

May 1, 2025

**DELIVERED VIA ONLINE FORM**

**Species at Risk Branch**

40 St Clair Ave West  
Toronto, ON M4V 1M2

To Whom It May Concern,

**RE: Proposed Interim Changes to the *Endangered Species Act, 2007* and a Proposal for the *Species Conservation Act, 2025* (ERO #025-0380)**

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Please accept the following submission on behalf of AEL Advocacy in response to the proposed interim changes to the *Endangered Species Act, 2007* (the “ESA”) and the proposal for the *Species Conservation Act, 2025* (the “SCA”) as set out in Schedules 2 and 10 of Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025* (ERO #025-0380).<sup>1</sup>

AEL Advocacy strongly opposes these proposals. Together, they constitute a sweeping and regressive dismantling of Ontario’s legislative framework for protecting species at risk and the habitats they depend on. If enacted, these changes would gut core protections for wild animals across the province and sacrifice their lives, homes, and futures to short-term economic interests. At a time when biodiversity loss is accelerating at alarming rates, Ontario should be strengthening its protection of animals—not retreating from its responsibilities to them.

**A. About AEL Advocacy**

Animal Environmental Legal Advocacy (“AEL Advocacy”) is a public interest law practice and not-for-profit organization based in Ontario. Our lawyers understand the important interconnection between humans, animals, and the environment. We

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<sup>1</sup> <https://ero.ontario.ca/notice/025-0380>

leverage our legal and political expertise to support individuals, communities, and organizations working to protect animals and the environments where they live.

## **B. AEL Advocacy's Comments on the Proposal**

When the ESA came into force, it was regarded as one of the strongest species protection laws in Canada. It established a science-based framework for listing and protecting species, developing recovery strategies, and enforcing habitat protections.

However, since its enactment, the strength and integrity of the ESA have been steadily undermined. A series of regulatory amendments have progressively weakened the Act's protections. Exemptions have been granted for high-impact sectors including infrastructure, aggregate extraction, and forestry. The introduction of permit-by-rule provisions further diminished oversight, allowing damaging activities such as mineral exploration and energy transmission to proceed with minimal scrutiny.

More recent changes have increased ministerial discretion, delayed the implementation of protections, and curtailed automatic safeguards for species and their habitats. These cumulative amendments have eroded the ESA's effectiveness and represent a failure to uphold its central purpose: the protection and recovery of Ontario's most vulnerable wildlife.

Rather than reversing this erosion, Bill 5 accelerates it. The proposed changes would further entrench industry-driven exemptions, weaken accountability, and sever the ESA's remaining ties to independent science. If passed, this legislation would mark a profound and dangerous step backward in Ontario's commitment to protecting species at risk.

### **Phase 1: Schedule 2 — Immediate Changes to the ESA**

Schedule 2 proposes a series of amendments that would fundamentally rewrite the ESA, weakening the purpose of the Act, stripping habitat protections, removing scientific oversight, eliminating mandatory recovery planning, and reducing transparency and accountability. These amendments betray the intent of the ESA: to prevent the extinction of species and promote their recovery in Ontario.

#### **I. Redefining the Purpose of the ESA to Prioritize Economic Development**

One of the most troubling proposals in Bill 5 is the revision of the ESA's purpose clause to explicitly prioritize "social and economic considerations including the need

for sustainable economic growth in Ontario”, undermining the ESA at its core. This reframing introduces economic development as a co-equal—or even superior—goal to species protection, diluting the legal and moral imperative to prevent extinction.

The existing ESA already provides mechanisms to accommodate economic development through a permitting framework. Elevating economic objectives in the purpose clause is unnecessary and dangerous. It sends a clear message to industry and developers: conservation concerns are negotiable. This change is inconsistent with the precautionary principle and global biodiversity commitments, and represents a profound departure from best practices in environmental law.

## II. Narrowing the Definition of “Habitat”

Schedule 2 also proposes a narrower definition of “habitat” for animal species, limiting it to a “dwelling-place” (such as a den or nest) and “the area immediately around” it, used for breeding, rearing, staging, wintering, or hibernating. This definition risks excluding critical seasonal habitats, migratory pathways, and ecological corridors necessary for species’ survival.

The phrase “area immediately around” is vague and subjective, likely to result in inconsistent or minimal application of habitat protections. For other species, habitat is defined merely as “an area on which any member of a species directly depends to carry on its life processes”—an overly narrow and unclear definition that fails to capture the complexity of ecological relationships.

## III. Eliminating Prohibitions on Harassment

Schedule 2 proposes to remove “harass” from the list of prohibited activities. This change is deeply alarming. Harassment—such as persistent noise, disturbance, or the presence of humans—can lead to chronic stress, interfere with reproduction, and disrupt species’ ability to feed and migrate. Removing this prohibition eliminates a vital safeguard against indirect but significant harm to wildlife.

