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DELIVERED VIA EMAIL: HealthyEnv-EnvSain@ec.gc.ca

Right to a Healthy Environment Implementation Framework Team
Legislative and Regulatory Affairs Directorate
Environment and Climate Change Canada
351 Saint-Joseph Boulevard
Gatineau QC K1A 0H3

Re: Draft Implementation Framework for the Right to a Healthy Environment under the Canadian Environmental Protection Act, 1999

Please accept this submission on behalf of AEL Advocacy in response to the public consultation on the Draft Implementation Framework for the Right to a Healthy Environment under the *Canadian Environmental Protection Act, 1999* (“CEPA”) (the “**Draft Implementation Framework**”).¹

A. Background on AEL Advocacy

AEL Advocacy is a public interest law practice and not-for-profit organization based in Ontario.² As Canada’s only intersectional animal and environmental advocacy organization, we champion a holistic approach to legal advocacy that highlights the crucial connections between people, animals, and the environment. Our mission involves enforcing existing laws, offering legal support to individuals and organizations committed to animal and environmental protection, and advocating for stronger legislation to promote sustainable and compassionate practices for all.

B. Comments on the Implementation Framework

We strongly support the Government of Canada’s initiative to devise an implementation framework for the right to a healthy environment under CEPA. However, we are deeply

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<https://www.canada.ca/en/environment-climate-change/corporate/transparency/consultations/draft-implementation-framework.html>

² <https://www.aeladvocacy.ca/>

Animal Environmental Legal Advocacy

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concerned about the oversight in the Draft Implementation Framework regarding animals. In addition to playing a crucial role in our ecosystems and a healthy and sustainable environment, animals have inherent rights that should be acknowledged and addressed in the Implementation Framework.

In light of this, we offer the following comments and recommendations:

I. *The Right to a Healthy Environment Should Include Animals*

In CEPA, the term “healthy environment” is defined as an environment that is clean, healthy, and sustainable. The Draft Implementation Framework notes the substantive elements of this right include the right of every individual in Canada to live in an environment that is protected from harmful substances, pollutants, and waste, and where actions taken under CEPA contribute to: clean and healthy air and water; a sustainable climate; and, healthy ecosystems and biodiversity. A “healthy environment” includes “consideration of human health and the health of the environment, including its biological diversity,” emphasizing the importance of management and reduction of pollution.

Although this definition recognizes ecosystems and biodiversity, it does not explicitly extend the right to animals themselves. This omission undermines the Framework’s ability to achieve its stated goals.

AEL Advocacy strongly recommends that animals be explicitly recognized as beneficiaries of the right to a healthy environment within the Implementation Framework. This inclusion aligns with the submissions made in response to the Discussion Document³ and reflects the interconnectedness of animal well-being, ecosystem health, and environmental sustainability.

There are several compelling reasons why the right to a healthy environment should incorporate considerations for animals.

Animals Are Vital to Ecosystems

First and foremost, animals are integral components of ecosystems, and their well-being is inherently linked to environmental health. Neglecting to include animals within the scope of a healthy environment would undermine the overall goal of environmental protection and sustainability. Therefore, any effective Implementation Framework must recognize and prioritize the well-being and rights of animals.

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<https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/publications/what-we-heard-report.html>

Animals as Indicators of Environmental Quality

Second, animals serve as critical indicators of environmental quality. Their well-being and population dynamics reflect and often influence the overall health of their habitats and the broader ecosystem.

Ethical Considerations

Third, recognizing animals as part of a healthy environment aligns with ethical principles regarding their intrinsic value and right to well-being. Failing to include animals in discussions about environmental health disregards their inherent worth and their entitlement to a safe and sustainable habitat.

International Precedents

Finally, there exists a growing body of legal precedents on the international stage that recognizes the intrinsic link between animal protection and the right to a healthy environment. Canada can align itself with these global trends, demonstrating its commitment to environmental stewardship for all of the planet's inhabitants by integrating animal considerations into the Implementation Framework.

