CHIEFS AND COUNCILS
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**May 16, 2025**

**Environmental Registry of Ontario:**

**Ontario Place Redevelopment Secretariat**
777 Bay Street, 2nd Floor
Toronto, ON M5G 2C8
ERO Number: 025-0416

**Public Input Coordinator- Species at Risk Protection**
Species at Risk Branch
40 St Clair Ae West
Toronto, ON M4V 1M2
ERO Number: 025-0380

**Heritage Consultation**
ERO Number: 025-0418

**Special Economic Zones**
ERO Number: 025-0391

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We write on behalf of the Saugeen Ojibway Nation ("SON"), in response to Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025* (hereinafter referred to as "Bill 5" or "the Bill").

In Bill 5, Ontario is scaling back protections in Ontario law for the environment, species at risk, and cultural heritage. The changes Ontario proposes in Bill 5 amount to an attack on our rights and way of life. There is a clear pattern to the changes proposed in the Bill: the government seeks to, at its discretion, remove regulations and safeguards in place that protect our Territory, reduce or circumvent the opportunities for First Nations to be consulted, and ultimately steamroll our rights and laws. The Bill cannot be passed in its current form.

## SON AND OUR RELATIONSHIP TO OUR TERRITORY

SON is an Anishinaabe Nation made up of the Chippewas of Nawash Unceded First Nation and the Saugeen First Nation. Our Territory – known to us as Saukiing Anishnaabekiing – consists of the Saugeen (Bruce) Peninsula, the 1.5 million acres of land to the south, and the surrounding waters of Lake Huron and Georgian Bay. As a result of a series of historic treaties, including Treaty 45 ½ and Treaty 72, we are treaty partners with the Crown, though the Crown has not always respected and honoured our treaty relationship.

SON has lived in our Territory since time immemorial. Our Territory sustains us and is central to who we are as a people. Under Anishinaabe law, we have responsibilities to care for the lands and waters of our Territory. We hold the authority and responsibility to protect our Territory and the rights and interests of our people. We continue to hold and exercise our inherent jurisdiction to care for our Territory in accordance with our own laws. This includes protecting and caring for our Ancestors, sacred places, and the animals and plants that share our Territory: we have a relationship with our Territory and the species inhabiting it. We are all essential to the continued health of the Territory, and our ability to continue our way of life as Anishinaabe people.

We also hold and exercise exclusive Aboriginal and treaty rights throughout our Territory. Courts have recognized these rights, including SON's right to fish commercially in our traditional waters.[1]

Our assessment of legislation and projects affecting our Territory is guided by our Anishinaabe laws, values, teachings, knowledge system, and the wisdom of our Ancestors, ensuring that what our Ancestors safeguarded continues to be protected. We make informed decisions that protect, restore, and fulfill the vision of SON, with deep reverence for sacred sites and Ancestral burial places, the land, waters, way of life, and the well-being of all living relations. In doing so, we honour our Ancestors and uphold our responsibilities to all of Creation.

Embracing seven-generation thinking, SON considers the long-term and cumulative impacts on our Territory, our People and future generations. Any project that is approved by our Nation must lead to an overall benefit in terms of environmental health, cultural integrity, and social well-being. Projects must heal, restore, and achieve our vision for the land, waters, way of life, and the well-being of all our living relations, with costs of mitigations being secondary considerations. We require that all projects recognize and offset their impacts with significant improvements, ensuring a balance that aligns with our understanding of impact. We expect Ontario to adhere to these principles with legislation, decisions and activities that affect our Territory.

## Pressures Facing Our Territory

Our Territory is already under tremendous pressure from development and resource extraction. In particular, the development of the nuclear industry in our Territory has played a major role in shaping the land and SON People's place within it. Without consultation or free, prior and informed consent, SON became host to Canada's first commercial-scale Canada Deuterium Uranium reactor at Douglas Point; the world's largest operating nuclear facility at the Bruce site; the vast majority of Ontario's low and intermediate level waste at the Western Waste Management Facility; and nearly 45 percent of Canada's used fuel.[2]

Over the last 30 years, SON has undertaken enormous efforts politically and legally to ensure that the impacts of the nuclear industry are addressed and that our rights and interests are understood and protected going forward. SON has participated in almost every significant regulatory proceeding respecting nuclear projects and plans that stand to affect SON. These processes have been critical to allowing SON to fulfill its stewardship obligations, to protecting SON rights and interests, to strengthening the relationship between SON and the Crown, and to the Crown's fulfilment of the constitutional obligations owed to SON. The degradation of the laws supporting these environmental and regulatory processes would threaten our Territory, our rights, our interests, and, fundamentally, our relationship with the Crown.

