



November 10, 2025

Submitted online and via email to ESAREg@ontario.ca

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

Re: Proposed guidance on Section 16 activities under the Species Conservation Act, 2025 (ERO 025-0908) and Proposed legislative and regulatory amendments to enable the Species Conservation Act, 2025 (ERO 025-0909)

The City of Markham appreciates the opportunity to provide feedback on the proposed guidance and regulations to enable the *Species Conservation Act (SCA), 2025*. This submission provides City of Markham staff comments and recommendations for consideration by the Ministry. Please note that additional or revised comments that may be provided by the Council of the City of Markham will be forwarded to the Ministry further to this submission.

General Comments

Conserving biodiversity, including species at risk and their habitat, is essential for ecosystems to remain healthy. The development of regulations to shift most authorizations to a registration approach is supported in principle. However, the regulatory requirements needed to implement the new Act should ensure that effective habitat protection, mitigation and offsetting is provided when authorizing activities impacting species at risk. An effective framework for the protection and conservation of species is critical to ensuring the Province's biodiversity remains healthy.

Comments on Proposed Guidance for Section 16 Activities under the SCA (ERO 025-0908)

A comprehensive set of "species at risk guides and resources", similar to what is currently provided on the Ministry's website for the *Endangered Species Act (ESA)* should be updated and expanded to support implementation of the new *Species Conservation Act (SCA)*.

The guides "Categorizing and Protecting Habitat under *the Endangered Species Act*" and "Policy Guidance on Harm and Harass under the *Endangered Species Act*" provide helpful background to understand and interpret the current legislation. The guides should be updated or supplemented with new guides and policy to provide relevant context and explanation of new definitions, protection standards, transition, exceptions, registration and permitting provisions contained in the SCA.

The updated guidance should provide a detailed explanation of the 'purpose' and intended outcomes of the Act. The legislation's intention to provide for the "protection and conservation of



species” should be fully explained with examples of requirements that are to be addressed when registering activities and meeting permit requirements.

The previous guidance defining and explaining key terms should be retained and updated, as may be appropriate, including how “damage to” and “destruction of” habitat are to be determined and assessed.

The guiding principles including risk and uncertainty, adaptive management and spatial scale continue to be relevant considerations as guidance to support the SCA (e.g., how impacts and mitigation will be considered at a spatial scale that is ecologically relevant for the species).

The guiding principles should be expanded to also include the “mitigation hierarchy” concept as a guiding principle to inform development of project registration and permitting requirements. Project authorizations should be guided by a framework that emphasizes avoiding impacts first, followed by minimizing impacts and lastly mitigating impacts that cannot be fully avoided in circumstances that would not threaten the recovery or ability of a species to exist in the wild.

The mitigation hierarchy should support the option of compensation to be provided in appropriate circumstances when removal of habitat may be appropriate, and replacement of habitat is feasible to implement as a condition of registration or permit.

Finally, the continuation of the Species Conservation Program with enhanced funding up to \$20 million annually to promote protection and conservation of species under the new Act is an important commitment of the Province. The funding of stewardship initiatives to third parties for habitat restoration, public education and outreach, and scientific research that fills knowledge gaps contributes to the protection and conservation of species and should be continued.

Recommendations:

- A comprehensive set of “species at risk guides and resources”, similar to what is currently provided on the Ministry’s website for the *Endangered Species Act (ESA)* should be updated and expanded to support implementation of the new *Species Conservation Act (SCA)*.
- The current eligibility for municipalities to receive grant funding to undertake stewardship initiatives under the current Species at Risk Stewardship Program should continue under the new Species Conservation Program.

Comments on proposed legislative and regulatory amendments to enable the Species Conservation Act, 2025 (ERO 025-0909)

1. Proposed Species at Risk in Ontario Regulation

The Ministry’s proposal to include endangered and threatened species currently listed on the Species at Risk in Ontario List in the proposed new Protected Species at Risk in Ontario List, including the recent reclassifications provided in COSSARO’s Annual Report, is generally supported as it is consistent with a science-based approach.



The proposed exclusion of federally regulated aquatic and migratory bird species listed as extirpated, endangered or threatened on the List of Wildlife Species at Risk under the *Species at Risk Act (Canada)* is also supported in principle as it removes duplication of approvals.

However, the removal of federally listed species from the Protected Species at Risk in Ontario List should only be on the basis of provincial assessments that an equivalent standard of species and habitat protection will be afforded through compliance with federal requirements and approvals.

Further, the proposed removal of federally listed species from the Ontario list should be reviewed on an annual basis with guidance that species be re-listed if species statuses change at the federal level or if provincial assessments determine that federal species and habitat protections are not equivalent to provincial requirements for species protection needs determined at a provincial scale.

Federally regulated aquatic species, such as Redside Dace, and migratory birds are important components of the City of Markham's biodiversity and natural heritage system and should be afforded effective protections in the implementation of species at risk legislation.

Please note that while the reduction in regulatory duplication is positive, changes in classification or protection status (e.g., species newly added or removed from the provincial list) could impact municipal infrastructure project schedules. Further clarification is recommended regarding how responsibilities will be divided between the Province and federal agencies for project reviews affecting aquatic and migratory species. Clear guidance will help municipalities coordinate compliance requirements efficiently and avoid delays in infrastructure delivery. Early communication and transition support from the province are recommended.

