



Informational Briefing Note

October 28, 2025

Taking Action to Stop Bill 5 and Protect Biodiversity and Environmental Rights: Responding to Ontario's Proposals Under the *Species Conservation Act, 2025*

Issue

Ontario is moving ahead with implementing Bill 5 and is proposing regulations, amendments and guidelines under the *Species Conservation Act, 2025 (SCA)* that would further weaken the protection of species at risk and their habitats, as well as the public's right to have a say.

The deadline to provide comments on the proposed regulations, amendments and guidelines via the Environmental Registry of Ontario (ERO) is **November 10, 2025, at 11:59 pm EST**. We strongly encourage you to share your views with the province via the ERO ([ERO No 025-0909](#) and [ERO No 025-0908](#)) and invite you to draw on our recommendations, detailed below.

Background

On September 26, 2025, the Ministry of the Environment, Conservation and Parks released two proposals:

- 1) Five proposed regulations and several other amendments to laws and regulations (ERO No 025-0909); and
- 2) A draft guidance document (ERO No 025-0908).

These proposed materials operationalize the new *SCA* (established by way of Schedules 2 and 10 of Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*), and pose a threat to Ontario's biodiversity and the public's right to have a say in environmentally significant decisions.

The Ministry is proposing:

- **Protected Species in Ontario List Regulation:** lists the species that would be subject to the *SCA*, which removes protections for 107 species that are currently protected under the *Endangered Species Act, 2007*¹ (*ESA*).

¹ Schedule 2 of Bill 5 repeals the *Endangered Species Act, 2007*.

Legal Advocates for Nature's Defence

PO Box 754, Callander, ON P0H 1H0

info@naturesdefence.ca | www.naturesdefence.ca

- **Registration Regulation:** sets out rules for registering activities that may negatively impact a protected species. Registration means letting the government know that a person will be engaging in conduct that could harm a protected species, rather than asking the government for permission.
- **Permit Regulation:** specifies which activities cannot be registered and instead require a permit (such as killing a protected species).
- **Exception Regulation:** lists activities that will be exempt from even more requirements, including permitting, registering, or notice requirements.
- **Transition regulation:** sets out rules to transition from the current *ESA* to the weaker *SCA*. People engaging in an activity authorized under the *ESA* have to continue complying with the requirements under the *ESA*. However, people will be allowed to request the cancellation of certain permits, agreements and registrations so that they can apply for a new registration or permit under the *SCA*, meaning that someone who had a more restrictive permit under the *ESA* can cancel it and re-apply for a weaker permit under the *SCA*.
- **Amendments to the *Environmental Bill of Rights (EBR)*:** the Ministry wants permits and orders issued under the *SCA* to be exempt from the requirements of Part II of the *EBR* (Public Participation in Government Decision-Making), meaning that the public would not have the right to participate in such decision despite their environmentally significant implications.
- **Guidance on section 16 activities:** a policy that will guide decision-makers when assessing whether an activity is likely to have an impact on a protected species or species' habitat (in which case registration or a permit would be required).

LAND's Position

LAND strongly opposes these proposals and continues to call for the repeal of the *SCA* and Bill 5².

We categorically reject these proposals and maintain that weakening the protection of species at risk and their habitats, and preventing the public from being able to have a say, is not necessary to promote economic growth. As we describe below, the proposals also violate the *EBR*, because they do not contain the text of the proposed materials, which directly hinders our ability to review, understand and provide informed comments.

Accordingly, we recommend that these proposals be withdrawn in full.

Summary of Recommendations

² For a more detailed analysis of the impacts of Schedules 2 and 10 of Bill 5 (repealing the *Endangered Species Act, 2007* and enacting the *Species Conservation Act, 2025*), see pages 2-4 of our legal briefing [here](#).

Our recommendations reflect the principles and actions we feel are necessary to safeguard and advance the protection of species at risk, their habitats and the public's right to participate in environmentally significant decisions. We provide these recommendations without prejudice to our continued stance that Bill 5 ought to be repealed.

Each of the following recommendations are detailed below:

- 1) **The text of the proposed materials must be made available for review.** The 45-day comment periods for the proposals must be restarted once sufficient information (i.e. the text of the proposed regulations, amendments and guidelines) is publicly accessible and available online, to enable the public to meaningfully engage, thoroughly review, and provide informed comments (in compliance with the *EBR*). The proposals in their current state do not contain sufficient information to understand their far-reaching and significant implications.
- 2) **The public's right to participate in environmentally significant decisions must be upheld.** Decisions made under the *SCA*, specifically regarding permits and orders, must be subject to Part II of the *EBR* (Public Participation in Government Decision-Making), so that the public continues to have the right to have a say before the government makes environmentally significant decisions.
- 3) **The proposed regulations, amendments and guidelines must increase protection** of species at risk and their habitats.
- 4) **The proposed regulations, amendments and guidelines must uphold Indigenous rights.** The proposed materials, and the *SCA* more broadly, threatens the health and survival of culturally important species, directly impacting Indigenous people's inherent rights and constitutionally protected Treaty rights to hunt, fish and trap.
- 5) **The definition of 'habitat' must be strengthened** if Ontario is to protect species and their habitats from adverse impacts.