For example, in a 2008 case from Brazil's Superior Court of Justice, often referred to as the "wild parrot case," the Court concluded that the right to a healthy environment encompasses animals.⁴ In this case, the Court addressed the issue of whether an individual who had kept a blue-fronted parrot in captivity for more than two decades and in inadequate living conditions violated the right to a healthy environment under Brazil's constitution. The Court ruled that the protection of the environment extends beyond just the physical elements like air, water, and land. It recognized that animals are integral components of the environment and that their well-being is crucial for maintaining a healthy ecosystem. Therefore, actions that harm or threaten animals can be considered detrimental to the environment as a whole.

In a landmark 2014 case, India's supreme court affirmed that animals not only have the right to life and security, but that this right inherently includes the right to live in a healthy, clean environment.⁵ The Court ruled to ban certain bullfighting practices, holding that the constitutional right to life applies to animals as well, requiring an expansive interpretation of "life". India's Constitution has been interpreted as recognizing the right to life encompasses a right to a healthy environment, extending this protection to animals.⁶ Consequently, animals are

⁴ See: <https://harvardlawreview.org/forum/vol-134/rights-of-nature-rights-of-animals/>

⁵ See: <https://ecojurisprudence.org/initiatives/animal-welfare-board-of-india-v-a-nagaraja-ors/>

⁶ <https://indiankanoon.org/doc/1199182/>

granted not only the right to be free from unnecessary suffering caused by human actions, but also the right to live in an environment conducive to their well-being.

Similarly, a 2019 case from Mexico addressed the legality of a decree declaring horse racing, bullfighting, cockfighting, and similar practices intangible cultural heritage of the state, the Court affirmed animals' significance within the constitutional framework of the "right to a healthy environment."⁷ The Court held that "[t]he human right to a healthy environment is a broad concept that includes animal life and well-being, conceiving animals not only as members of a single species or group of species, but also as individual living beings capable of experiencing fear, suffering, and pain." On this basis, the Court rejected the protection of horse racing, bullfighting, and cockfighting, recognizing that these activities cause agony, suffering, and death to animals, contradicting the principles of a healthy environment.

These cases demonstrate a shift in legal paradigms towards recognizing animals as beneficiaries of the right to a healthy environment. There is a growing recognition that protecting animals is inseparable from achieving a clean, healthy, and sustainable environment.

RECOMMENDATION NO. 1: Explicitly recognize animals as beneficiaries of the right to a healthy environment. This recognition should be reflected in the language, objectives, and guiding principles of the Framework.

II. *The Principle of "Environmental Justice" Should Include Animals*

Under sub-section 5.1(2) of CEPA, the Implementation Framework must elaborate on principles to be considered in the administration of CEPA, such as environmental justice (including the avoidance of adverse effects that disproportionately affect vulnerable populations and environments). AEL Advocacy submits that the principle of environmental justice, and the concepts of "vulnerable populations" and "vulnerable environments", should include animals.

While the current definition of environmental justice under section 4.1 of the Draft Implementation Framework encompasses various human communities facing disproportionate environmental burdens, it crucially overlooks the intrinsic connection between environmental justice and animal well-being. Animals, as sentient beings, are profoundly impacted by environmental degradation and pollution, yet they are strikingly absent in discussions surrounding environmental justice.

Including animals within the framework of environmental justice acknowledges their vulnerability to adverse environmental effects and the need for equitable treatment in environmental decision-making processes. Just as certain human populations face systemic

⁷ See: https://www.animallaw.info/cases/topic/animal-fighting?order=field_primary_citation&sort=asc&page=1

discrimination and disproportionate exposure to environmental hazards, animals also endure exploitation, habitat destruction, and exposure to toxins with even less representation or consideration of their well-being.

Furthermore, animals inhabiting vulnerable environments, such as those in habitats threatened by human activities, are particularly susceptible to environmental injustices. When marginalized human communities face environmental injustices, the surrounding wildlife often suffers similarly. Neglecting the inclusion of animals in the principle of environmental justice perpetuates a paradigm that prioritizes human interests over the broader health and well-being of all animals – human and non-human – going directly against submissions previously highlighted on the Discussion Document.

