to proponents who wish to be authorized to conduct harmful activities to pay into with minimal additional responsibilities.

While we can perhaps take some comfort from the possibility that some projects or activities will be funded that will be valuable, and perhaps even beneficial to one or more of the Conservation Fund species themselves, the off-ramps provided to multiple proponents of harmful activities by paying into this Fund has a high risk of incurring considerable net harm to species at risk in Ontario. With the responsibilities of the Agency focused primarily if not exclusively on the activities it funds, how will the front end of this regime be monitored to ensure that the collective harm that generates the funds in the first place doesn't undermine any later benefits from the Fund? How will MOECP ensure that this fund doesn't become an incentive to damage and destroy habitat?

#### Recommendations:

- Establish a transparent tracking system that records the activities (and proponents) that pay into the fund, details of the paid charges for each, and cumulative habitat loss for conservation fund and other affected species at risk.
- Gather and make public evidence that demonstrates Ontario is indeed "maintaining protections for species at risk", or otherwise cease using such language aimed at placating members of the

public who are concerned that this government's drive for "streamlining" and enhanced "clarity" for developers will compromise the recovery of species at risk and contribute to continuing biodiversity loss in Ontario.

- Clarify the criteria used to determine Conservation Fund species.

As always, I welcome any conversations about this and related matters.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Ray'.

Justina C. Ray, Ph.D.  
President and Senior Scientist