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Electronic Submission only

ATTENTION:
Public Input Coordinator - Species at Risk Protection
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Proposed legislative and regulatory amendments to enable the Species Conservation Act, 2025

Environmental Registry of Ontario Posting 025-0909

On September 26, the Province released a posting relating to the "Proposed legislative and regulatory amendments to enable the Species Conservation Act". The Province is accepting comments until November 10, 2025. It is noted that on October 30, 2025 Bill 56 *Building a More Competitive Economy Act,* received third reading and effectively implemented the changes to the Environmental Bill of Rights (EBR) identified in item 6 of ERO Posting 025-0909 prior to the culmination of the engagement period.

The stated purpose of the posting is to seek feedback on five (5) newly proposed regulations to implement the Species Conservation Act (SCA). The proposal also includes amendments to the SCA and amendments to other statutes and regulations.

The ERO posting sets out that the five (5) newly proposed regulations would be required prior to the SCA coming into effect and would address the following aspects:

- Protected Species in Ontario List regulation: sets out the list of species that would receive protection 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 of how activities commenced under the ESA under a permit, agreement, or conditional exemption would transition to the SCA

In addition to the above, the MECP is seeking comments on proposed amendments to the regulations made under the Environmental Bill of Rights (EBR) as a result of the repeal of the Endangered Species Act (ESA).

Feedback

Role of the City of Burlington (the "City")

In its responsibility to make decisions under the Planning Act, the City must have regard for, among other things, the protection of ecological systems including natural areas, features and functions. This responsibility is furthered by the Provincial Planning Statement (2024) which recognizes the importance of the long-term ecological function and the biodiversity of natural heritage systems.

The focus on a systems-based approach to long-term environmental protection is one that has been supported by the City as it recognizes the integrated nature of natural features and functions. It is understood that the implementation of the ESA is predominantly a Provincial responsibility; however, this responsibility is just one aspect of an integrated natural system. It is common for species at risk (SAR) and their habitat to overlap with other key features and contribute to the assessment of the ecological function of those features.

Previous Submissions

Comments provided by the city on ERO Posting 025-0380 were extensive and sought to understand how the new direction for SAR protection at the provincial level was intended to be decoupled from the broader approach to natural heritage protection, and how this should be interpreted in the development planning process. Those comments also suggested that an update to the direction on END/SAR species provided in the Province's Natural Heritage Resource Manual (NHRM) would be a logical place to address this interface.

General Concerns

The comments discussed above have gone unaddressed and/or unanswered despite similar issues being raised by other stakeholders.

The legislative changes enacted through Bill 56 and the implementing regulations will collectively guide the long-term protection of Ontario's biodiversity and natural environment, especially species at risk. As such, both the legislative changes and implementing regulations should be viewed as a complete package to ensure that the desired outcomes do not result in negative or adverse unintended consequences. It is also noted in ERO Posting 025-0909 that there are no draft regulations for review, and instead broad overviews of what these five (5) regulations may include are provided to solicit feedback. Staff note that it is difficult to provide constructive

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feedback on the specific elements of the regulations that do not yet exist, even in draft form. It is concerning that a complex piece of replacement legislation would be approved without an opportunity to review draft versions of the regulations required to implement it. It is recommended that once the regulations are drafted additional consultation should be undertaken.

The following comments are provided for consideration.

1. Protected Species in Ontario List (new SCA list)

- Approximately 169 species would be protected at SCA launch.
- The list starts from the ESA's Species at Risk in Ontario List but excludes:
    - 64 "special concern" species (not prohibited under ESA either); and
    - 42 aquatic and migratory bird species already listed under federal SARA/MBCA "to remove duplication." Four newly classified species from COSSARO 2024 would be added; two reclassifications are reflected.

Concerns

- On non-federal lands, dropping aquatic and migratory birds from the provincial list shifts day-to-day protection to federal processes creating practical gaps whenever no federal authorization is triggered.
- As a result of Bill 5 future listing discretion sits with LGIC/Minister. Transparency on decisions made that are not reflected in COSSARO direction should be made mandatory.

Recommendations

- Publish a species-by-species transition protocol showing which protections shift to federal law and how proponents should screen for those triggers.
- Commit to annual, dated list updates with reasons (esp. for adds/removals diverging from COSSARO advice).

2. Registration Regulation

- Defines what must be filed to register and the rules and/or conditions for registerable activities.
- Some information requirements will be activity specific.

Concerns

- If threshold triggers and conditions are not well defined, high impact files may default to registration.
- Compliance quality will be dependent on the ability to audit the registration/permit system, as well as the establishment of minimum survey standards, not just declarations.