Recommendations:

- The removal of federally listed species from the Protected Species at Risk in Ontario List should only be on the basis of provincial assessments that an equivalent standard of species and habitat protection will be afforded through compliance with federal requirements and approvals.
- The proposed removal of federally listed species from the Protected Species at Risk in Ontario List should be reviewed on an annual basis with guidance that species be re-listed if species statuses change at the federal level or if provincial assessments determine that federal species and habitat protections are not equivalent to provincial requirements for species protection needs determined at a provincial scale.
- Early communication, guidance and transition support is recommended regarding how responsibilities will be divided between the Province and federal agencies for municipal infrastructure project reviews affecting aquatic and migratory species.



2. Proposed Registration Regulation

The registration approach and requirements outlined in the proposed regulation are generally supported. The regulations should clearly set out the activities or classes of activities that would be eligible for registration or require permits under the Act.

Registerable activities should be scoped to those that have relatively lower impact and risk and to circumstances that would not require more complex mitigation and compensation for larger scale impacts or more involved oversight and review by the Ministry of the Environment, Conservation and Parks (MECP) staff that a permitting process can provide. The proposed regulation and/or rules for projects impacting endangered and threatened species habitat should include rigorous standards with requirements to demonstrate how impacts have been avoided, minimized and mitigated to the greatest extent possible.

Regulation rules should specify that species at risk screening, field surveys, impact assessments, conservation plans, and monitoring be undertaken when needed and that these submission documents be prepared by qualified professionals.

The new regulation rules should enable more municipal infrastructure projects to be authorized through project registrations while maintaining strong environmental standards. The ability to register certain infrastructure activities - rather than undergoing a lengthy permitting process - could reduce infrastructure delivery delays and administrative costs for municipalities, provided that the registration criteria and mitigation standards remain clear.

Since stewardship activities are proposed to fall under the registration regulation, additional guidance should be provided to municipalities on the specific requirements for these activities to qualify for registration - particularly for habitat restoration and enhancement projects lead by municipalities.

Recommendations:

- Registerable activities should be limited to those with lower impact and risk, and to situations that do not require complex mitigation or compensation for larger scale impacts, or extensive oversight and review by MECP staff.
- Requirements for creating, enhancing or restoring species' habitat should be mandatory in circumstances where additional conservation actions are required such as when activities propose the removal of critical habitat and options to minimize and mitigate impacts are limited.
- The regulation should clearly define which types of municipal infrastructure activities (e.g., road reconstruction, stormwater management retrofits, culvert replacements, utility installations) would qualify as registerable, along with any thresholds for project scale or habitat sensitivity that would trigger the need for a full permit.



- The registration process should be designed to align with typical municipal infrastructure project stages (i.e., environmental assessment, detailed design, tendering, and construction) to prevent duplication of efforts and facilitate early identification and management of species-related constraints within the project timelines.

3. Proposed Permit Regulation

The proposed permit regulation should include provisions requiring higher-impact and higher-risk activities to be subject to permit approvals under the Act. This includes circumstances that would involve more complex mitigation and compensation for larger scale impacts, or require more involved oversight and review by MECP staff, which cannot be adequately addressed through a registration process.

The City emphasizes that the permitting process undertaken by the Ministry should be timely, transparent, and integrated with municipal project delivery frameworks. Clear definitions and thresholds for activities that would require a permit versus those that may proceed through registration should be provided.

Recommendations:

- The proposed permit regulation should require higher-impact and higher-risk activities to be subject to permit approvals under the Act including activities that have larger scale impacts, involve more complex mitigation and compensation, or require more involved oversight and review by MECP staff.
- Clear definitions and thresholds for activities that would require a permit versus those that may proceed through registration should be provided.
- Detailed implementation guidance, including decision criteria, mitigation hierarchy examples, and sample permit conditions should be provided to assist municipalities and consultants with compliance planning.

4. Proposed Exception Regulation

The proposal to consolidate and clarify existing exemptions under O. Reg. 242/08 within the new framework is generally supported. However, the City recommends that the Ministry provide additional clarity on the scope and application of the proposed exceptions to ensure consistent interpretation and compliance for municipal infrastructure projects.

5. Proposed Transition Regulation

The City is generally supportive of the proposed approach to providing transition under the new Act. A clear transition framework from the *Endangered Species Act* (ESA) to the *Species Conservation Act* (SCA), that ensures continuity and regulatory certainty for ongoing projects initiated under existing ESA permits, agreements, or conditional exemptions would be helpful.



Clear direction should be provided on how and when proponents must transition from ESA instruments to SCA authorizations, including how ongoing compliance monitoring and reporting obligations will be managed during the transition period.

The limitation allowing only administrative amendments after December 31, 2026, may pose challenges for long-term infrastructure projects.

Recommendation:

- A guideline document explaining transition options and requirements for municipal infrastructure projects should be provided to ensure regulatory certainty for ongoing projects initiated under existing ESA permits, agreements, or conditional exemptions.

We appreciate the opportunity to provide our comments on these proposals. Should you have any questions please reach out to either myself at jyeh@markham.ca or Mark Head, Manager, Natural Heritage at mhead@markham.ca.

Sincerely,

John Yeh, RPP
Senior Manager, Policy & Research, Zoning & Special Projects
Development Services Commission
City of Markham

cc. Giulio Cescato, Director, Planning and Urban Design
Frank Clarizio, Director, Engineering
Salia Kalali, Senior Manager, Infrastructure and Capital Projects
Henry Sung, Manager, Infrastructure and Capital Projects
Imtiaz Shah, Manager, Environmental Engineering