## IV. Stripping Scientific Oversight from Species Listing Decisions

The proposed amendments would allow the Minister to delegate decision-making powers to Ministry staff and introduce ministerial discretion to override or ignore the science-based classifications of the Committee on the Status of Species at Risk in Ontario (“COSSARO”). These changes open the door to politically motivated decisions and remove safeguards designed to ensure that species are listed—and protected—based on the best available evidence.

Weakening the independence and authority of COSSARO compromises the integrity of the entire listing process and undermines public trust. It also reduces transparency by severing the link between scientific recommendation and legal protection.

V. Weakening COSSARO Membership and Accountability

Reducing the minimum size of COSSARO from 12 to 10 members, while giving the government full discretion over the appointment of the Chair and Vice-Chair, risks politicizing the committee and eroding its scientific legitimacy. The changes do not address longstanding governance concerns and instead reduce accountability and transparency in the committee's operations.

Furthermore, the proposal removes the requirement for the Species at Risk in Ontario ("SARO") list to reflect all COSSARO classifications, meaning species may remain unprotected even after being identified as at-risk by experts.

VI. Repealing Recovery Planning and Management Provisions

The repeal of sections 11-16.1 of the ESA—which mandate recovery strategies, management plans, government response statements, and conservation agreements—would strip away the essential tools that guide species recovery. These provisions ensure that responses are timely, science-informed, and publicly accountable. Without them, there is no roadmap for recovery and no mechanism for monitoring progress or ensuring government follow-through.

VII. Dismantling the Species at Risk Conservation Fund

Finally, the proposed elimination of the Species at Risk Conservation Fund would remove one of the few remaining tools requiring financial accountability for harm to species and habitats. While the Fund has been criticized as a "pay-to-slay" mechanism lacking meaningful on-site mitigation, it at least held potential to support tangible conservation outcomes.

Rather than eliminating the Fund, reforms should strengthen it—ensuring that offset payments are directed toward clear, measurable conservation actions that benefit the species impacted. Its dismantling represents a missed opportunity to improve and properly leverage this tool for species recovery.

## **Phase 2: Schedule 10 — Full Repeal of the Endangered Species Act and Replacement with the Species Conservation Act, 2025**

Schedule 10 proposes the wholesale repeal of Ontario’s ESA and its replacement with the SCA—a significantly weaker framework that abandons the ESA’s core principles in favour of deregulation, discretionary power, and facilitation of development. This marks not an evolution, but a dismantling of species at risk protections in Ontario.

We are gravely concerned by the proposed legislation, particularly for the following reasons:

### I. Purpose and Framing

The SCA would adopt the same revised purpose clause as Schedule 2 of Bill 5, embedding “social and economic considerations” and “sustainable economic growth” as primary legislative objectives. This fundamental shift reframes the law from one grounded in respect for animal life, ecological stewardship, and the precautionary principle to one that explicitly accommodates, and even prioritizes, industrial and development interests.

This change is not just symbolic—it changes how every provision of the Act will be interpreted and applied. It weakens the legal basis for challenging harmful projects, undermines compliance and enforcement, and signals to developers that species protection is secondary to economic expediency.

### II. Definition of Habitat

The SCA would adopt the same limited definition of habitat introduced in the ESA amendments—restricting it to areas of *current use*, such as nests or dens and their immediate surroundings. This exclusion of historical, seasonal, and potentially restorable habitats severely limits the law’s ability to support species recovery.

By failing to protect critical ecological functions like migration corridors, overwintering areas, and breeding grounds that may not be in constant use, the law denies the complexity of animals’ lives and ecosystems. It also contradicts scientific consensus on what constitutes essential habitat for species survival and recovery.

### III. Eliminating Prohibitions on Harassment

Schedule 10 would remove “harass” from the list of prohibited activities, just as Schedule 2 proposes to do. This omission is deeply troubling. Persistent noise, human presence, and other forms of disturbance can cause chronic stress, alter

behaviour, and reduce reproductive success—especially in sensitive or already-imperiled species.

Harassment is a well-documented threat in both terrestrial and aquatic contexts, particularly for birds, amphibians, and mammals. Eliminating this prohibition strips away a key tool for preventing harm and reflects a willful disregard for the science of animal welfare and behavioural ecology.

#### IV. Ministerial Delegation and COSSARO Composition

As with the ESA amendments, the SCA would permit broad ministerial discretion, including:

- Delegating key decision-making powers to Ministry staff,
- Retaining the ability to override COSSARO's scientific assessments,
- Appointing COSSARO's Chair and Vice-Chair at the government's discretion,
- Shrinking COSSARO's minimum membership.

While the government must follow COSSARO's scientific classifications *if* it chooses to list a species under the new *Protected Species in Ontario* list, the choice to list remains entirely discretionary. This means animals can be scientifically recognized as at risk, but still receive no legal protection if the government declines to act.