There are also over 500 pits and quarries in our Territory already. For decades, we have advocated for proper consultation on decisions about aggregate extraction in our Territory, and alerted Ontario to the impacts of intense aggregate development in our Territory. Despite this, it was not until we took legal action, resulting in a decision in 2017 that Ontario had breached its

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[1] *R v Jones*, 1993 CanLII 8684; *Saugeen First Nation v. Ontario (MNRF)*, 2017 ONSC 3456*; Saugeen First Nation v Canada et al*, 2021 ONSC 4181 at paras 1201-1255 (not appealed from in 2023 ONCA 365).
[2] Nuclear Waste Management Organization, Nuclear Fuel Waste Projections in Canada – 2023 Update at 4.

duty to consult and accommodate us relating to a specific project,[3] that we began to be consulted on new aggregate applications and began entering into Environmental Protection Agreements directly with proponents being granted licenses to operate pits and quarries in our Territory. Nothing has been done to address the impacts of the intense and sustained aggregate mining in our Territory without any consultation or accommodation.

Developments in our Territory already impact wildlife – over the past few decades, we have seen a decline in biodiversity and an erosion of healthy ecosystems in our Territory, resulting in the undermining of our rights, culture and way of life. The individual and cumulative impacts of projects on our Territory are ongoing concerns for us, as we strive to maintain our relationships with the land and waters, which we have used and protected for time immemorial. Some species in our Territory are already at risk of disappearing.

We also have a long history of archaeological sites, including places that are the resting place of our ancestors and other culturally significant sites, being disturbed by development. We have had to fight for many years and will continue to fight to ensure these sites are treated with respect and cared for in accordance with our laws.

The changes Ontario proposes in Bill 5 amount to an attack on our rights and way of life. These changes, if made into law, take away essential procedural steps for archaeological protection, species at risk, and regulating development more generally that allow us to work with proponents and government agencies to protect our Territory. The changes will undermine our efforts to protect our Territory as nuclear development, aggregate extraction, and housing development intensify. They will take away the safeguards that are in place to protect our environment, and our sacred places.

While the existing processes are far from perfect, eliminating processes and steam rolling our rights is not the answer. And, while each of these individual changes will have negative effects on our rights and way of life, collectively they will be catastrophic for the health of our Territory: the impacts of each skipped regulation, failure to protect habitat, and disturbance of our culturally significant sites, added together, amount to a serious attack on the well-being of our Territory and Anishinaabe way of life. We cannot and will not allow Ontario to destroy our way of life and our Territory.

## SON AGREEMENT WITH THE CROWN (MINISTER OF ENERGY AND MINES)

As indicated above, SON has been actively and centrally involved for many decades to protect our Territory in the face of industrial pressures, including from the energy sector. SON will continue to play a central role in the development, assessment and regulation of major projects in our Territory that stand to affect our Rights, interests and way of life. SON and Her Majesty the Queen in Right of Ontario as Represented by the Minister of Energy and Infrastructure (now His Majesty the King in Right of Ontario as Represented by the Minister of Energy and Mines) ("Ontario") are parties to a binding agreement, dated January 14, 2010 (the "Agreement") which establishes a clear process for energy-related project development in our Territory, carefully designed to ensure meaningful SON involvement in the planning, review and development of

[3] *Saugeen First Nation v. Ontario (MNRF)*, 2017 ONSC 3456.

projects that stand to affect SON rights. The Agreement creates additional requirements, on top of the laws and regulations otherwise in place, to protect our rights and Territory.

The Agreement includes requirements for Ontario to provide early notice to SON of possible projects and early engagement between SON and energy developers wishing to carry out projects in our Territory. In addition, Ontario must provide notice in writing to energy developers proposing to carry out projects in our Territory advising them of the requirement for timely engagement with SON, which will include notice of other SON specific requirements for project development, as set out in the Agreement. Further, the parties anticipated that SON and energy developers would use the early notice to enter into protocol agreements or other arrangements which would effectively address SON concerns.

