



December 18, 2020

Public Input Coordinator
Species at Risk Branch
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Re: Conservation Ontario's comments 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" (ERO#019-2636)

Thank you for the opportunity to provide comments on the above referenced proposal. Conservation Ontario is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit consideration of comments shared individually by CAs through this review and consultation process.

Conservation authorities are local watershed management agencies that deliver programs and services that protect and manage water and other natural resources in partnership with government, landowners and other organizations. Through these partnerships, CAs deliver a number of programs and services that help protect species at risk (SAR) and their habitats within CA watershed jurisdictions. As the Province's second-largest landowners, CAs protect and manage a considerable amount of habitat that supports SAR. In addition to these owned and operated lands, CAs' watershed science and monitoring programs collect up-to-date information which supports the integrity of these landholdings and also informs many of their corporate programs which also benefit SAR protection and recovery. These programs and services include natural heritage system planning (e.g. restoration, enhancement and protection), climate change mitigation and adaptation, and, stewardship and outreach programs. Further, CA staff have considerable expertise in the land use planning review process and may provide consideration for SAR and required habitats when advising municipalities on matters related to potential ecological impacts to SAR.

Conservation Ontario offers the following general comments on the proposal to enable the use of the Species at Risk Conservation Fund and the proposed amendments to conditional exemptions to streamline *Endangered Species Act* authorizations under O. Reg. 242/08.

Conservation Fund Species

It is understood that the Province is proposing to designate a small subset of species listed on the Species at Risk in Ontario List (O. Reg. 230/08) as conservation fund species which would be eligible for

the proposed charge payment option. It is proposed that Butternut, Barn Swallow, Bobolink, Eastern Meadowlark, Eastern Whip-poor-will and Blanding's Turtle (Canadian Shield populations) are to populate this list. Additional information is requested to justify the inclusion of Blanding's Turtle and Eastern Whip-poor-will, given the range and habitat specificity requirements for these species. The habitat needs of the remaining four proposed conservation fund species (Butternut, Barn Swallow, Bobolink and Eastern Meadowlark) are better understood, as demonstrated through their current conditional exemptions under O. Reg. 242/08 (which include required mitigation actions and habitat replacement, management and monitoring actions to be undertaken when authorized activities would harm or harass the species, or damage or destroy its habitat). Given the limited justification provided for the inclusion of Blanding's Turtle and Eastern Whip-poor-will, as well as the habitat specificity requirements for these two species, Conservation Ontario recommends that these species be removed as potential conservation fund species.

Conservation Ontario's previous comments requested that the Ministry make available the criteria which will be used to designate these species, and recommended that these criteria be developed through collaboration with COSSARO, using the best available scientific data to support species protection and recovery. While we note that the Ministry has provided some criteria which were considered in determining the proposed conservation fund species, it is unclear how the criteria were developed, whether the criteria will be consistently used in the event of more species being considered for this list, and whether the criteria were developed through collaboration with COSSARO. Further, no information was provided to support the statement that the six species proposed for eligibility would benefit from a "more strategic and coordinated approach to planning and implementing large-scale protection and recovery efforts". It is recommended that a species-specific rationale be developed and made publicly available for each conservation fund species, as well as for any future proposed additions to the List.

Species Conservation Charges

It is understood that the financial contributions to the Species at Risk Conservation Trust ("the Agency") would be paid by proponents who are authorized under the ESA to carry out activities that would otherwise be prohibited under the Act. Proponents who choose to use the conservation charges option would still be required to undertake actions to avoid and minimize impacts to species at risk and their habitats, however, they will be able to provide payment of species conservation charges in lieu of undertaking beneficial action requirements. Proposed formulas and costing for calculating a species conservation charge have been prepared which will be used by proponents to calculate the contribution to the Fund to be made for an authorized activity, based on the degree of impact to the species and its habitat. Conservation Ontario offers the following comments on specific elements of the proposed charge formulas:

Cost of Land (Where Applicable)

The charge formula is proposed to include the costs associated with acquiring or repurposing land, including related administrative costs, to provide habitat that a proponent would typically have otherwise been required to incur as part of their authorization. While the Ministry is proposing that the conservation charge formulas will be updated periodically to ensure the charges remain relevant over time, it is recommended that a specific review and update timeframe be provided. Given that projects may span multiple years, and land values throughout Ontario may fluctuate, such an approach would

provide a higher degree of certainty to both proponents paying into the fund, as well as recipients of fund monies who are undertaking habitat creation and/or restoration works.