The Draft Implementation Framework recognizes that environmental justice is grounded in the principle of interconnectedness among all living beings, including animals, and the broader natural systems they inhabit. As a guiding principle to CEPA, the ecosystem approach recognizes these interrelationships, emphasizing that the protection of the environment requires an integrated perspective that considers environmental, social and economic factors. While this approach recognizes that environmental issues cannot be addressed in isolation, section 4.1, as previously noted, lacks any discussion regarding animals, leaving a critical aspect of this interconnectedness unaddressed.

Expanding environmental justice to encompass animals aligns with the One Health, One Welfare framework, which emphasizes the interconnectedness of human health, animal health, and environmental health.⁸ Sustainable health outcomes can only be achieved when each element is considered in environmental decision-making. Distributive justice – a core tenet of environmental justice – focuses on how populations disproportionately impacted by pollution face adverse environmental health outcomes, outcomes that are inherently linked to the health of animals and ecosystems.

Further, given that 75% of emerging infectious diseases are zoonotic, factors such as the expansion of intensive livestock farming and deforestation amplify human-wildlife interactions, heightening disease transmission risks.⁹ For instance, in areas with intensive livestock farming –

⁸ <https://humaneCanada.ca/en/your-humane-canada/programs-and-projects>

⁹ Food and Agriculture Organization of the United Nations, “One Health legislation: Contributing to pandemic prevention through law” (2020), online: <https://openknowledge.fao.org/server/api/core/bitstreams/7542d2b2-00e1-4d23-be33-4a39422e3210/content> referencing Taylor, L.H.; Latham, S. M. & Woolhouse, M.E., 2001. Risk factors for human disease emergence. Philosophical Transaction of the Royal Society of London, Series B, Biological Sciences, 356 (1411) 983-989.

often near low-income or marginalized communities – residents face elevated zoonotic disease risks due to close proximity to animals in confined conditions.¹⁰

To effectively confront these challenges, legislative frameworks advocating for a healthy environment must recognize animals as integral components. Incorporating animal health into environmental justice not only broadens the scope of protection but also strengthens the rights of communities disproportionately affected by environmental hazards. Human, animal and ecosystem health and welfare are intricately bound within a complex web of relationships; by omitting animals from environmental justice undermines, the principle falls short of its intended purpose. Integrating the One Health, One Welfare is essential for a holistic approach that safeguards the interconnected health of humans, animals, and ecosystems.

We submit that broadening the scope of environmental justice to include animals aligns with the principle’s core objectives of promoting fairness, equity, and sustainability in environmental governance, acknowledging the interconnectedness of all living beings. An integrated approach yields more comprehensive and equitable outcomes, effectively tackling both immediate and long-term environmental challenges by addressing the root causes of environmental health disparities that affect both humans and animals. By recognizing animals as stakeholders deserving of protection and consideration, the Implementation Framework under CEPA can foster a more inclusive approach to addressing environmental challenges, promoting holistic well-being for all beings within ecosystems.

RECOMMENDATION NO. 2: Adopt an expanded definition of environmental justice that includes animals as a necessary consideration.

Recognizing Animals as Vulnerable Populations

Bill S-5 added the term “vulnerable population” to CEPA, and defined it as “a group of individuals within the population living in Canada who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances.”

AEL Advocacy submits that it’s imperative to acknowledge that animals too fall within this category. Animals are more susceptible to and subject to greater exposure to the negative impacts of pollution, toxic substances, and environmental injustices for the following reasons:

- **Limited Mobility:** Most animals have limited mobility compared to humans. Most cannot easily escape, avoid, or even possess awareness of polluted areas, contaminated water

¹⁰ Food and Agriculture Organization of the United Nations. *One Health: Operational Framework for Strengthening Human, Animal and Environmental Public Health Systems at National Level*. Rome: FAO, 2021: <https://openknowledge.fao.org/handle/20.500.14283/y3542e>

sources, or areas with high levels of toxins. This makes them more likely to be exposed to pollutants for longer periods.

