

December 18, 2020

Public Input Coordinator
Species Conservation Policy Branch
Ministry of Environment, Conservation and Parks
300 Water Street
Floor 5N
Peterborough, ON
K9J 3C7

To Whom It May Concern;

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

The Ontario Federation of Agriculture (OFA) is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members across the province. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. We are passionate and dedicated to ensuring the agri-food sector and our rural communities are included, consulted and considered in any new and changing legislation that impacts the sustainability and growth of our farm businesses.

OFA appreciates the opportunity to comment on ERO 019-2636, A proposal under the *Endangered Species Act (ESA)* to enable to 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. OFA would like to restate its longstanding perspective that there is only one Ontario landscape, meaning that the full range of landforms and land uses found across Ontario; urban, rural, agricultural, natural heritage, wildlife habitats, cultural heritage, aggregate extraction, etc. must share this one landscape. Inherent in this is the recognition that our agricultural areas not only provide us with food, fibre and fuel, but also a broad range of environmental and ecological goods and services, including habitat for endangered and threatened species. We acknowledge that actions need to be taken to minimize impacts on species at risk and their habitats, however recovery strategies, government response statements and habitat regulations need to reflect the reality that a single-minded focus on species restoration to the exclusion of all other factors is unsustainable. Based on data from the 2011 and 2016 censuses, total Ontario farm area declined dramatically by almost 320,000 acres. Maintaining our agricultural lands to produce food, fibre and fuel is critical.

Part A: Enabling the Species at Risk Conservation Fund

In general, OFA does not oppose the use of the proposed Species at Risk Conservation Fund to focus on beneficial recovery actions in most suitable locations or in places with enough potential habitat to make a positive impact on species numbers and populations. We recognize some will argue this a “pay for play” scenario, but we see the benefits outweighing the negatives. Putting recovery actions into the hands of experts seems worth it. OFA would like to reiterate our concern as stated in our previous submission on ERO 013-5033: We are concerned that the new provincial board-governed agency, the Species at Risk Conservation Trust, would be open to private developers in addition to municipalities, businesses and individuals. It could provide an easy "out" from compliance with fulfilling one's obligations concerning on-the-ground activities required under the *ESA*.

OFA is concerned where the Species at Risk Conservation Trust might undertake “strategic, large-scale, and coordinated actions that would support more positive outcomes for select species at risk”. We object to the concept of “repurposing” or “offsetting” land to provide habitat, not only for these specific species but also as a general practice. OFA does not support offsetting habitat destruction in one place by endeavouring to recreate that habitat somewhere else. Our principal objection to offsetting is that it inevitably leads to a loss of agricultural land. As OFA has previously stated, prime agricultural land is the one land use designation that is sacrificed for all other uses, be that be offsetting habitat for endangered or threatened species, wetland offsetting or urban settlement expansions. The principal cause of the loss of agricultural land across Ontario has been urban expansion. Urban areas have grown, consuming not only Ontario’s prime agricultural land but also its natural heritage features and areas, depriving flora and fauna of the habitats they depend upon for their survival. Species are endangered and threatened due to urban expansion, not agricultural uses. We doubt created features function as well as naturally occurring ones, and valuable natural features should be protected where they are. Lands required to created endangered species habitat would come from our finite and shrinking reserves of agricultural land. Prime agricultural land is a shrinking resource; one that must be retained for its ability to produce food, fibre and fuel.

For many Ontario farmers, it is an everyday reality that the habitats of many endangered, threatened and special concern species are on and around their farms. From our perspective, the presence of listed species on and around farms should be applauded as a testament to the suitability of agricultural land as habitat for many endangered, threatened and special concern species. However, some may view everyday agricultural activities as a threat and argue for onerous species and habitat protection provisions, provisions which would severely constrain the ability of farmers to continue to produce safe, affordable, local food. Farmers are not compensated for the broad range of environmental and ecological goods and services they provide to Ontarians. The presence of listed species on and around farms should be acknowledged as a societal benefit, and any consequences and costs should be borne by all Ontarians. OFA believes that any financial costs associated with achieving the goal of preserving endangered wildlife and their habitats should be shouldered by the public, not by the individual farmers and other rural property owners. The *ESA* was designed to identify species at risk, protect their habitats and promote stewardship practices that will help protect these plant and animal species. Ontario agriculture is no stranger to this legislation as many habitats of endangered, threatened or species of special concern are found on or around farmland. For some outside our industry, the habitat locale seems to argue for habitat protection at all cost – even over food production. This is not a sustainable solution.