Detailed Recommendations

1. The text of the proposed materials must be made available for review

Our preliminary concern is the Ministry's approach to the proposals. Importantly, while the government has briefly summarized the implications of the proposed regulations, amendments and guidelines on the ERO, they have not provided the text of proposed materials (except for the new [Protected Species in Ontario List](#)). This means that the public is being expected to comment on draft documents without being able to read and review them.

If the text of the proposed materials are not made publicly available with ample time to review, understand and respond, the public will not be able to meaningfully participate, which is their right under the *EBR*.

In your comments, we also encourage you to highlight the province’s violation of the *EBR*, by drawing from or endorsing [LAND’s letter](#) sent to the Minister of the Environment, Conservation and Parks and the Environment Commissioner on October 14, 2025.

Providing a public consultation period without granting the public access to the proposed materials and information required to understand the implications of the proposal is not consistent with the intent of the *EBR* to provide a means by which residents of Ontario may participate in the making of environmentally significant decisions.³ Compliance with the *EBR* cannot be achieved without full and fair disclosure of all information necessary to enable the public to meaningfully engage, thoroughly review, and provide informed comments. This is also necessary to fulfil the purpose of the ERO, which is to “provide a means of giving information about the environment to the public”⁴, including information about proposals, decisions and events that could affect the environment.⁵

The proposed regulations, amendments, and draft guidance will have far-reaching impacts, and the brief summaries contained in the proposals are not sufficient for the public to understand the implications and therefore be able to comment. Disclosure of the drafted regulations, amendments and draft guidance must be required. This concern was raised by several participants during the Ministry’s information session on October 28, 2025, and we strongly encourage the Ministry to implement this feedback.

2. The public’s right to participate in environmentally significant decisions must be upheld

The government wants to exempt permits and orders issued under the *SCA* from the requirements of Part II of the *EBR*. As the proposal states:

“We are proposing to prescribe the *SCA* as being subject to Part IV (Application for Review), Part V (Application for Investigation) and Part VII (Employee Reprisals) of the *Environmental Bill of Rights*. We are also proposing to exempt all permits and orders issued under the *SCA* from the requirements of Part II of the *Environmental Bill of Rights*.” (emphasis added)

Alarmingly, the proposal does not expand on the implications of this proposed amendment. For context, Part II of the *EBR* sets out minimum levels of public participation that must be met before the government can make environmentally significant decisions.⁶ Making decisions to issue permits and

³ *Environmental Bill of Rights, 1993* at [s 2\(3\)](#) [*EBR*].

⁴ *EBR* at [s 6\(1\)](#).

⁵ *EBR* at [s 6\(2\)](#).

⁶ *EBR* at [s 3\(1\)](#).

orders subject to Part II of the *EBR* is essential to uphold the public's rights to be informed and have an opportunity to raise their concerns. Without public participation, decision-making processes will lack transparency and further protect the government from accountability.

Additionally, during an information session hosted by the Ministry on October 28, 2025, which was intended to provide an overview of the proposals to help inform the public and enable them to submit feedback, **the Ministry did not mention the proposed amendment to the *EBR***. When asked why this proposed amendment was omitted from the presentation, the Ministry responded that the onus is on the public to read and understand the full proposal, and declined to hold a separate information session on the proposed amendment to the *EBR*.

The Ministry's approach to engagement on this proposal has been highly problematic throughout and this amendment would remove what few opportunities remain for the public to have a say when the government contemplates issuing orders and permits under the *SCA* that will have environmentally significant implications. The government's failure to explain this proposed amendment in both the ERO posting and the public information session raises serious concerns about their commitment to good governance and ensuring information is shared openly and transparently, such that the public can be informed prior to commenting with their views about the implications of this proposed amendment. This proposed amendment to the *EBR* must be withdrawn.

3. The proposed regulations, amendments and guidelines must increase protection of species at risk and their habitats

Under the proposed Protected Species in Ontario List Regulation, the Ministry proposes to remove protection for 64 species that are "of Special Concern". Species of Special Concern are [defined](#) by the Committee on the Status of Endangered Wildlife in Canada as a species that "may become threatened or endangered because of a combination of biological characteristics and identified threats". These species deserve protection, and the proposed regulation, if passed, would likely result in these species becoming threatened, endangered, extirpated or extinct.