- **Biological Differences**: Animals often have different biological systems compared to humans. Some pollutants may affect animals more severely due to differences in metabolism, detoxification mechanisms, or sensitivity to certain chemicals.
- **Habitat Destruction**: Human activities such as deforestation, urbanization, and industrialization often lead to habitat destruction for wildlife. This destruction can leave animals inhabiting areas with higher levels of pollution or deprive them of habitat on which they depend directly or indirectly to carry out their life processes.
- **Food Chain Contamination**: Animals can be exposed to pollutants indirectly through the food chain. Pollutants often accumulate in plants or smaller animals, which are then consumed by larger animals. This bioaccumulation can result in high concentrations of toxins in the tissues of animals higher up in the food chain, including humans.
- **Vulnerability to Climate Change**: Pollution and environmental injustices often exacerbate the effects of climate change, which can further impact animals. Changes in temperature, precipitation patterns, and habitats can disrupt ecosystems, leading to increased stress and vulnerability for many species.
- **Susceptibility to Habitat Fragmentation**: Fragmentation of habitats due to human activities can isolate animal populations, making them more vulnerable to pollution and other environmental stressors. Smaller, fragmented populations are often more susceptible to death or even extinction due to reduced genetic diversity and limited ability to adapt to changing conditions.

We propose embracing an expanded definition of “vulnerable populations” that explicitly includes animals to ensure that all vulnerable beings, whether human or non-human, receive the necessary safeguards under CEPA.

RECOMMENDATION NO. 3: Embrace an expanded definition of “vulnerable population” to include animals, thereby acknowledging their susceptibility to environmental harm and ensuring comprehensive protection under CEPA.

Recognizing Animals as Part of Vulnerable Environments

Bill S-5 also introduced the term “vulnerable environment” to CEPA, which has yet to be defined. AEL Advocacy submits that incorporating animals into the definition of “vulnerable environment” within CEPA is essential to ensure comprehensive environmental stewardship. We propose a definition that includes the following:

“Vulnerable environment” refers to ecosystems, habitats, or geographic areas that are particularly susceptible to adverse impacts from exposure to substances, resulting in harm to wildlife populations, ecological processes, or animal welfare. This term

encompasses habitats essential for the survival, reproduction, and welfare of animals, including but not limited to:

- a. Critical Wildlife Habitats: Areas designated as crucial for the conservation of threatened or endangered species, including breeding grounds, migratory routes, and feeding areas.*
- b. Sensitive Ecosystems: Fragile or unique ecosystems, such as wetlands, old-growth forests, coral reefs, and estuaries, that support diverse animal communities and play vital roles in maintaining ecological balance.*
- c. Wildlife Corridors: Connectivity zones that facilitate the movement and dispersal of wildlife populations, allowing for genetic exchange and adaptation to changing environmental conditions.*
- d. Protected Areas: Designated reserves, parks, and conservation areas established to conserve biodiversity and provide refuge for native wildlife species, including terrestrial and aquatic habitats.*
- e. Areas of High Animal Concentration: Regions with significant aggregations of wildlife, such as breeding colonies, rookeries, or seasonal congregation sites, where disturbances may have impacts on animal welfare.*
- f. Fragile Ecosystem Components: Key components of ecosystems that are particularly vulnerable to degradation or loss, including keystone species, essential food sources, and critical habitat features.*

RECOMMENDATION NO. 4: Adopt a comprehensive definition of “vulnerable environment” that recognizes and prioritizes animals, ensuring their protection and the preservation of their habitats.

III. Reasonable Limits

AEL Advocacy emphasizes the paramount importance of prioritizing CEPA’s core objectives, particularly the safeguarding of wildlife and their habitats, within the Implementation Framework.

Social factors, such as prevalent cultural norms and societal values, often exhibit a bias favouring human interests over those of animals. This inherent bias may inadvertently diminish the significance of integrating animal welfare into environmental decision-making processes. Similarly, health considerations traditionally center on human health impacts, potentially overshadowing the equally critical health effects experienced by animals due to environmental hazards. Economic factors also often prioritize short-term gains for humans over long-term environmental sustainability and animal well-being, potentially overshadowing measures aimed at protecting animals, their habitats, and mitigating environmental degradation. Moreover, the

economic valuation of animals fails to accurately reflect their intrinsic worth, further marginalizing their consideration in decision-making processes.