Species to be Eligible Under the Fund

The purpose of the Species at Risk Conservation Fund (the Fund) is to provide for funding for activities that are reasonably likely to protect or recover conservation fund species or support their protection or recovery. The regulatory proposal enables the designation of conservation fund species, which are a subset of species listed on the Species at Risk in Ontario List (O.Reg. 230/08) and enables the setting of associated regulatory charges to be paid by proponents. Six species are being proposed to be eligible under the Species at Risk Conservation Fund, of which four have habitat requirements that intersect with agriculture: Barn Swallow, Bobolink and Eastern Meadowlark, and Eastern Whip-poor-will. Butternut habitat is tangential to prime agricultural land. While OFA has no objections to the proposed species listed to be eligible under the Fund, normal farm practices need to be maintained regardless of the presence of a species at risk on land. Inhibiting normal farm practices and or restricting farmer's the ability to change the crops they grow or livestock they raise may lead to habitat being destroyed discreetly. Maintaining normal farm practices will help maintain species at risk habitat, and strike a balance between conservation and farming.

Calculation of Species Conservation Charges

Recent changes to the *ESA* allow proponents to pay a species conservation charge to the Agency, in relation to certain eligible species. Proposed formulas and costing would be used for calculating a species conservation charge, depending on the proposed conservation fund species. Regarding the proposed Formulas and Costing outlined in the Species at Risk Conservation Fund: Species Conservation Charge Formulas as Costing draft, OFA does not have the in-house expertise to comment on the makeup of these formulas and costing factors but supports the intention of the ministry to update the costing periodically to ensure the charges remain appropriate over time.

However, OFA has some concerns regarding the following proposed conservation species and charge variables, included in the draft consultation document on formulas and costing:

Barn Swallow

The Barn Swallow is an insectivore, found in Southern Ontario, which builds nests in human-made structures such as barns and open bridges. Classified as Threatened, the Assessment Report states threats to the Barn Swallow include loss of nest sites (i.e.- the demolition of abandoned barns), loss of foraging habitat such as pastures, and "massive pesticide spraying of fields". Farmers are stewards of the environment, and the purchase and use of pesticides and herbicides is highly regulated in Ontario. Farmers must be certified and licensed to purchase and apply pesticides and herbicides and must do so in accordance with label directions, which include specifications on mixing, application rate and weather conditions. Farmers also work hard to protect their crops using Integrated Pest Management, which focuses on preventing pest or insect problems. The term "massive spraying" assumes that the application of increasing amounts of pesticides and herbicides are somehow beneficial to farmers and that farmers will apply over label directions despite the high cost of pesticides and herbicides, which is completely false.

The species conservation charge for Barn Swallow is proposed to be made available only where nests are unoccupied and calculated based on whether impacts will be to unoccupied nests only, or to unoccupied nests and their structures, and additional charge components. OFA is concerned that the proposed formulas would include the possible protection of unused or abandoned bank barns, where barn swallows sometimes build their nests. Bank barns are outdated, inefficient, and do not suit the needs of 21st-century farmers. Efforts to protect farm buildings, principally

defunct bank barns, are troubling to Ontario's farmers and present an unfair burden on Ontario farm businesses. Unless constantly maintained at the farmer's cost, old, unused buildings will eventually collapse, particularly when they are no longer used to house livestock or poultry. Obtaining insurance for unused barns and structures is expensive, and some farm property insurance providers simply refuse to insure them. Forcing farmers to shoulder the costs and obligations of buildings that serve no day-to-day farm purpose is unrealistic and unfair.

The index of variables for Barn Swallow charge formulas include the Beneficial Action variable C1_{variable} of “cost to purchase and install one nest cup and monitor it for three years”. OFA questions where these nest cups are to be installed. Beneficial Action M2_{fixed} is the “fixed cost per authorization to maintain the structure in a condition that would provide suitable habitat for the species and monitor for three years”. OFA questions what type of structure will need to be maintained for this action.

Bobolink and Eastern Meadowlark

The Bobolink and Eastern Meadowlark are both classified as Threatened species. The Bobolink inhabits tall grass prairie, open meadows, and hayfields. According to the Assessment Report, threats include cutting of hayfields, and a decline in quality habitat, which includes pastureland. The Eastern Meadowlark, inhabits tall grasslands, including alfalfa fields, field borders, roadsides and orchards. Threats to this species include changes in farming practices, overgrazing of pastures, grassland fragmentation, and pesticides. The decline in pastures suitable as habitat for both species is the direct result of fewer pastured livestock. Farmers have shifted to specializing their activities, focusing on either on crop production or livestock or have shifted away from the more traditional "mixed farm" approach, decreasing the number of livestock on pasture.