Benefit Ratio

The proposal outlines that a ratio of 1:1.5 is proposed to be included in the species conservation charges to compensate for adverse effects (level of the impact: level of benefit to the species). Further clarification is requested on how the Province determined the standard benefit ratio of 1:1.5, as well as how the various benefit ratios for specific conservation fund species were determined, as outlined in the proposed “Conservation Charge Formulas and Costing” document.

It is further recommended that the Ministry consider the approach used as part of conservation allowances federally, per the federal government’s “*Operational Framework for Use of Conservation Allowances*”. Through this framework, it is stated that “the ratio of the conservation allowance habitat area to impacted habitat should be greater than 1:1 in all cases, and normally 2:1”. It is noted in the federal approach that there will be instances where much higher ratios are appropriate, and that the choice of ratio for each allowance is case-specific, based on an assessment of a number of factors (e.g. impact type, severity and duration, site characteristics, and uncertainties). The current proposed standard ratio would be below the normal standard of used by the federal government. To create consistency in the approaches used provincially and federally, Conservation Ontario recommends (at a minimum) that the standard ratio be increased from 1:1.5 to 1:2, with higher benefit ratios considered for mature and/or complex ecosystems.

Administration

The proposal identifies administration costs to be included in the species conservation charge formulas. An addition of 10% is proposed for the conservation species charge formulas, which is expected to cover the costs that a proponent would have otherwise incurred by carrying out beneficial actions (e.g. project management, contract management, etc.). It is currently unclear whether this 10% administrative charge would be applied to the administration of the Agency or will be provided to cover administrative costs of those groups/agencies who will undertake work using Agency funds. Should these funds be used to support administration of the Agency, the total amount spent on species conservation actions would be less than what is currently spent by proponents when undertaking beneficial actions. As per Conservation Ontario’s previous comments on the 10th Year Review of the ESA, it is recommended that at minimum, funding received as a result of species conservation charges be allocated only to eligible activities which will protect or advance the recovery of SAR in Ontario, while other funds received by the Agency (e.g. donations, funds received from the Crown) could be utilized for administrative costs associated with the Agency.

Further, the proposal does not clearly state if the Agency will be administered solely by a Board of Directors or if there will be additional staff positions, and whether or not these are paid or voluntary positions. Section 20.4 (4) of the ESA states that the Agency “may employ or otherwise engage persons for the proper conduct of its activities, subject to the regulations or, if the regulations so provide, employees may be appointed under Part III of the *Public Service of Ontario Act, 2006*”. Should Board members and potential staff be paid positions, the administrative charge should be adjusted to accommodate these additional financial needs.

Further to the proposed charge formulas, the Ministry is proposing to specify in regulation the general timing and steps that proponents must follow when providing species conservation charges to the Agency. It is proposed that the appropriate species conservation charge would be calculated at the time of payment by the proponent, and that payment would be required, at minimum before the start of any activities that would impact the conservation fund species and its habitat. To ensure that the charges are appropriate and consistent with the proposed authorized activities, Conservation Ontario recommends that proponents should be required to wait until the Agency has confirmed the appropriate charges have been received, prior to commencing works. Further, details should be provided in the regulation on what enforcement measures will be in place to ensure activities are being carried out as proposed, and what penalties for non-compliance with an authorization will apply.

The Species at Risk Conservation Trust

Currently, section 20.4 of the ESA enables the establishment of the Species at Risk Conservation Trust (“the Agency”), and sets out provisions about its governance, objects and government oversight. The Ministry is now proposing a regulation which will establish the Agency, and provide oversight provisions to support the Agency in meeting the purposes of the Fund. The Agency’s Board of Directors is proposed to consist of three to five voting directors, and one non-voting director who is an employee of the Ontario Public Service, with a majority of the voting members required to have applied knowledge of, and expertise with, concepts and techniques related to the protection or recovery of SAR. Conservation Ontario agrees with the proposal that a majority of voting members should be objective technical experts, however, greater clarity should be provided on the level of technical expertise required to be appointed to the Board. Care should be given to ensure impartiality of appointed Board members to ensure that decisions are made which support the protection and recovery of conservation fund species in Ontario.

Further, under the proposed “powers and duties” of the Board of Directors, it is proposed that the regulation would include provisions to ensure that investments are made for all conservation fund species for which charges have been received. In addition to this, Conservation Ontario recommends that the regulation further ensure that investments are made in all geographic regions for which contributions have been received. Without such a requirement, given provincial disparities in land values and available lands, there is a possibility that charges received will be disbursed to regions of the Province where costs may be lower, which could result in localized extirpation of conservation fund species.

Plans for Conservation Fund Species

It is understood that the Ministry is proposing to establish requirements in regulation to require the Agency to develop and publish a plan for each conservation fund species before any funds are disbursed. These plans are proposed to include direction-setting information, such as the types of activities that are priorities for the Agency to fund, or the locations in Ontario where funding would most benefit the species. As previously noted, Conservation Ontario recommends that funds for each species be disbursed within the same geographic regions where impacts to said species are taking place through authorized activities. It is recommended that the local watershed be used as an appropriate natural heritage management unit, to ensure that funded activities which are reasonably likely to protect and restore SAR and their habitats are taking place within the same geographic location of the impacts to conservation fund species and/or habitats.

Further, while the proposal states that the Agency would be required to publicly communicate its focus for funding by publishing a plan for each conservation fund species, it is strongly recommended that the plans for these species be posted to the Environmental Registry for public and agency input, prior to final plans being submitted to the Ministry. This approach would allow for local/regional expertise residing in agencies such as conservation authorities to be considered to help inform funding locations and direction-setting priorities for conservation fund species.

Lastly, the proposal states that the directions identified in the Agency's plan for a conservation fund species would need to align with the funding eligibility requirements that are set out in the ESA, the species' government response statements, and any minister's guidelines for the species, if applicable. It is further recommended that the directions identified in the Agency's plans align with existing recovery strategies prepared for applicable conservation fund species.

Reporting

Conservation Ontario is pleased to note the proposed additions to the Annual Report contents, beyond what is currently in the ESA and government requirements. We respectfully recommend the following items for inclusion in the "information about funded species" portions of these Annual Reports:

1. A comparison of the total amount of funds collected vs. the amounts disbursed **by location**. Such a comparison will provide an opportunity to flag any areas where there are major impacts to conservation fund species and their habitat without corresponding investment to counter those impacts. Inconsistencies in investments could suggest the potential for the gradual erosion of regional and local natural heritage system resilience in areas where there are significantly more losses than investments.
2. Documentation of the total habitat loss as a result of the authorized activities, as well as impacts on any conservation and biodiversity targets that have been established and approved for the subject area.
3. Information on whether or not funded activities have benefitted the impacted species. Details from the on-going monitoring of projects should be provided to determine whether the action was successful in implementing a true overall benefit to the impacted species, and can be used to improve and revise plans for each eligible conservation fund species, as well as inform future adjustments to charge formulas and activities eligible to receive funds from the Agency.

Overall, it is recommended that the proposed contents for the Annual Report provide greater details with respect to outcomes achieved for each conservation fund species. More details in this regard would increase transparency on the effectiveness of the plans for each conservation fund species and conservation charges approach in protecting and recovering SAR and their habitats in Ontario.

Terms and Conditions of the Fund

Under the terms and conditions of the Fund, the proposal outlines that all funded activities must provide a benefit to a conservation fund species in Ontario. It is currently proposed that the Agency be restricted from purchasing land, as well as funding any actions that a person is already obligated to undertake, such as overall benefit actions required by conditions in an ESA permit. Earlier, this proposal notes that species conservation charge formulas would include consideration of the "cost of land, where applicable". In many cases, land acquisition is a necessary method to ensure that rehabilitation efforts can take place in order to provide appropriate habitat for impacted conservation fund species. If the

Agency will not be permitted to purchase land, further clarity is required on how funds will be made available to other appropriate organizations to acquire, restore and manage lands to support the protection and recovery of impacted conservation fund species. As agencies with ample experience with land acquisition and management, conservation authorities with SAR expertise should be considered as potential recipients of these funds.

Finally, Conservation Ontario notes that the current proposal does not provide details as to how the funds would be distributed, or what agencies would be entitled to access the funds. Current provisions in the *ESA* outline activities which would be eligible to receive funding, as well the ability for the Minister to establish written guidelines respecting activities that may receive funding from the Fund. To provide greater clarity, it is recommended that the Province provide guidance on how funds would be distributed, and whether there are restrictions on who may be eligible to receive funds to undertake beneficial actions. Currently, CAs are eligible to receive funds from the Species at Risk Stewardship Program administered by the Ministry of the Environment, Conservation and Parks to administer projects within their watershed boundaries to protect and help facilitate the recovery of SAR in Ontario. It is recommended that CAs be acknowledged as eligible agencies to receive funds from the Species at Risk Conservation Fund to support projects within their jurisdictions which enable positive outcomes for conservation fund species.

Further Streamlining ESA Authorizations

In addition to the proposals under the *Endangered Species Act* to enable the use of the Species at Risk Conservation Fund, the Province is proposing to amend the conditional exemptions under O. Reg. 242/08 to increase the number of activities eligible for these exemptions, allowing them to proceed more quickly while maintaining standards for the protection and recovery for species.

The Province is proposing to expand eligibility for the existing conditional exemption to activities that are intended to assist in the protection or recovery of species at risk (O. Reg. 242/08, s.23.17). The proposed amendments would make activities such as conducting surveys and all activities that have been approved to receive funding through Ontario's Species at Risk Stewardship Program eligible for conditional exemptions. Conservation Ontario is generally supportive of the proposal to expand eligibility for the existing conditional exemptions, as CAs are eligible organizations to receive funds from this program to administer projects within their watershed boundaries to protect and help facilitate the recovery of SAR in Ontario. With respect to the proposed conditional exemptions for surveying, we note that survey activities for one species may in turn have a negative impact on another and details should be provided in the regulation to prevent any further impacts as a result of this conditional exemption.

The Province is proposing to further amend the conditional exemption for Butternut trees to increase the number of Category 2 and 3 Butternut trees that may be impacted under the conditional exemption (O. Reg. 242/08, s.23.7). Conservation Ontario cautions against this proposed amendment, as Butternut trees often grow in higher numbers where there is a parent tree present. When this occurs and many of the trees are assessed as being relatively healthy, more should be done to protect the healthy trees in situ. Additionally, new changes are proposed to the way that Butternut health assessments are completed, which would enable "qualified persons" to undertake Butternut health assessments, and no longer require that assessments be completed by a designated Butternut Health Assessor. Conservation Ontario requests that additional information be made available on what would constitute a "qualified person" to assess the health of Butternut trees. Currently, qualified persons would refer to a designated Butternut health assessor that has received the appropriate training through the Ministry. If

assessments are no longer required to be completed by a designated Butternut Health Assessor, it is recommended that a standardized Butternut Health Assessment Process and/or tool be prepared by the Ministry, to ensure that assessments are completed in a thorough and consistent manner by all qualified persons. Lastly, the proposed changes to standardize approaches for activities impacting Butternut in the conditional exemption, including changing the duration of the period that seedlings are to be monitored and tended from 2 to 5 years, are positive and are supported by Conservation Ontario.

Finally, it is understood that the Ministry is proposing to amend section 23.12 of O. Reg. 242/08 (General) to allow the current conditional exemption for hydro-electric generating stations to include the operation of dams that do not produce electricity. Conservation Ontario is supportive of the proposed amendments, as they would enable consistent requirements under the ESA for the operation of dams that do not produce electricity and hydro-electric generating stations. Further to the proposed amendments, Conservation Ontario recommends that the Ministry explore the possibility of creating a separate, streamlined approach for the removal of existing low to mid-sized on-line dams (e.g. run of the river dams, small impoundments) which would have minimal impact on SAR or their habitats, or would benefit the local species. Based on the experience of conservation authorities, the existing approval process for removal of small or mid-sized dams is not cost-effective for private landowners where ESA and other regulatory approvals are required. Consequently, this has encouraged the retention of older, potentially unsafe dams throughout Ontario. To explore this opportunity for further streamlined approaches, Conservation Ontario recommends that the Ministry create a small working group of dam owners, and undertake a pilot project to assess the benefits of such an approach.

Conclusion

As the Province continues to consult on proposed changes to the *Endangered Species Act*, it is recommended that conservation authorities be considered as knowledgeable and cost-effective service delivery partners for proposals affecting SAR in Ontario. CAs provide support to the protection of SAR in a variety of ways, including providing local expertise and liaison services which support the SAR program. It is recommended that the Province leverage the local knowledge and expertise of CAs when developing tools to protect and recover SAR and their habitats across Ontario.

Thank you for the opportunity to review and provide comments 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”. Should you have any questions about this letter please feel free to contact myself at extension 229.

Sincerely,



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Policy and Planning Officer

c.c. All CA CAOs/GMs