Granting undue weight to these factors within the Implementation Framework undermines the fundamental objectives of CEPA and impedes meaningful consideration of the right to a healthy environment.

RECOMMENDATION NO. 5: Establishing clear guidelines within the Implementation Framework that prioritize CEPA's objectives, including the protection of wildlife and their habitats, over other factors, such as social, health, scientific, and economic factors.

IV. *Access to Justice and Accountability*

It is evident that the existing remedy authority of CEPA under section 22 presents significant barriers to the effective enforcement of the right to a healthy environment. The fact that this provision has never been utilized in over 20 years due to procedural obstacles underscores the urgent need for reform.

Barriers to the effective enforcement of the right to a healthy environment are particularly problematic when dealing with animals because animals cannot represent their interests and they rely entirely on humans to take action on their behalf. Barriers that make it difficult for humans to initiate legal proceedings directly impact the extent to which animals can avail themselves of the right to a healthy environment.

Pursuant to section 22 of CEPA, individuals are empowered to initiate an environmental protection lawsuit in a competent court when, following a request for investigation by the Minister that is either neglected or inadequately addressed, an offence under the Act causing significant environmental harm occurs. However, this provision's efficacy is considerably diminished by several impediments, including the prerequisite for individuals to first solicit the Minister to undertake an investigation, the requirement for a confirmed offence, and the necessity for the offence to result in significant environmental degradation. To enhance accessibility and effectiveness, we propose that section 22 be revised to permit legal action for offences that could potentially harm or pose a serious risk to the environment or the health of humans, animals, or plants. The existing framework imposes excessive restrictions and procedural hurdles. Simplifying the criteria to allow actions based on any harm, rather than "significant harm", is important for achieving the intended protective objectives of CEPA.

Ultimately, without meaningful reforms to address the procedural barriers to enforcement, the right to a healthy environment will remain aspirational rather than actionable. The Government of Canada must prioritize legislative amendments that empower citizens to protect their

environmental rights and hold decision-makers accountable. Only then can we truly ensure the protection of the environment and the health of present and future generations.

RECOMMENDATION NO. 6: Remove procedural barriers and prioritize legislative amendments that empower citizens to protect their environmental rights and hold decision-makers accountable.

C. Conclusion

In conclusion, we urge ECCC and HC to amend the Draft Implementation Framework for a Right to a Healthy Environment under the *Canadian Environmental Protection Act, 1999* to include animals. By recognizing that animals are entitled to a clean, healthy, and sustainable environment, Canada can demonstrate leadership in environmental stewardship and .

To effectively integrate animal considerations into the Implementation Framework, we make the following recommendations:

RECOMMENDATION NO. 1: Explicitly recognize animals as beneficiaries of the right to a healthy environment. This recognition should be reflected in the language, objectives, and guiding principles of the Framework.

RECOMMENDATION NO. 2: Adopt an expanded definition of environmental justice that includes animals as a necessary consideration.

RECOMMENDATION NO. 3: Embrace an expanded definition of “vulnerable population” to include animals, thereby acknowledging their susceptibility to environmental harm and ensuring comprehensive protection under CEPA.

RECOMMENDATION NO. 4: Adopt a comprehensive definition of “vulnerable environment” that recognizes and prioritizes animals, ensuring their protection and the preservation of their habitats.

RECOMMENDATION NO. 5: Establishing clear guidelines within the Implementation Framework that prioritize CEPA’s objectives, including the protection of wildlife and their habitats, over other factors, such as social, health, scientific, and economic factors.

RECOMMENDATION NO. 6: Remove procedural barriers and prioritize legislative amendments that empower citizens to protect their environmental rights and hold decision-makers accountable.

Thank you for your attention to this important matter. We welcome the opportunity to discuss the above comments and recommendations.

Sincerely,

A handwritten signature in cursive script that reads "K Berkeley". The signature is written in black ink and is positioned above a horizontal line.

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