Most importantly, the Agreement defines an area of special cultural and environmental significance to SON—the area historically known in Treaty records of 1836 as the "Saugeen Peninsula" and now known as the Bruce Peninsula, along with a buffer zone (collectively defined in the Agreement as the "Peninsula"). The Agreement acknowledges that SON has expressed special concerns respecting possible energy developments in the Peninsula and recognizes that special provisions and assurances are required to address those concerns.

Through the Agreement, Ontario and SON agreed that before any energy projects proceeded in the Peninsula, a Natural and Cultural Values Study of the Peninsula would be conducted and form the basis for SON's future engagement with planners and energy developers and would help inform decisions regarding possible projects in the Peninsula. In addition, SON and Ontario agreed to convene to create a SON specific consultation process for all energy development in the Peninsula, which shall consider the findings of the Natural and Cultural Values Study, special measures to mitigate adverse effects or impacts on SON rights, and project development principles which are respectful of SON rights and consistent with the purposes of the Agreement.

Ultimately, the Agreement sets out the negotiated processes which are required in order to satisfy Crown commitments to SON, including the discharge of the duty to consult and accommodate SON. The Agreement was originally intended to guide the parties to building a new positive relationship, to reflect and address SON concerns about existing and future energy-related projects in our Territory, and to allow for the development of future energy-related projects in ways that are respectful of and accommodate SON rights. These commitments are designed to operate in tandem with the existing regulatory protections and processes Ontario already has in place. And, the existing regulatory framework – which Ontario seeks to dismantle through Bill 5 – operates as a backstop, providing the baseline which proponents and Ontario are, at a minimum, required to meet before projects can proceed.

Bill 5 creates a regime that enables wholesale violations of the negotiated and binding principles set out in the Agreement. While the Bill itself is silent on Ontario's commitments in the Agreement, the Bill attempts to create regulation-free spaces where development can proceed entirely unchecked, without regard for our rights.[4]

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[4] Bill 5, *Protect Ontario by Unleashing our Economy Act*, 1st Sess, 44th Leg, Ontario, 2025 ["Bill 5"], Schedule 9, s 2.

Let us be clear: we will never allow proponents to be exempted from the requirements set out in the Agreement, nor will the Peninsula or any part of SON Territory ever be a Special Economic Zone. It should be understood that any processes or outcomes which breach the Crown commitments to SON set out in the Agreement may be subject to legal challenge.

Below we set out the impacts of the proposed changes to the *Ontario Heritage Act*, the replacement of the *Endangered Species Act* with the *Species Conservation Act*, and the creation of the *Special Economic Zones Act, 2025*.

## Amendments to the *Ontario Heritage Act*

We have been in our Territory since time immemorial. There are important archaeological and ancestral sites, locations significant to our history and who we are as a people, throughout our Territory. Some of these sites have already been disturbed by development. We have fought for many years, and continue to fight, to get these sites appropriately protected and to ensure our sacred places are treated with respect and cared for in accordance with Anishinaabe law.

The proposed amendments to the *Ontario Heritage Act ("OHA")* will make this fight, which is already an uphill battle, significantly more difficult. The amendments will allow the government to exempt a proponent from provisions of the *OHA* designed to protect archaeological sites.[5] The criteria for these exemptions is not yet known, and would be up to the government to decide through regulations. The government could exempt a proponent, for example, from needing to get a license to disturb archaeological sites, such as sites our ancestors used as hunting camps, sacred spaces, or inhabited as villages.[6] The government could also exempt a proponent from needing a permit to excavate a designated property,[7] or from needing to conduct an archaeological assessment, even where development is happening on a known archaeological site.[8]

In sum, these amendments amount to a targeted attack on Indigenous peoples and our ancestors.