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Recommendations

- Include decision-trees and worked examples (roads/culverts, subdivisions, utilities, quarries, early exploration, SWM/PTTW, etc.).
- Classify minimum data standards (survey timing windows, methods, detection probabilities, data recency) and develop record-keeping standards for audit purposes.
- Publish all registration and conditions on the SCA registry.
- Set risk-weight audit targets for annual public reporting. Risk weighted audit targets should focus on auditing a large percentage of high-risk permits, a moderate amount of medium risk permits, and a low amount of low risk permits (i.e. 80%/40%/10%)

3. Permit Regulation

- Identifies activities that cannot proceed by registration and need a permit (e.g., killing a protected species where not otherwise allowed; introductions/re-introductions).
- Minister may refuse permits.

Concerns

- The threshold between register vs permit determines where fuller review applies.
- Without clear criteria, borderline cases may default to registration.

Recommendations

- Prescribe objective referral triggers to the permit track considering the following:
    - cumulative effects beyond set spatial/temporal bounds.
    - impacts in and in proximity to critical life stage habitat.
    - uncertainty above a set threshold. (Habitat delineation uncertainty, survey methodology uncertainty, impact magnitude uncertainty, mitigation effectiveness uncertainty, etc.).
    - multi-phase projects.

- Require a public statement of reasons when a file that appears to meet permit triggers is nevertheless registered.

4. Exception Regulation

- Will prescribe activities that can proceed without registration or permit.
- MECP proposes to carry over most “no-notice” exemptions from O. Reg. 242/08 ss. 1.1–23.19, dropping spent items and those linked to species not protected under the SCA.
- Stewardship activities now covered by s. 17.1 would be moved to registration and not left as exceptions.

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- Proposes to combine and expand commercial cultivation exemptions for plants.

Concerns

- Overly broad exceptions will result in minimized visibility of activities having assessed lower risk. This is likely to result in unassessed or unknown cumulative impact in areas with high development pressures.
- Moving stewardship into registration is positive as it should result in additional transparency.

Recommendation

- Publish a complete carry-over table (O.Reg. 242/08 → SCA Exception vs Registration) with rationale.
- For each exception, state conditions in plain language. If field verification is required, that should be so stated in direct language.
- Confirm that exceptions will be reviewed and/or renewed on a schedule with data on their environmental outcomes.

5. Transition Regulation

- activities under ESA permits/agreements/conditional exemptions (that required Registry notice) continue under ESA requirements (including the ESA habitat definition in place at the time) so long as the impacted species remains protected by the SCA.
- Proposes allowing cancellation of certain ESA instruments so proponents can switch to SCA.
- Only administrative amendments to transitioned registrations after Dec 31, 2026; changes that add impacts to a new species require a new SCA registration/permit. Similar rules for ESA orders/instruments.

Concerns

- Confirms grandfathering and preserves ESA delineations on those specific files but places a timeframe on substantive changes for ESA registrations (post-Dec 31, 2026).
- Expect more mixed portfolios (some phases under ESA terms, later phases under SCA). Management of mixed portfolios will be cumbersome.

Recommendations

- Publish a transition FAQ with scenarios (scope change, species added, phases of development).
- Clarify process for switching from ESA to SCA (cancellation + new reg/permit) and how monitoring obligations transfer over.

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- Confirm whether mapping/habitat delineations filed under the ESA must be re-filed to the SCA registry for transparency.

6. <u>Environmental Bill of Rights changes</u>

- MECP proposes to exempt all SCA permits and orders from Part II of the Environmental Bill of Rights
    - Results in no ERO posting, comments, or other participation rights for those instruments).
- The SCA itself would be prescribed for Part IV/V/VII (review, investigation, reprisals)

Concerns

- Minimizes transparency and public/stakeholder engagement.
- Risks important information and/or data from being shared by those who may be specific knowledge of an area to be impacted by proposed works.

Recommendation.

- Not supportive of the Part II exemption for permits/orders

    - At minimum ERO postings providing summaries and affixed conditions should be standard, especially for higher risk permits.
    - Commenting rights should also be upheld for such postings. The SCA already centers on registration; removing public visibility from the remaining permit path further concentrates risk and erodes transparency.

Next Steps

Please accept this letter as the City of Burlington's submission on ERO posting 025-0909. Given the short period for consultation, the attached comments have not been approved by City Council. This letter will be shared through an upcoming Council Information Package. Should Council determine any additional comments or refinements to these comments are required, the Province will be advised at the earliest opportunity.

Sincerely,

Jamie Tellier, MCIP, RPP
Director of Community Planning
Community Planning Department
City of Burlington