Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

VIA ELECTRONIC MAIL & ERO REGISTRY

November 10, 2025

Public Input Coordinator – Species at Risk Protection
Species at Risk Branch
Ministry of the Environment, Conservation and Parks
40 St. Clair Ave West
Toronto, ON
M4V 1M2

RE: PROPOSED REGULATIONS AND GUIDANCE UNDER THE *SPECIES CONSERVATION ACT, 2025* -- ERO 025-0909 AND ERO 025-0908

These are the comments of the Canadian Environmental Law Association (CELA) to the Ministry of the Environment, Conservation and Parks (MECP) in relation to the above-noted Registry notices.[1]

For the reasons outlined below, CELA is strongly opposed to the various proposals described in the Registry notice (ERO 025-0909) pertaining to regulations under the *Species Conservation Act, 2025* (SCA). In our view, these proposed regulations confirm our previous view[2] that the SCA represents an unacceptable attempt to limit or delete important legal protections of species at risk and their habitat in Ontario.

Accordingly, CELA submits that none of the regulatory proposals should proceed, and that the SCA should not be proclaimed into force on the basis of these regressive regulations. In our view, the SCA should be repealed at the earliest opportunity, and the original *Endangered Species Act, 2007* (ESA) should be re-enacted forthwith.

We have also reviewed the MECP's proposed guidance (ERO 025-0908) in relation to activities that are "registerable" under section 16 of the SCA and other implementation matters under the Act (e.g. applying the new definition of "habitat" under the SCA). Our concerns about the SCA self-registration process are set out below. Given the SCA's unduly restrictive approach to "habitat" (i.e. just the species' "dwelling place" will be protected), CELA profoundly disagrees with the Registry notice's unsubstantiated and unpersuasive claim that "the SCA will continue to provide important protection for species at risk and their core habitats."

[1] Proposed legislative and regulatory amendments to enable the Species Conservation Act, 2025 | Environmental Registry of Ontario and Developing guidance on section 16 activities under the Species Conservation Act, 2025. | Environmental Registry of Ontario.
[2] CELA Comments on Bill 5 "Protect Ontario by Unleashing our Economy Act, 2025" - Canadian Environmental Law Association.

This submission therefore focuses on the five regulatory proposals being advanced by MECP at this time via ERO 025-0909.

Overview of Regulatory Proposals

In the Registry notice, the MECP is seeking public feedback on several proposed regulations under the SCA:

- **Protected Species in Ontario List regulation**: sets out the list of species that would receive protections under the SCA
- **Registration regulation**: sets out registration requirements and rules for conducting registerable activities
- **Permit regulation**: specifies which activities cannot proceed under a registration, but instead require a permit
- **Exception regulation**: lists activities that can proceed without a registration or permit
- **Transition regulation**: sets out any necessary rules to transition from the ESA to the SCA, including details how activities commenced under the ESA under a permit, agreement, or conditional exemption would transition to the SCA

In addition, the Registry notice also seeks public comments on proposed amendments to the regulations made under the *Environmental Bill of Rights, 1993* (EBR) as a result of the repeal of the ESA and the coming into force of the SCA.

Similarly, the Registry notice also solicits inputs on proposed amendments to the SCA and consequential amendments to other statutes and regulations.

CELA Comments on the Regulatory Proposals

(i) Absence of Actual Draft Regulations or Regulatory Impact Statement

While the Registry notice invites public comment on regulatory proposals, the notice does not attach or link to draft versions of the regulations (as has been done in other recent ERO postings).

Instead, the current notice only provides high-level descriptions which do not contain adequate detail or sufficient clarity on regulatory content. Moreover, some of the regulatory descriptions are equivocal or ambiguous at best. For example, some proposals use the word "may" to describe what might (or might not) be set out in the forthcoming regulations (see below).

We further note that while sections 27(4) and (5) of the EBR generally require Registry notices about regulatory proposals to include regulatory impact statements, no such statement is included in ERO 025-0909.

In our view, the unjustifiable lack of draft regulations (or a regulatory impact statement) in the Registry notice undermines the ability of the public to meaningfully comment on the MECP proposals, and runs contrary to the public participation and accountability purposes of the EBR.

If the Ontario government intends to proceed with new regulations to accompany the SCA, then the actual draft regulations should be re-posted on the Registry, and a new 60-day public comment period should be established.

