# Ontario aims to overhaul regulatory requirements for critical infrastructure and mining projects under Bill 5

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As part of its broader legislative initiative under *Bill 5, the Protecting Ontario by Unleashing our Economy Act, 2025* (Bill 5), the Ontario government has introduced a suite of proposed legislative reforms aimed at accelerating approvals for mining and critical infrastructure projects. One of the most consequential proposals includes significant amendments to the *Endangered Species Act, 2007*[1] (ESA).

The ESA currently prohibits harm to listed species and damage to their habitat, while establishing a permitting and registration framework for activities that could impact protected species. The proposed amendments mark a fundamental shift in the province's regulatory landscape, with broad implications for project proponents.

The proposed legislative changes will be implemented in two stages. Key amendments to the ESA will take effect immediately upon Royal Assent of Bill 5, creating an interim framework that narrows the definition of "habitat," streamlines the permitting process, and eliminates the option of a payment in lieu of beneficial activity. This interim framework will come to an end when the *Species Conservation Act, 2025* (SCA) is proclaimed, which will replace the ESA in its entirety. However, the SCA will not come into force until the province has completed the development and public consultation process for supporting regulations.

## Narrowing habitat protections and changing the purpose of the ESA

One of the most consequential proposed changes is the narrowing of the definition of "habitat." Under the current *ESA*, habitat is defined to include any area a species depends on, directly or indirectly, to carry out its life processes — such as migration, feeding, or overwintering.[2] The proposed amendments would limit the definition of "habitat" for animal species to physical dwellings (e.g., dens, nests, hibernacula) and the immediate surrounding area necessary for breeding, rearing, or hibernation.

The new “habitat” definition would significantly reduce the amount of land subject to protection under the ESA. Currently, once a species is listed as endangered or threatened, its habitat is automatically protected under section 10 of the ESA. The Ministry of the Environment, Conservation and Parks (MECP) relies on general habitat descriptions (GHDs) — technical documents outlining areas a species uses for key life processes — to guide decisions about whether proposed activities might damage or destroy protected habitat. However, the proposed definition would restrict habitat protection to only the physical dwelling of the species and the area immediately surrounding it that is essential for breeding, rearing, overwintering, or similar functions.

This change would appear to render GHDs largely irrelevant for determining whether an activity triggers regulatory requirements or enforcement under the ESA. The practical implications of such a shift are illustrated by a recent motion for leave to appeal a decision of the Ontario Court of Justice overturning a conviction under the ESA, *R v. Consolidated Homes Ltd*.,[3] where the central issue was the identification of the Blanding’s turtle habitat. The Ontario Court of Appeal confirmed that while GHDs may be informative, they are not legal instruments and cannot alone establish that an area qualifies as protected habitat under section 10. The proposed narrowing of the statutory definition appears to reduce some of the uncertainty of relying on technical documents, like GHDs, to try to delineate protected habitat.

The legislation also proposes a revised purpose clause for the ESA. While the ESA emphasizes the identification, protection, and recovery of species at risk and their habitats, along with the promotion of stewardship, the new purpose would explicitly require decision-makers to weigh social and economic considerations alongside ecological factors.[4] This shift signals a move toward a more development-friendly framework that seeks to balance species protection with other public policy objectives.

## A shift to a registration-first model

A central feature of the proposed reforms is the shift to a registration-first authorization model. Under this approach, most activities that may impact listed species would be authorized through an online registration process, provided proponents comply with prescribed regulatory conditions. This would allow proponents to move forward with a regulated activity immediately upon completing the registration, without waiting for MECP approval of a permit application. The intent is to streamline approvals and reduce project delays. Notably, many activities affecting protected species are already regulated through registration rather than permitting under the current ESA.

## Aligning with federal protections: Less duplication, more clarity

To reduce duplication with the federal *Species at Risk Act* (SARA),[5] Ontario is proposing to cease regulating aquatic species and migratory birds that are already protected under federal law. Currently, proponents undertaking projects on non-federal lands need to comply with both federal and provincial species-at-risk requirements, including obtaining separate permits. Once the new SCA is in force, Ontario would cease regulating SARA-listed species on non-federal lands, eliminating the need for overlapping approvals.

## Species listings and oversight powers

Under the current ESA, protected species are assessed and classified by the Committee on the Status of Species at Risk in Ontario (COSSARO), an independent body that identifies species to be added to the Species at Risk in Ontario List. Under the proposed changes, the government would gain the discretion to add or remove species from the list, although any listed species must still carry the same classification (e.g., endangered, threatened) as assigned by COSSARO.

## Phasing out the Species Conservation Action Agency

The amendments also call for the wind-down of the Species Conservation Action Agency (SCAA). This agency was established to manage payments made in lieu of direct conservation actions. Since its inception in 2021, the SCAA has not yet implemented any funded projects and remains in its operational start-up phase.

Going forward, proponents will no longer have the option to pay a conservation charge instead of undertaking on-the-ground mitigation. The associated fund will also be dissolved, and the species conservation charge regime will be discontinued.

## Changes to governance and enforcement

On the enforcement side, Ontario proposes to modernize compliance tools under both the current ESA and the forthcoming SCA. New enforcement tools include:

- Contravention orders to stop unlawful activities;
- Mitigation orders to compel restoration or corrective action; and
- Expanded powers for investigations and inspections.

These tools are intended to support more flexible, risk-based enforcement approaches.

## Transition period and implementation timeline

The proposed amendments to the ESA will take effect immediately upon Royal Assent of Bill 5 and remain in force until the new SCA is proclaimed. During this transitional period:

- The current definition of habitat will continue to apply to all existing ESA permits and agreements. The new narrower habitat definition will apply to *new* decisions only;
- Existing permits will remain valid, and new permits will follow a simplified process with no specific permit “types”;
- Conditional exemptions will remain available through registration, but the option to pay a conservation charge in lieu of action will be removed.

The full transition to the registration-first model will occur only after the SCA is enacted and supporting regulations are developed through public consultation.

## What this means for project proponents

Proponents with current or upcoming projects should:

- Review their environmental compliance strategies in light of the narrowed habitat definitions;
- Monitor the rollout of the SCA and its supporting regulations; and
- Consider how the loss of the conservation charge option may impact project timelines and budgets.

## Contact us

If you have any questions regarding the upcoming SCA and its implications, or the interim framework introduced by Bill 5, please reach out to the key contacts below.

## Footnotes

[1] S.O. 2007, c. 6.

[2] *Ibid*, s. 2.

[3] 2025 ONCA 41

[4] Ibid, s. 1.

[5] S.C. 2002, c. 29.

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