The *OHA* is a fundamentally necessary and historic piece of provincial legislation, which has alone played an essential role in protecting archaeological sites in Ontario, including those within our Territory. It serves many purposes relating to the protection of culturally-relevant grounds, but also acts as a legislative safeguard against illegal acts of destruction towards Indigenous burial sites.[9] The *OHA* also functions prophylactically as a deterrent, helping to ensure that developers, consultants, planning authorities and individuals understand that there are protections in place in Ontario. It stands as a reminder that cultural heritage and archaeological sites (non-renewable) cannot be disregarded, and that archaeological assessments must be conducted in a thorough and appropriate manner, with regard for Indigenous groups and their rights protected by section 35 of the *Constitution Act, 1982*. Indigenous peoples depend upon the *OHA* for these protections, and every report that is provided to SON by a licensed consultant archaeologist in Ontario references the *OHA*, and the rules and regulations it commands. These archaeological assessments and associated reporting are of the utmost importance to the Saugeen

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[5] Bill 5, Schedule 7, s 4.
[6] See: *Ontario Heritage Act*, RSO 1990, c O.18 [*"OHA"*], s 48(1).
[7] See: *OHA*, s 56(1).
[8] See: Environmental Registry of Ontario, "*Proposed Amendments to the Ontario Heritage Act, Schedule 7 of the Protect Ontario by Unleashing our Economy Act, 2025"*.
[9] See: *OHA,* s 7.

Anishnaabek with regard to the identification, conservation and protection of our ancestry, our sacred places, with reference to the features and locations provincially-identified as archaeological sites. Nochemowenaing is just one example of such sacred ancestral sites requiring necessary protections in our Territory.

Ontario has a tragic history related to archaeological protection, including a very dark time when all developments were not preceded by archaeological assessment. This lack of oversight and absence of accountability resulted in the destruction of untold numbers of ancestral sites and burials connected to Indigenous groups in the province. Even now, in a time where the spirit of reconciliation has brought change, there remains significant obstacles to overcome to ensure Indigenous sites and artifacts are protected under provincial legislation. There is no question that the proposed changes to the *OHA* would jeopardize, if not undo, all of the progress collectively made by the province and Indigenous communities around archaeological protection and accountability for developers who disregard the law.[10] In places like SON Territory, the detection of ancestral sites can be difficult. In the process of working with several counties, covering an extensive area, to develop Archaeological Management Plans (AMPs) - it has become evident that the number of sites that have (as yet) been recorded in the past, does not remotely reflect the actual incidence of ancestral sites or their distribution within SON Territory. Many historic impacts have already occurred - resulting in our archaeological visibility being greatly impaired. In recent years, with new commitments to reconciliation and enhanced collaborative stewardship in the archaeological field, the number of sites being documented in our Territory is growing at an unprecedented rate. This includes the first palaeo site documented in Bruce County, squarely in our Territory, as well as the discovery of one of the largest ancestral sites ever recorded. The proposed changes to the *OHA* would compromise the progress being made around cultural protection in Ontario, and prevent SON and other First Nations from both addressing the impacts on them and protecting their ancestors and sacred sites.

The Saugeen Anishinaabek depend upon the *OHA* to achieve justice when archaeological sites or ancestral burials are impacted, damaged or destroyed.[11] This includes impacts to a profoundly culturally significant ancestral site suffered by Saugeen First Nation in 2022, in Southampton at the mouth of the Saugeen River (S. Rankin St.). This is among the most obvious reasons why the *OHA* must not be altered or adulterated. Legislative protections for archaeological sites and burial grounds act as a deterrence against future destruction. Our concerns with regard to protection and preservation of cultural heritage have only been compounded by impacts to a large ancestral burial site in Sauble Beach in 2023, as well as several other archaeological sites within our Territory in recent years that had not yet been fully documented due to existing failures within the provincial Planning Act and the reckless issuance of municipal building permits. The failure to protect and preserve sites of importance to Indigenous groups is an ongoing crisis in Ontario, which has already led to the destruction of ancestral sites. The prospect of exacerbating this further by removing and diminishing the critical protections and long-standing provisions of the *OHA* is absolutely unacceptable.

The proposed changes flowing from Bill 5 would reduce the science of archaeology to an ineffective and sad reactive measure, with no regard for the rights of Indigenous Peoples or stewardship over our cultural heritage. The Supreme Court of Canada has long recognized the need for the Crown, as represented by the provincial government in this case, to consult

[10] Bill 5, Schedule 7, s 5.
[11] See: *OHA,* s 62.

Indigenous people on conduct that would adversely impact their rights.[12] Because of this, the Saugeen Ojibway Nation demands that any legislative changes that remove safeguards for the protection of Indigenous artifacts and sacred sites be retracted and removed from Bill 5, and that consultation with Indigenous groups be taken. Any changes from the Government of Ontario should not erase the progress made to protect culturally-significant areas.

The drastic erosion of this critical legislation would represent an unjustifiable and cruel attack upon the rights of Indigenous peoples, their ancestors, and their very ways of life. Various legislative acts and policy changes have made progress on Indigenous rights and the protection of Indigenous cultures in Canada, including the federal *United Nations Declaration on the Rights of Indigenous Peoples Act* ("*UNDA*")[13]and Canada's Reconciliation Action Plan. These changes affirmed Canada's commitment to the recognition of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") and provided a framework for its implementation domestically.[14] In our case, Article 11 of the UNDRIP speaks directly to the rights of Indigenous peoples to practice and revitalize their cultures, including our right to protect archaeological and historic sites, as well as artifacts. The changes being introduced through Bill 5 would be entirely counter to Ontario's commitment to reconciliation with Indigenous peoples, the intention of the *UNDA*, and the ongoing duty to consult owed to First Nations groups in the province. This includes the ongoing need to engage as outlined in the Provincial Policy Statement (2024).

Given the concerns outlined in this letter, we call for a halt to the changes in Bill 5 and consultation with First Nations on the legislative alterations being made. The Government of Ontario has failed to consider the immense impacts these changes will have on Indigenous rights and cultures in the province, and should take necessary measures to ensure that any changes to *OHA* maintains its intended purpose of protecting cultural sites and artifacts, including those of Indigenous peoples.

Even beyond these amendments, Ontario seeks to limit its own liability, preventing anyone from suing them about anything "directly or indirectly" related to "anything done or not done" under the law or its regulation.[15] Although this won't apply to judicial reviews, claims for constitutional remedies or claims based on infringements of Aboriginal and Treaty rights, this still creates a barrier for proceeding through the courts. If we lose money or are otherwise harmed because of irresponsible government action related to an ancestral archaeological site, for example, actions addressing that could be barred.

Ontario putting in place this 'get out of jail free' law shows that it does not want to be held accountable for the harms that it knows will be caused by this change. We call on Ontario to remove these limitations from the amendments.

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[12] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73; *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, 2004 SCC 74; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69.

[13] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

[14] The Supreme Court of Canada has recognized the importance of honouring the United Nations Declaration on the Rights of Indigenous Peoples and has made it clear that it forms part of Canada's domestic positive law. As such the Crown should not enact laws that erode the rights of Indigenous people. This is set out *in Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5.

[15] Bill 5, Schedule 7, s 5.

## Replacing the *Endangered Species Act* with the *Species Conservation Act*

Bill 5 proposes to replace the *Endangered Species Act* ("*ESA*") with a new *Species Conservation Act* ("*SCA*") and, in the interim, Bill 5 would amend the *ESA* to make many of the same changes planned for the *SCA*. In doing so, it would take away significant protections for species which are at risk of disappearing from Ontario. The *ESA* currently provides protections for over 200 different species, many of which are present in our Territory.

The proposed changes gut the existing protections and will put many species at risk of disappearing entirely. Our connection to our Territory includes connection with the animals and plants that share our land. We cannot allow changes that result in their disappearance from our Territory.

For nearly two decades, Ontario's *ESA* has been a key component of environmental protection in the province. The existing *ESA* requires that species at risk *and the habitats they rely on* be protected from harm. Bill 5 would substitute the current definition of "habitat" with a greatly reduced, more limited area, as follows:

> *(a) In respect of an animal species,*
>
> *(i) 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*
>
> *(ii) The area immediately around a dwelling place described in subclause (i) that is essential for the purposes set out in that subclause.*
>
> *(b) In respect of a vascular plant species, the critical root zone surrounding a member of the species, and*
>
> *(c) In respect of all other species, an area on which any member of a species directly depends in order to carry on its life processes.*[16]

In other words, the proposed *SCA* would limit habitat protection *only to the immediate surroundings* of a "Threatened" or "Endangered" animal's den, nest, wintering or staging area, or a plant's root zone. [Strangely, the proposed Act apparently provides species *that do not fit the definition of "animal" or "vascular plant"* – presumably meaning lichens, mosses and fungi – a more robust habitat definition: "*the entire area on which the species directly depends to carry on its life processes*"].[17]

Such a limited habitat definition for at-risk animal and plant species is certain to result in their further decline in Ontario, including in SON Territory, and may contribute to their extinction globally. Habitat for animals and plants must be defined *to ensure protection of the entire area that any member of the species requires to carry out its life processes*, including (but not limited to): denning and nesting sites, hibernacula, access to important food resources, reproduction sites, staging areas, essential ecological communities and features (e.g., forest interior, cold-water streams) in non-degraded condition, as well as suitable, safe habitat corridors that allow for movement and interactions (e.g., for breeding, seasonal feeding, staging and migration)

[16] Bill 5, Schedule 2, s 2 (3).
[17] Bill 5, Schedule 2, s 2(3)(c).

of the species between such essential areas of habitat. SON will not stand for Ontario abrogating its responsibility to protect the rich biodiversity and natural heritage within SON Territory by sacrificing our most at-risk species and their habitats.

We also oppose the removal of protections against "harassment" of species from the laws.[18] This means if a proponent impacts an area in a way that disrupts the normal behaviour of a species at risk, this will no longer be against the law. This change, combined with the narrow definition of habitat, will inevitably lead to species disappearing from our Territory.

SON also opposes the proposed discretionary powers (on the basis of social and economic concerns) of the executive branch with respect to official listing of species and protection of their habitat.[19] Under the current *ESA*, decisions are made by an independent body, the Committee on the Status of Species at Risk, or COSSARO, based on scientific information, including Indigenous Traditional Knowledge. Ontario is then required to list these species in the regulation which protects them. One of the most important features of the current process is that it is insulated from political interference. It is an independent body, by design. If the changes proposed in Bill 5 proceed, this would not longer be the case: Ontario could unilaterally decide that a species should not be protected, even where Indigenous knowledge holders and scientific evidence demonstrate otherwise. The legal provincial designation of "Extirpated", "Endangered", "Threatened" or "Special Concern" should not differ from the science-based, independent species status designation recommended by COSSARO, and ideally would not differ significantly from federal (COSEWIC) designation. SON also opposes any proposed legislative changes that would result in a lesser degree of protection in Ontario for species listed in federal wildlife protection lists and legislation, such as those noted in "Extirpated", "Endangered", "Threatened" or "Special Concern" on the List of Wildlife Species at Risk under the federal *Species at Risk Act,* SC 2002 c 29 (*"SARA*")—specifically, species of birds protected by the *Migratory Birds Convention Act, 1994*, SC 1994, c 22 and aquatic species as defined in subsection 2 (1) of the *SARA*.

SON also opposes the removal of "recovery" as a goal for at-risk species and replacing it with "conservation".[20] Species are listed as "Endangered" or "Threatened" because they are *at risk of becoming extinct in Ontario* because their populations are unsustainably low and/or will become low if current declining trends continue. Conservation implies maintaining current conditions. Recovery implies restoring conditions that would allow the current trend to be reversed and the populations to be restored to a viable level. If recovery is not the goal, at-risk species are almost certain to be lost in Ontario. Further, under the *SCA,* Ontario will no longer be required to create a recovery strategy for species identified as endangered or threatened, and will not have to report on progress regarding the recovery of that species every five years.[21] This will mean First Nations won't have information available on the true impacts of this Bill on species, and it will be more difficult to hold the government accountable for these impacts. This shift away from recovery would be unacceptable to SON.

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[18] Bill 5, Schedule 2, s 14.
[19] Bill 5, Schedule 2, s 1(2).
[20] Bill 5, Schedule 2, ss 2 (7); 36 (2); 37 (4); and 42.
[21] Environmental Registry of Ontario, "*Proposed interim changes to the Endangered Species Act, 2007 and a proposal for the Species Conservation Act, 2025*".