The conservation charge for both these species is proposed to be calculated based on the number of hectares of habitats to be impacted and additional variables. The Beneficial Action variable C1_{variable} is the “cost per hectare to establish habitat, plus maintain and monitor for five years”. OFA is concerned that the variable would consider taking land currently in crop production (row crops, vegetables, etc.) as habitat for Bobolink and Eastern Meadowlark. Currently, agricultural operations are exempt from clauses 9(1)(a), 9(1)(b) and subsection 10(1) of the *ESA* when dealing with Bobolink and Eastern Meadowlark, provided they meet the criteria to be considered an “agricultural operation” in O. Reg. 242/08. OFA reiterates the need for this exemption, which addresses concerns that agricultural cropland conversions might be prohibited and provides certainty to farmers who rely upon grass pastures and hayfields for their livestock operations, or who incorporate hay as part of their crop rotation cycle.

Eastern Whip-poor-will

The Eastern Whip-poor-will is classified as a Threatened species and inhabits a mix of open and forested areas. Assessment Report threats to the Eastern Whip-poor-will include habitat degradation, forest succession, pesticides, predation, and “intensive agriculture”. As mentioned in our previous submission on ERO 019-1749, OFA is concerned as to what is meant by the term “intensive agriculture”. Significant improvements in crop genetics have led to significantly improved crop yields, not only in Ontario but globally. In many cases, those significantly improved crop yields have been achieved with less fertilizer and herbicide usage.

The species conservation charge is proposed to be calculated on the number of hectares of habitat to be impacted, and additional variables. The Beneficial Action variable C1_{variable} is “the cost per hectare to establish habitat, plus maintain and monitor for 5 years”. Similar to the Bobolink

and Eastern Meadowlark, OFA is concerned about where “land to establish habitat” will come from and worries agricultural land will be used to establish new habitat. To reiterate, agricultural lands are a declining resource, and that the majority of land across Southern Ontario is privately owned by Ontario’s farmers. Agricultural lands are a finite and declining resource, one best utilized to provide food, fibre and fuel.

Butternut

Butternut trees are found growing alone or in small groups in deciduous forests and are classified as Endangered. Threats to Butternut is Butternut Canker, a fungal disease which spreads quickly, killing trees within a few years. The conservation charge for an activity that will impact Butternut is proposed to be calculated on the number of trees to be impacted, their size, whether they will be harmed or killed, and their health assessment report category, in addition to proposed variables. Beneficial Action variable $C1_{variable}$ is the “cost per seedling to be planted, including tending and monitoring for five years”. The equation does not seem to take into consideration that land currently being farmed would be converted to Butternut trees.

Establishing the Species at Risk Conservation Trust

Proposed regulations would establish the Agency, a new provincial board-governed agency, called the Species at Risk Conservation Trust, to administer the Fund. The ESA enables the establishment of the Agency and sets out provisions about its governance, objects and government oversight. The proposal outlines the composition of the Board of Directors, made up of three to five voting directors, and requirements and skills of the collective board members. The skills listed in the proposal include:

- Relevant knowledge or scientific expertise, such as conservation biology, ecology, and Aboriginal Traditional Knowledge and/or Indigenous Community Knowledge
- Corporate governance experience, such as financial management, risk management, strategic planning and out-comes based reporting
- Experience in building strategic partnerships in the area of conservation management.

OFA believes the proposed listed skills and qualifications of the Board of Directors are laudable and approves of a small Board. However, we believe it will be difficult to find this specific skillset in a group of three people. OFA recommends a minimum of five board members, to ensure the required skillset is included in the board. Furthermore, we recommend that a farm organization representative sit on the board, to collaborate, provide input, and advice from an agricultural perspective.

Part B: Further Streamlining ESA Authorizations

O. Reg. 242/08 provides conditional exemptions for proponents from prohibitions in the *ESA*. In general, OFA does not oppose the proposed amendments to the conditional exemptions to make more activities eligible under the conditional exemptions. OFA would like to take this opportunity to again reiterate the need for the exemption for agricultural operations, as listed in O.Reg. 242/08. This exemption provides certainty to farmers who rely upon grass pastures and hayfields for their livestock operations, or who incorporate hay as part of their crop rotation cycle. The exemption addresses concerns that agricultural cropland conversions might be prohibited, in the pursuit of preserving species-at-risk habitats.

OFA appreciates this opportunity to provide its perspectives on the 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 those species. We trust that our perspectives will be reflected in any forthcoming changes.

Sincerely,

A handwritten signature in black ink that reads "Peggy Brekveld". The signature is written in a cursive style with a period at the end.

Peggy Brekveld
President

cc: The Honourable Jeff Yurek, Minister of the Environment, Conservation and Parks
The Honourable Ernie Hardeman, Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors