November 10, 2025

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

Re: Proposed legislative and regulatory amendments to enable the *Species Conservation Act*, 2025 (ERO 025-0909).

Dear Sir/Madam:

Thank you for the opportunity to comment on the proposed regulatory framework to enable the *Species Conservation Act, 2025* (SCA). We submit these comments as lawyers and scientists with Ecojustice, an organization with expertise and a long history of litigation under the *Ontario Endangered Species Act* (ESA) as well as policy engagement on its implementation.

We start by stating our blanket objection to the repeal of the ESA and its replacement with the far weaker SCA. The SCA is hampered by a severely limited definition of species habitat, no science-based assessment approach, discretionary listing of species, and elimination of recovery strategies. Amidst a biodiversity crisis, Ontario's species need greater, not weaker, protection. The SCA will only serve to send Ontario's at-risk species further down the wrong trajectory.

This ERO posting proposes five new regulations and several legislative amendments which would result in significant changes to Ontario's approach to protecting species at risk. However, the proposal lacks sufficient detail and fails to explain its likely impacts on protection of species at risk. Though the following should not be mistaken as support for the SCA, which will harm not help species at risk, we offer these comments and recommendations to ensure the proposed regulations are strengthened to a bare minimum standard.

1. **Protected Species in Ontario List Regulations**

Through this regulation, the Ministry of the Environment, Conservation and Parks (MECP) proposes to remove 106 listed species in Ontario, including 64 Special Concern species and 42

aquatic and migratory bird species listed as endangered and threatened under the federal *Species at Risk Act* (SARA) and the *Migratory Bird Conservation Act* (MBCA).

Though significantly weakened through many amendments, the ESA was still designed and intended to provide complementary and locally enforceable habitat protection. Special Concern species are listed to provide an early warning sign of how a species is faring.[1] Without proactive management, which the proposed regulation would remove, they risk a trajectory of further decline.

The SCA retains the special concern classification, and mandates the Committee on the Status of Species at Risk in Ontario (COSSARO) to apply it to any species that "lives in the wild in Ontario, is not endangered or threatened, but may become threatened or endangered because of a combination of biological characteristics and identified threats."[2] COSSARO has not indicated that any of the 64 species proposed to be removed no longer face such threats. Rather, the government proposes to unilaterally remove them in the absence of any scientific opinion that it would be safe to do so. This evidence-free approach means that at-risk species will not be monitored and will be more likely to become threatened or endangered.

Similarly, the proposal to designate 42 federally protected aquatic and migratory bird species as ineligible for protection under the SCA, for reasons of supposed "duplication", is short-sighted and unjustified. The federal government has consistently demonstrated reluctance to exercise their jurisdiction for species on non-federal lands, and the degree of federal versus provincial protection and recovery action for each of these species varies. While SARA and the MBCA may help prevent direct harm and set recovery goals, they do not safeguard many species that stand to lose targeted and focused protection via provincial planning, monitoring, permitting oversight and local action.

For example, the Piping Plover (*Charadrius melodus circumcinctus*), would not be listed under the SCA and as a result would no longer have protection under its provincial recovery strategy and habitat regulation. Yet the federal SARA Action Plan has only vaguely identified critical habitat, and the Piping Plover is well overdue for both an updated critical habitat description and a s. 58 (5.2) protection order. While in this limbo state with inadequate federal protection, Ontario is set to transfer the beach (Wasaga Beach) on which the Piping Plover's critical habitat is located to the Town of Wasaga Beach, removing it from protection under the *Provincial Parks and Conservation Reserves Act*. This endangered species stands to fall through the cracks of

[1] O. Reg 230.08: Species at Risk in Ontario, Schedule 4.
[2] *Species Conservation Act*, 2025, SO 2025, c 4, Sch 10, s.11(1)(5).

protection, and it is now the sole responsibility of the federal government to exercise its jurisdiction to ensure equivalent habitat protection and recovery planning for the Piping Plover and the other 41 species not eligible under the SCA.

Ontario's abdication of any responsibility for protecting at-risk migratory birds and aquatic species breaches its obligations under the "Accord for the Protection of Species at Risk" and the "Canada-Ontario Agreement on Species at Risk." Both agreements commit to complementary initiatives and coordination between the federal and provincial governments on regulations, policies and guidelines for the effective conservation and protection of species at risk. The SCA's step away from this, in the name of eliminating "duplication", is in fact a retreat from the shared responsibility between Canada and Ontario over endangered species.

Ontario has been critical of federal attempts to play a role in protection of aquatic species and migratory birds in the province on the basis that those species are already adequately protected under Ontario law.[3] The proposed regulation would remove any possible future objection to such federal intervention, since the proposal explicitly disclaims jurisdiction over these species and defers to applicable federal legislation. While we maintain that Ontario has an important role to play in protection of migratory birds and aquatic species and should not cede its jurisdiction, Ontario should understand that if it proceeds to deregulate provincial standards, it will invite and require further federal regulation of species on provincial lands.

Recommendations:

- List the 64 special concern species under the SCA.
- List all COSSARO assessed aquatic species and migratory birds, outlining the status of and gaps in equivalent protections under SARA.
- For those species with gaps, provide the coordinated Ontario/federal plan to address these gaps via updated recovery strategies, action plans, critical habitat identifications equivalent to any habitat identification or protection under the Ontario ESA, and protection orders.