SON also opposes the proposed changes to the existing permitting process. Under the existing *Environmental Species Act, 2007,* SO 2007, c 6, proponents must apply for permits when a proposed project may adversely impact a listed species or its habitat.[22] The existing permitting process involves review by environmental experts, with approval typically contingent on meeting specific requirements to limit or prevent harm to the species. Under Bill 5, that process is replaced in nearly all cases by an online registration form that, once submitted, allows the project to proceed with no expert review and no obligation to consider less impactful alternatives.[23] While registrants will be required to comply with any rules Ontario creates through regulation, we have no indication at this point what, if any, rules Ontario might impose. How are Indigenous and Treaty rights addressed in such a process? How are "Endangered" and "Threatened" species, and biodiversity generally, protected in such a process? This will inevitably reduce the opportunities to First Nations to be consulted and accommodated. We note that similar systems have been used in the mining context and have been challenged as unconstitutional because they try to circumvent the Crown's duty to consult and accommodate.[24]

SON are a fishing people. The health of Ontario's fisheries is inextricably linked to the integrity of entire aquatic ecosystems—streams, wetlands, riparian corridors, and lakebeds—which function collectively to support spawning, nursery, foraging, and migratory habitats for fish species. Bill 5 undermines this ecological interdependence by narrowing environmental triggers, weakening habitat definitions, and exempting designated projects from oversight under the guise of economic development.[25] Aquatic (and terrestrial) habitat degradation rarely results from a single catastrophic event but from the accumulation of small-scale, under-regulated activities that fragment habitat, increase sedimentation, alter flows, and degrade water quality. By eliminating the requirement for expert environmental review and allowing projects to proceed through self-registration, Bill 5 drastically increases the risk of unmitigated harm to fish populations and the ecosystems they rely on.[26]

The exclusion of aquatic species from the scope of the new *SCA*, combined with exemptions from Environmental Assessment (EA) requirements, will lead to reduced detection and mitigation of fish mortality and habitat disruption—particularly in areas near industrial discharges, thermal plumes, and shoreline developments.[27] For example, prior concerns raised about fish mortality at facilities like Bruce Power have highlighted the limitations of current screening processes. Bill 5 would further dilute these processes, making it even less likely that cumulative impacts on fish populations will be accurately assessed or meaningfully addressed. This approach runs counter to sound fisheries management, which requires full lifecycle habitat protection, long-term monitoring, and the precautionary principle in decision-making. Failing to maintain these standards could lead to irreversible losses in fish abundance, diversity, and commercial viability across Ontario's waters.

SON has a court-affirmed, section 35 right to a commercial fishery.[28] Ontario currently screens thousands of small works under provincial *ESA*, EA, and conservation authority regulations before anything is sent to federal Department of Fisheries and Oceans (DFO). By stripping

[22] *Endangered Species Act, 2007*, SO 2007, c 6, s 17.
[23] Bill 5, Schedule 2, s 15.
[24] See for example *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680 at paras 426-430.
[25] Bill 5, Schedule 2, s 27.
[26] Bill 5, Schedule 10, ss 17-18.
[27] Bill 5, Schedule 10, s 4.
[28] *R v Jones*, 1993 CanLII 8684.

aquatic species from the *SCA* and by allowing EA exemptions, many works may skip provincial review entirely, landing on DFO's desk late or not at all. Additionally, SON has consistently argued that provincial EA processes already underestimate cumulative fish-kill risk at Bruce Power and elsewhere. Bill 5 will narrow EA triggers further and we are concerned about what this will mean in cases like this.

The Crown's duty to consult and accommodate set out in s. 35 of the *Constitution Act, 1982* is triggered for both federal and provincial decisions that could adversely impact SON's asserted or proven Aboriginal and treaty rights. Bill 5 contains a clause stating it does not "abrogate or derogate" Aboriginal rights, but the practical effect of swifter permits and exemptions will be to compress timelines and reduce the depth of consultation before habitats are altered.[29]

We also note that the proposed increase in investment in species conservation programs from $4.5 million/year to $20 million/year is a change roughly equivalent to an investment of $0.11/per Ontario resident per year to $0.50/per Ontario resident per year, or <0.01% of the overall provincial budget.[30] What does this level of support say about the current provincial government's commitment to protecting our relations, the animals and plants that are most at risk of being lost forever and whose home these lands and waters have been since time immemorial?

Taken together, the proposed changes show a blatant disregard for the land, biodiversity, and the survival of species. These changes also show a blatant disregard for our rights, and our laws. In our Territory, we are interconnected with the creatures we share the land with, and rely on them to continue our way of life. Ontario cannot bulldoze biodiversity for the short term profit of very few.

We remind the Government of Ontario of its duty to consult, and that projects may only proceed in our Territory if they demonstrably protect, restore, and achieve our vision for the land, waters, way of life, and the well-being of all our relations, respecting our values, laws, and principles. Bill 5 must not be passed.