This politicizes what should be an evidence-based process, opening the door to industry interference and severing the critical link between scientific knowledge and the legal recognition of species in need. It is a structure designed for delay, denial, and discretion—not protection.

#### V. Species Conservation Registry and Streamlined Approvals

The SCA would replace ESA permits with a streamlined registration system. Key features include:

- Automatic registration for activities affecting listed species, provided that registrants follow regulatory rules;
- An online "Species Conservation Registry" for rapid self-approval;
- Exemptions for certain activities and selective permit requirements only when prescribed by regulation.

This "registration-first" approach abandons the ESA's precautionary, case-by-case review. While it is pitched as efficient, the system erodes oversight and facilitates harm—prioritizing speed and convenience for industry at the expense of animal lives and species protection.

#### VI. No Protection for Federally Listed Migratory Birds and Aquatic Species

Under the SCA, activities affecting migratory birds or aquatic species protected under the federal *Species at Risk Act* (“SARA”) would no longer require registration or authorization under Ontario law. This creates a dangerous jurisdictional gap. Federal protections under SARA are already limited in their scope and enforcement; removing complementary provincial oversight further exposes these species to unchecked harm.

#### VII. Elimination of Independent Oversight Bodies

The SCA would abolish two key entities:

- The Species Conservation Action Agency, and
- The Species at Risk Program Advisory Committee.

These independent bodies provide crucial checks and balances, offer technical expertise, and foster public and stakeholder engagement. Their dissolution centralizes control in the hands of the Ministry and removes key platforms for accountability, scientific review, and community input.

#### VIII. The “Extinction Clause”

The SCA includes a general prohibition against actions that would result in a species no longer living in the wild in Ontario. However, the clause is devoid of enforcement mechanisms, legal standards, or thresholds for government action. It is symbolic at best—a paper shield that does nothing to prevent extinction or hold decision-makers accountable for failing to act.

#### IX. Mitigation Orders

The introduction of "mitigation orders" acknowledges that harmful activities will occur, allowing them to proceed as long as mitigation is attempted. This represents a fundamental shift away from a precautionary or “no net loss” approach and effectively permits the destruction of habitat or individuals so long as compensatory measures—however inadequate—are proposed.

#### X. Codes of Practice

Under the SCA, the Minister would be able to establish “Codes of Practice” or guidelines for the protection of listed species. However, these documents are not

binding law and may be ignored or inconsistently applied. They lack enforcement mechanisms, clarity, and legal weight, rendering them a poor substitute for clear, enforceable protections.

#### XI. Omission of Recovery Planning Requirements

Perhaps most problematic, the SCA would omit any requirement for:

- Recovery strategies,
- Management plans,  
Government response statements, or
- Conservation agreements.

These tools are essential for identifying threats, setting recovery targets, and coordinating multi-agency responses. Their removal confirms that the SCA is not a parallel system—it is a hollowed-out framework that no longer aspires to recover species, but merely to manage their decline.

### **C. Inadequate Consultation and Failure to Uphold First Nation Rights**

In addition to the above, AEL Advocacy is deeply concerned about the inadequate consultation process surrounding these proposed changes.

The mere posting of these proposals on the Environmental Registry of Ontario does not constitute meaningful consultation with Indigenous communities. Engaging with Indigenous Peoples is not just a procedural formality—it is a legal obligation under Section 35 of the *Constitution*, which affirms the Aboriginal and Treaty rights of Indigenous peoples in Canada.

The proposed repeal of the ESA and its replacement with the SCA directly affects Indigenous Peoples' rights to steward and protect species that are central to their traditional knowledge, ways of life, and cultural survival. Any such changes must be preceded by good faith, transparent, and adequately resourced consultation processes—not rushed, opaque legislative efforts with limited public notice and no meaningful engagement.

**RECOMMENDATION:** AEL Advocacy urges the Ministry to **immediately withdraw Schedules 2 and 10** of Bill 5 and engage in meaningful public consultation on how to strengthen—not dismantle—Ontario's species at risk framework. We further urge the Ministry to reaffirm its commitment to science-based, precautionary, and enforceable conservation laws that reflect Ontario's legal and moral obligations to animals and the environments where they live.

## D. Conclusion

Ontario's ESA is not an obstacle to economic prosperity—it is a critical safeguard for animals and ecosystems on the brink. Weakening and repealing it would represent an unprecedented abandonment of our duty to protect the province's most imperiled wildlife, at a moment when decisive, science-based action is more urgent than ever.

AEL Advocacy is calling for the full withdrawal of Schedules 2 and 10 of Bill 5.

Thank you for the opportunity to comment. We would welcome further engagement with the Ministry and would be pleased to engage further on strategies to strengthen protections for Ontario's animals and the environments they call home.

Sincerely,

**ANIMAL ENVIRONMENTAL LEGAL ADVOCACY**



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