(ii) Key Proposals were Implemented before the Comment Period Ended

The original Registry notice indicates that MECP is proposing some amendments to the SCA despite the fact that the Act was passed just months ago. In particular, the notice generally described these changes as including "amendments to improve clarity and consistency within the legislation and more closely align the circumstances in which orders can be issued under sections 37 and 38."

However, the Registry notice was subsequently amended to state that Bill 56 was recently enacted by the Ontario legislature to implement these proposed amendments:

> Please note that on October 30, 2025, Bill 56, *Building a More Competitive Economy Act, 2025* received third reading in the legislature. This is considered implemented for the purposes of the *Environmental Bill of Rights, 1993*. Bill 56 implemented the legislative amendments discussed in section 7 of this proposal. Details can be found at 025-1223 (https://ero.ontario.ca/notice/025-1223). Consultation on the regulatory portions of the proposal continues.

In our view, implementing a proposal well before the public comment period has ended is unacceptable and makes a mockery of public participation rights under Part II of the EBR.

(iii) Unjustifiable De-Listing of Numerous Species from the Regulatory List

The Registry notice states that the "proposed regulation would list approximately 169 species to be protected under the SCA and set out the classifications assigned to each by the Committee on the Status of Species at Risk in Ontario (COSSARO), i.e., extirpated, endangered, or threatened."

However, the notice goes on to indicate that over 100 species found on the current list (O.Reg.230/08) will no longer be on the SCA's Species at Risk in Ontario List:

> Species currently listed on the Species at Risk in Ontario List that will not be listed in the proposed regulation include:
>
> - the 64 species classified by COSSARO as special concern including 6 species that were classified as special concern in **COSSARO's 2024 Annual Report**. Note that none of these species are subject to the prohibitions under the ESA
>
> - the 42 aquatic species (fish and mussels) and migratory bird species listed as extirpated, endangered or threatened under the federal *Species at Risk Act*. This removes duplication for species already receiving protections federally. Activities impacting these species will still need to comply with the following federal legislation: the *Species at Risk Act*, *the Fisheries Act*, and the *Migratory Birds Convention Act, 1994*

In our view, this is arguably the most objectionable regulatory proposal by the MECP under the SCA, and represents an abdication of Ontario's role and responsibility in safeguarding species at risk and their habitat throughout the province.

First, the former ESA contained protective provisions that helped to manage and protect "special concern" species so that they do not become threatened or endangered. This is an important public policy objective that unfortunately has not been carried forward into the SCA. In our view, these key provisions must be returned to the SCA via expedited legislative and/or regulatory amendments. This is also true in relation to the former ESA provisions that properly placed positive legal duties on the Ontario government to produce recovery strategies, management plans and progress reports for species at risk in the province.

Second, the exclusion of so-called "federal" species is ill-conceived and potentially harmful to such species that are present in the province. CELA submits that there is no merit to the Registry notice's erroneous claim that there is "duplication" between the SCA and the *Species At Risk Act*. In our experience, having overlapping species listings is both constitutionally permissible and helps to ensure a coordinated and cooperative approach by the federal and provincial governments.

Third, CELA draws no comfort from the Registry notice's reassurance that impactful activities will still have to comply with applicable federal legislation such as the *Fisheries Act* or *Migratory Birds Convention Act, 1994*. This is simply a statement that persons and corporations must comply with legislation, which is a Rule of Law expectation that applies to everyone in the province. Accordingly, this statement cannot be used as a pretext for de-listing 42 "federal" species under the SCA.

(iv) The Unacceptable Registration, Permitting, Exempting, and EBR Regulatory Proposals

The Registry notice indicates that:

> The SCA requires any activity that adversely impacts a protected species to be registered before proceeding with it unless the activity is excepted from the SCA or prescribed as an activity that requires a permit. This proposed regulation will set out the requirements for registering 'registerable' activities and the rules that must be followed when engaging in the registered activity.
>
> The regulation would require registrants to submit relevant information with a registration. Some requirements will be tailored to specific activities. The regulation would also set out rules that must be followed when engaging in a registered activity. These rules <u>may</u> be activity or species specific, and <u>may</u> include requirements related to impacts to a species or species' habitat (emphasis added)…
>
> [Another] regulation will set out activities that would require a permit before proceeding. These activities would not be eligible to proceed by way of a registration…
>
> Certain activities are being <u>considered</u> for inclusion in the permit regulation, including:

- killing a protected animal species (e.g., mammal, fish, reptile) if the activity is not already subject to an exception (e.g. threats to human health and safety) or eligible for registration (e.g. euthanasia for rabies testing)
- introducing or reintroduction of most protected species to an area where it does not currently occur (emphasis added)…

[Another] regulation will set out activities that may proceed without being registered or obtaining a permit…

We are proposing to prescribe the SCA as being subject to Part IV (Application for Review), Part V (Application for Investigation) and Part VII (Employee Reprisals) of the *Environmental Bill of Rights*.

We are also proposing to exempt all permits and orders issued under the SCA from the requirements of Part II of the *Environmental Bill of Rights*.

First, as noted above, the paucity of prescriptive detail in the Registry notice about the scope, nature, and content of the forthcoming registration "rules" does not facilitate meaningful public review and comment under the EBR. Similarly, the Registry notice's frequent use of the word "may" (or "considering") provides no certainty or transparency about the government's actual intentions when promulgating the regulations under the SCA.

Second, for the reasons outlined in our submissions on Bill 5,[3] CELA remains highly concerned about the proposed importation of an online self-registration system (i.e. "permit by rule") under the SCA in order to minimize the application of permitting requirements under the Act. In our view, self-registration (even with generic province-wide "rules") is an unacceptable substitute for effective, enforceable, and project- or site-specific permit conditions that are tailored to mitigate or prevent harm to species at risk or their habitat. In particular, CELA is concerned about: (i) the efficacy of the proposed registration system (or the unknown "rules") to protect species at risk; (ii) the adverse cumulative effects that may arise from numerous registered activities (especially if undertaken in the same geographic area or timeframe); (iii) the institutional capacity or willingness of the MECP to frequently investigate and strictly enforce registration "rules"; and (iv) the loss of public participation, transparency, and accountability since registrations per se are not instruments subject to Part II of the EBR.

Third, the regulatory reach of the narrowly framed permitting regime under the SCA must be reconsidered and revised so that most, if not all, regulated activities require permits under the Act, rather than be exempted. On this point, however, we are mindful of the Auditor General's highly critical 2021 report[4] that raised numerous concerns about the MECP's overuse of permitting provisions in relation to activities that may affect species at risk and their habitat:

---

[3] *Supra*, footnote 2, pages 43-44.

[4] Value-for-Money Audit: Protecting and Recovering Species at Risk, pages 2-3. The 2024 EBR report by the Auditor General of Ontario also raised similar concerns about the MECP's proposed expansion of its Environmental Activity and Sector Registration program: see Operation of the Environmental Bill of Rights, 1993, pages 29-30.

> The Environment Ministry lacks guidance on when to say "no" to permit applications to harm species at risk and their habitats. No application to harm species or their habitats has ever been denied. In fact, most approvals are granted automatically by the Environment Ministry without review. There are also no inspections to ensure that companies and others abide by the conditions of their approvals. The cumulative effects of approvals to harm species at risk and other threats are not assessed by the Environment Ministry.

Fourth, issuing permits under the SCA to allow activities that are otherwise prohibited by the Act are, by any objective standard, environmentally significant decisions. Accordingly, the proposed issuance of SCA permits must be made fully subject to the public notice, comment and appeal rights under Part II of the EBR.

Fifth, CELA submits that all of the SCA – including its regulations, "rules", and permit issuance – must be subject to all parts of the EBR, including Part II (public participation) and the section 84 right of action regarding harm to public resources. In our view, comprehensive EBR coverage of the SCA regime is both necessary and consistent with the EBR's purposes of providing environmental protection, ensuring public participation, and enhancing governmental accountability for decision-making.

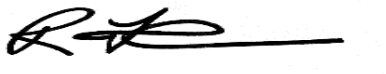
Conclusion

If the SCA is proclaimed into force and the amended ESA is repealed, then the new legislation is intended to serve as the province's primary line of defence for species at risk and their habitat in Ontario. However, CELA concludes that the SCA – together with the proposed regulations and guidance – represents a significant, unjustified, and unconscionable rollback of the former ESA regime.

Accordingly, CELA recommends that none of the regulatory proposals should proceed, and that the SCA should not be proclaimed into force on the basis of these regressive regulations. In our view, the SCA should be repealed at the earliest opportunity, and the original ESA should be re-enacted forthwith.

We trust that the foregoing comments will be considered and acted upon as the MECP determines its next steps under the SCA. Please contact the undersigned if you have any questions arising from this submission.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel

cc. Dr. Tyler Schulz, Commissioner of the Environment