The Minister also wants to remove protection of 43 federally-designated species at risk (i.e. migratory birds and aquatic species) as the government claims they are already protected by the federal government. However, simply because these species are also subject to federal jurisdiction does not mean that they will be protected, as the federal scheme is built on an understanding of intergovernmental cooperation. Thus, removing the provincial role in species at risk protection removes a key aspect of species protection and recovery, and assurances that the province will consider impacts and protective measures for species at risk within its decision making purview.

Regarding the other regulations, amendments and guidelines being proposed by the Ministry, we maintain that there is not sufficient information available to understand the extent of implications and thus, provide informed comments. However, based on the limited information available, we understand

that the proposed materials will decrease the protection of species at risk and their habitats. For instance:

- The concept of registering activities - put forth by the proposed Registration Regulation - is inherently flawed. A registration system would only require that proponents give the government notice that they will be engaging in activities that could harm a protected species. There is no requirement that the government assess each registered activity before it can move forward, and the Ministry has confirmed that the government has no decision-making role in the registration process, as the onus is on the proponent to ensure all municipal, provincial and federal rules and requirements are complied with.⁷
- The proposal does not specify that activities that may adversely impact the habitat of a protected species must be registered. The proposal lacks certainty around the rules - if any - that must be followed when engaging in a registered activity in order to ensure the protection of species and their habitats, and if/how the public can have their say.
- There is no confirmation of the type of activities that will require a permit under the Permit Regulation, as the language is vague (i.e. "Certain activities are being considered for inclusion...") and there is no clarity as to what the permit would require the person to do or not do. This raises concerns as to whether the permitting process will in fact be more rigorous than the registration process, leading to better outcomes for protected species and their habitats.
- The proposed Exception Regulation will set out the activities that can proceed without a permit or registration under the new SCA (i.e. exempted activities). Exempting activities from the already diluted protections provided by the Registration and Permit Regulations would reduce the transparency, oversight, and accountability measures previously established under the ESA.
- Under the proposed Transition Regulation, people engaging in activities authorized under the ESA can continue the activity, subject to the requirements set out under the ESA. This is *seemingly* beneficial because the ESA has higher standards when it comes to species protection and a more comprehensive definition of 'habitat'. However, the government can allow people to request the cancellation of certain permits, agreements and registrations so that they can apply for a new registration or permit under the SCA. This means that someone who had a more restrictive permit under the ESA can cancel it and re-apply for a weaker permit under the SCA.

4. The proposed regulations, amendments and guidelines must uphold Indigenous rights

The proposed regulations, amendments and guidelines do not speak to the protection of culturally important species, which is necessary for Indigenous communities to be able to practice their Treaty rights, including to hunt, fish and trap. The weakened regime put forward under these proposals (and

⁷ Stated by the Ministry during their public information session regarding the SCA proposals (held on October 28, 2025).

the SCA in general) will threaten the health and survival of culturally important species including the lake sturgeon, boreal caribou and polar bear, by authorizing the destruction of their habitats. Eliminating the protection of culturally important species is also inconsistent with Indigenous peoples' right to protect and conserve their environment.⁸ In order to uphold Indigenous peoples' constitutionally protected inherent and Treaty rights, the proposed regulations, amendments and guidelines must clarify how culturally important species will be protected in partnership with Indigenous communities. The Ministry must clarify how Indigenous communities will be able to participate in decision-making under the SCA that may adversely impact their rights and interests, including permitting decisions that would allow for culturally important species to be harmed, or their habitats destroyed.

5. Protection of species and their habitats requires a strengthened definition of 'habitat'

The government is developing guidance materials to assist in assessing whether an activity is likely to have an adverse impact on a protected species or their habitat, in which case a registration or permit would be required. This determination is vital to whether and to what extent the species will be protected. However, the definition of habitat has already been weakened by Bill 5.

Without a strengthened definition of habitat that accounts for the species' needs throughout its lifecycle and is grounded in scientific evidence and traditional Indigenous knowledge, guidance materials will not assist in assessing whether an activity is likely to adversely impact a protected species or their habitat.

Additionally, the draft guidance document does not define 'adverse impact'. The government is authorized to establish this definition by way of regulation under section 65(1) of the SCA, and we recommend that the government propose an evidence-based, measurable definition rather than maintain vague terminology that is open to interpretation.

Questions?

You are welcome to reach out to us.

Kerrie Blaise, Founder & Legal Counsel
kerrie@naturesdefence.ca

Kanisha Acharya-Patel, Staff Lawyer
kanisha@naturesdefence.ca

⁸ Article 29(1) of the [United Nations Declaration on the Rights of Indigenous Peoples](#).