## The *Special Economic Zones Act, 2025*

We are deeply concerned with Schedule 9 of Bill 5, the *Special Economic Zones Act, 2025* (*SEZA*). The *SEZA* will allow Ontario to create rule-free zones where it can exempt any business or project from any provincial or municipal law or by-law. Ontario can choose 'Trusted Proponents' and 'Designated Projects' who will be exempted from regulatory requirements within those zones, based on criteria that has not yet been set: the legislation as proposed includes no limits on the size, location or identity of the areas and businesses who the government could choose to favour with the legislation.[31] This means that where these rule free zones are, and who the Trusted Proponents are, and what projects are 'designated' is entirely up to the whims of the government of the day and its political agenda.

[29] Bill 5, Schedule 10, s 3.
[30] Environmental Registry of Ontario, "*Proposed interim changes to the Endangered Species Act, 2007 and a proposal for the Species Conservation Act, 2025*".
[31] Bill 5, Schedule 9, ss 2, 3.

Given that Ontario has cited the Ring of Fire, an area more than 5000 square kilometres in size rich in biodiversity, as a potential candidate for a 'Special Economic Zone',[32] it is clear that there is no limit to the area that Ontario will consider for this designation.

Ontario has also, tellingly, limited the types of legal claims that can be brought against it as a result of this law, meaning it cannot be held accountable for all the harms the government knows this law will cause.[33]

Our Territory cannot be subject to such a designation, nor should any land be. The *SEZA* grants Ontario virtually unlimited power to provide any proponent of business with the ability to conduct any activity it wants, in any area of the province the government chooses, without any regulatory oversight. SON would consider such a designation in our Territory a fundamental breach of the Crown commitments set out in the Agreement.

While Ontario has claimed it will live up to its constitutional obligation to consult and accommodate our rights, the *SEZA* does not reference the Agreement or the Crown commitments it includes, nor is there any mechanism in the *SEZA* providing for Indigenous oversight or expressly involving First Nations in decision making about our territories. Ontario has to consult with us when they make a decision that could impact our asserted or proven rights. The wholesale removal of regulations means there will be way fewer, if any, decisions the government will make about development in these special economic zones and particularly about 'preferred proponents' – given this, it is not at all clear when or how Ontario will fulfill its duty to consult and accommodate. This is not honourable, nor is it consistent with Ontario's constitutional or negotiated obligations.

Ontario cannot give developers free reign, with this Bill or otherwise. This land is covered by Treaties, and is subject to the laws of the Indigenous nations to which it belongs. If this Bill proceeds to law, we will continue to protect and defend our Territory as we have since time immemorial. But we should not have to battle Ontario's laws (or lack of laws) in order to do so.

## THE PROPOSED CHANGES WILL SLOW DEVELOPMENT

The sad truth is that this Bill proposes 'solutions' by taking aim at laws, regulations, processes and protections that are not problems, and are not the cause of delays.

In reality, those laws, regulations, processes, protections – and in our case, the Agreement – actually help developments proceed: Ontario currently relies on the very processes it is dismantling as a main avenue by which they satisfy their duties to consult and accommodate. Without those laws, regulations, processes and protections, Ontario's constitutional obligations to us don't go away. But, there is no clear path for them to be met: no existing bureaucratic mechanisms in place, no team responsible for seeing it through, and no personnel capable of doing the work.

Given this, it is clear that although the changes Ontario proposes in Bill 5 are aimed at speeding up development, they will inevitably have the opposite effect: if the government continues down this path and ignores First Nations' constitutionally protected rights, it will likely lead to legal

[32] See: Environmental Registry of Ontario, "*Proposed Amendments to the Ontario Heritage Act, Schedule 7 of the Protect Ontario by Unleashing our Economy Act, 2025*.
[33] Bill 5, Schedule 9, s 7 7(4) and 7(1)(c).

challenges. This is a far slower and more expensive process than the process set up by existing regulations. And, it unnecessarily exposes proponents to potentially costly litigation, and needlessly pits proponents and First Nations against each other. Proponents and Ontario would be far better served working with First Nations, to find a path forward that both safeguards the environment and allows economic development to proceed.

Miigwetch,

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