

November 10, 2025

DELIVERED VIA ONLINE FORM

Species at Risk Branch

40 St Clair Ave West
Toronto, ON M4V 1M2

To Whom it May Concern,

RE: Developing guidance on Section 16 activities under the *Species Conservation Act, 2025* (ERO #025-0908)

Please accept the following submission on behalf of AEL Advocacy in response to the proposal to develop guidance on section 16 activities under the new *Species Conservation Act, 2025* (the “SCA”) (ERO #025-0908).¹

AEL Advocacy opposes this proposal and continues to call for the repeal of the SCA and Bill 5. As outlined in our previous submissions on Bill 5, the legislative changes introduced by the SCA critically undermine Ontario’s ability to protect species at risk and their habitats.² The proposed guidance cannot remedy these fundamental weaknesses. Accordingly, we recommend that the proposal be withdrawn in full.

A. About AEL Advocacy

Animal Environmental Legal Advocacy (“AEL Advocacy”) is an intersectional animal and environmental law charity dedicated to advancing justice for animals, people, and the planet. Our lawyers understand the important interconnection between human, animal, and environmental well-being. We leverage our legal and political

¹ <https://ero.ontario.ca/notice/025-0908>

² See our submissions on the “Proposed Interim Changes to the *Endangered Species Act, 2007* and a Proposal for the *Species Conservation Act, 2025* (ERO #025-0380)”:

https://www.aeladvocacy.ca/_files/ugd/c883e8_bc78e80f903749ecafe70e3836cf97bd.pdf; the *Special Economic Zones Act, 2025* (ERO #025-0391): https://www.aeladvocacy.ca/_files/ugd/c883e8_16e68380fa7d47a8b606319283bf4709.pdf; Written Submission of AEL Advocacy to the Standing Committee on the Interior Regarding Bill 5, *Protect Ontario by Unleashing Our Economy Act, 2025*: https://www.aeladvocacy.ca/_files/ugd/c883e8_84cc3c1280d94521b278c41fc9f08a0f.pdf.

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

B. Comments and Recommendations

I. The Proposed Guidance Cannot Remedy the Weaknesses of the SCA

The ERO posting states that the government is proposing “guidance materials to assist in assessing whether an activity is likely to have an impact to a protected species or species’ habitat such that a registration or permit would be required.” This assessment is crucial to determining whether, and to what extent, species will be protected. While guidance can, in principle, promote consistent application of the law, it cannot compensate for the substantive weakening of statutory protections embedded in the SCA.

The Ministry’s assertion that the SCA “will continue to provide important protection for species at risk and their core habitats,” is inconsistent with the text of the Act itself. By narrowing the definition of “habitat,” making species listing discretionary, eliminating mandatory recovery strategies, and shifting to a registration-first model that replaces precautionary, science-based oversight with self-assessment, the SCA dismantles the core safeguards of the *Endangered Species Act, 2007* (“ESA”).

The SCA transforms Ontario’s species-at-risk protection framework from one grounded in legal obligation to one reliant on administrative discretion. Guidance cannot fix this. Without reinstating the substantive protections of the former ESA, any guidance developed under the SCA risks becoming a procedural gloss on a framework that facilitates rather than prevents harm.

II. Narrow Definition of ‘Habitat’ Undermines Protection

Under the ESA, “habitat” was broadly defined as “[...] an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding.” This definition recognized that species require more than their immediate dwelling places to survive; they need access to food sources, migration corridors, breeding areas, and seasonal habitats throughout their life cycles.

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The SCA, by contrast, restricts “habitat” for animals to:

- “A dwelling place, such as a den, nest or other similar place, that is occupied or habitually occupied by one or more members of a species for the purposes of breeding, rearing, staging, wintering or hibernating [...],” and
- “The area immediately around [...]” such dwelling place that is essential for those specific purposes.

This restrictive definition ignores fundamental principles of conservation biology and ecology. Species are part of complex ecosystems and require access to a variety of landscape features, including migration corridors, foraging areas, buffer zones, dispersal habitat, seasonal ranges, and connectivity to adapt to climate change. By protecting only the immediate dwelling place, the SCA leaves these critical landscape features vulnerable to destruction, fragmentation, and degradation.

Without a strengthened, science-based definition of habitat that accounts for a species’ full lifecycle needs and incorporates traditional Indigenous knowledge, the guidance materials cannot meaningfully assess whether an activity will adversely impact a protected species or its habitat.

Under the ESA, guidance documents assessing habitat impacts considered activity details, the areas of habitat likely to be altered, and the implications of such alterations for a species’ ability to carry out its life processes. Under the SCA’s limited definition, these same assessments become functionally meaningless, as they exclude vast portions of habitat essential to survival.

The Ministry has requested feedback on which previous policies or technical directions should be retained, updated, or removed, and which species groups most require detailed habitat guidance. However, until the definition of “habitat” is corrected, no such guidance can serve a meaningful conservation purpose. The Ministry must first revisit and strengthen this definition before developing any further policy materials.

III. Economic Considerations Improperly Embedded in the SCA

The SCA explicitly requires decision-makers to “take into account social and economic considerations, including the need for sustainable economic growth.” While socio-economic factors may appropriately inform implementation, embedding them as a mandatory consideration in a conservation statute fundamentally distorts its purpose. It transforms what should be a framework for preventing species extinction into one that balances survival against profitability. This

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risks subordinating environmental protection to short-term economic and political interests.

As noted in our previous submissions on Bill 5, 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.³ This change is inconsistent with the precautionary principle and global biodiversity commitments, and represents a profound departure from best practices in environmental law.

So long as economic growth remains embedded as a statutory priority, any guidance developed under the SCA will be inherently insufficient to achieve genuine conservation outcomes. Guidance cannot correct or override a legislative framework that explicitly instructs decision-makers to weigh ecological survival against economic convenience. It can only interpret and operationalize the priorities set out in the Act, and when those priorities place economic development on equal footing with conservation, the inevitable result is continued habitat loss and species decline.

Ontario's conservation framework must unambiguously prioritize the protection and recovery of species, not the facilitation of economic activity that contributes to their endangerment. Until this fundamental conflict of purpose is resolved within the legislation itself, any guidance will remain a procedural exercise incapable of delivering meaningful protection for Ontario's biodiversity.

C. Conclusion

AEL Advocacy strongly opposes the repeal of the ESA and the weakening of species protections under the SCA. While guidance can provide some operational clarity, it cannot replace the statutory obligations and legal enforcement that the ESA provided. We urge the Ministry to withdraw this proposal and retain the strongest elements of the ESA, explicitly prioritize species protection over development, and ensure meaningful public oversight.

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

³ See our submissions on the "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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strengthen protections for Ontario's animals and the environments they call home.

Sincerely,

ANIMAL ENVIRONMENTAL LEGAL ADVOCACY



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Co-Director and Counsel



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