2. Registration Regulation

A key weakness of the SCA is that it removes requirements under the ESA for project proponents to demonstrate that reasonable alternatives have been considered, including

[3] See e.g. the *Amended Factum of the Intervener, Attorney General of Ontario* in Attorney General of Canada v. Attorney General of Alberta, SCC case no. 40195, at para 52: https://scc-csc.ca/pdf/case-documents/40195/FM120_Intervener_Attorney-General-of-Ontario.pdf.

alternatives that would not adversely affect the species, and the best alternative has been adopted.[4] Instead, the SCA allows proponents to simply register an activity that impacts a protected species. The related regulatory proposal does not include details of the proposed registration requirements and is only a general outline, making it difficult to fully evaluate. Without substantial changes, it will do little or nothing to address the gaps in the SCA or prohibit avoidable harm to species.

The proposal contemplates requiring proponents to submit some basic information about the activities to be performed (little more than a list of "who, what, where and when") and about "the extent of any species' habitat impacted." There is no indication of any oversight to verify the completeness or accuracy of this information.

The proposal is equally unclear about how this information will be used, except that proponents *may* be required to make plans to reduce impacts on species and their habitats. Even if such plans are required, the effect of the Act and proposed regulation would be that the activities are permitted to proceed upon registration and before the Ministry is satisfied that an adequate plan is in place. There is no indication of how such plans, if any, are to be monitored and enforced.

In any event, since the SCA introduces a new and much more limited definition of "habitat" any plans made under the proposed regulation will, even if followed and enforced, be far less protective of habitat than under the ESA. For instance, Boreal Caribou calving sites and Jefferson Salamander breeding ponds will be afforded protection during relevant life cycle stages, but their habitat will be vulnerable to development and resource extraction at all other stages, including in buffer zones and throughout the large home ranges on which boreal caribou depend.

Recommendations:

- Clearly identify acceptable actions to avoid impacts, including requirements for a strong mitigation hierarchy that establishes a clear order of priority: starting with avoidance of impacts, then minimizing the severity of any unavoidable impacts, followed by restoring affected areas to their original or a similar state, and using offsets or environmental compensation only as a last resort.
- Detail how conservation plans will be evaluated before the proponent can proceed.
- Detail how MECP will monitor and enforce the registered activities to ensure compliance.

[4] *Endangered Species Act*, 2007, SO 2007, c 6, ss. 17 and 18.

3. Permit Regulation

Under the SCA's "restoration first" approach, discretionary permitting remains the only means for proponent activity to receive reasonable scrutiny and oversight. However, the list of activities being considered for permitting is so trivial it is effectively meaningless. It is limited to killing species (except where killing them is otherwise allowed) and introducing species into places where they do not currently occur. Missing are any permitting requirements for impacts to species' critical habitat, which is the main driver of species decline. The proposal also fails to explain the basis on which a permit will or will not be granted.

Recommendations:

- Require permits for any impact to a species' critical habitat as identified in a recovery strategy or action plan.
- Specify that permits will only be issued if the activities provide an overall benefit for the species' survival and recovery.

4. Exception Regulation

The SCA does not require any exemption regulations. The Act already exempts endangered and threatened species from the more rigorous protection of the ESA, replacing them with a discretionary regime. Since the SCA in most cases only requires registration of activities, there is no reason for any proponent to be exempt from this non-onerous obligation which will at least provide the public with notice of the intended activities.

Recommendation:

- Do not include an exemption regulation in the SCA.

5. Transition Regulation

This proposed regulation does not explain the circumstances under which a person can cancel "certain" pre-existing permits, agreements or registration under the ESA. It is concerning that existing instruments providing necessary protection to species might be abruptly cancelled and replaced with an ineffective substitute, such a bare registration.

Recommendation:

- Do not permit the retroactive cancelation of ESA instruments.

6. Proposed Regulatory Amendments under the Environmental Bill of Rights

Under the ESA, a proposal to issue a permit is a Class I proposal for an instrument under O. Reg 681/94 for the Environmental Bill of Rights (EBR). The proposal to exempt all permits and orders issued under the SCA from the requirements of Part II of the Environmental Bill of Rights raises significant public transparency concerns.

Recommendation:

- Ensure any permits under the SCA are subject to Part II of the EBR.

7. Legislative and Other Regulatory Amendments

This ERO posting lacks the information and detail necessary to understand the true implications of proposed amendments on Ontario's species-at-risk. This lack of transparency is not in compliance with the intent of the EBR. Even though public input is performatively being sought, this posting as it currently stands does not allow civil society to meaningfully review, provide informed comments or engage in the making of these environmentally significant decisions. Even if the intent of this ERO process is to gather feedback to inform the development and drafting of these regulations, there must then be an additional comment period through which the public can again engage on the specific details of the proposed regulations prior to finalization. This is the only approach that allows MECP and the Ontario government to demonstrate transparency and accountability.

Recommendations:

- Restart the 45-day Comment Period once the full details and text of the proposed legislative and regulatory amendments have been made publicly accessible and available online on the ERO.
- Ensure that the proposal details include explanations of their environmental implications and impacts on species at risk in Ontario.

Conclusion

Ontario's *Endangered Species Act* was once considered the gold standard of species-at-risk legislation in Canada. The repeal of the ESA and its replacement with the weak and discretionary *Species Conservation Act* will take Ontario many steps backwards on the survival and recovery of species-at-risk. While we appreciate the opportunity to provide input into the SCA regulations and urge strong consideration of our recommendations, we reiterate our objection to replacement of the ESA with the SCA.

We welcome the opportunity to answer any questions or further discuss our comments and recommendations.

Sincerely,

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