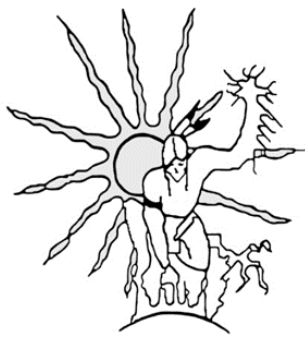




BIIGTIGONG
NISHNAABEG

May 16, 2025

The Honorable [REDACTED]
Minister of Environment, Conservation and Parks
[REDACTED]

Dear Minister [REDACTED],

Re: Biigtigong Nishnaabeg Comments on the Proposed Interim Changes to the Endangered Species Act, 2007 and a Proposal for the Species Conservation Act, 2025.

Biigtigong Nishnaabeg strongly objects to Ontario's proposed interim amendments to the *Endangered Species Act, 2007*, and the proposal for the new *Species Conservation Act, 2025*. The proposed changes pose not only a serious threat to the protection of at-risk species but also undermine the constitutional rights of First Nations throughout Ontario.

While Biigtigong Nishnaabeg holds deep and serious objections to numerous aspects of Bill 5 (*Protect Ontario by Unleashing our Economy Act*) – specifically due to its blatant disregard for our inherent Aboriginal rights and our active claim – those concerns are addressed in a separate correspondence (letter to Hon. [REDACTED], dated May 15, 2025). This letter focuses on our grave concerns with Schedule 2 (immediate amendments to the *Endangered Species Act, 2007*) and Schedule 9 (introduction of the *Species Conservation Act, 2025*), which further erodes provincial treaty implementation, co-management, and environmental stewardship.

Insufficiency of Consultation Process

First, Biigtigong expresses its deep dissatisfaction with Ontario's current approach to soliciting feedback from our Nation, as an Aboriginal Title holding community with the clear potential to be adversely impacted by the Crown's contemplated legislative amendments. As we have expressed to you time and time again, soliciting our input through the standard 30-day Environmental Registry of Ontario (ERO) public comment period does not constitute sufficient consultation required by the Crown's Duty to Consult and Accommodate. As you are aware, the duty to consult is triggered when the Crown contemplates conduct that may adversely affect

asserted or established Aboriginal or treaty rights, as protected under Section 35 of the *Constitution Act, 1982*.

As you are well aware, Biigtigong Nishnaabeg is not a signatory to the Robinson Superior Treaty of 1850 and has filed a claim for Aboriginal title in the Ontario Superior Court of Justice. We are currently engaged in settlement negotiations with both Canada and Ontario in respect of this claim. We wish to remind the Crown that the duty to consult is heightened for communities like ours that have asserted Aboriginal title.

Schedules 2 and 9 of Bill 5 will have direct implications for Species At Risk in Ontario (SARO)-listed species of cultural importance, such as boreal woodland caribou and lake sturgeon, and their habitats within our unceded Aboriginal Title Claim area. As such, the duty to consult is triggered when the Crown contemplates legislative amendments to the safeguards that provide the most significant protections to these species and their habitats in the province. In the absence of direct consultation from the Minister of Environment, Conservation and Parks (MECP) on this matter, we are submitting these comments to the ERO under protest and without prejudice to any of Biigtigong Nishnaabeg's rights.

However, it is our expectation that meaningful, two-way dialogue and good-faith efforts to achieve compromise will occur prior to the enactment of the *Protect Ontario by Unleashing our Economy Act, 2025*, in order to satisfy the Crown's constitutional obligations under Section 35 of the *Constitution Act, 1982*.

Context

Second, we wish to provide context regarding the deep connection between ESA-listed species and our Nishnaabeg way of life, and to underscore how Crown decisions have cumulatively contributed to the erosion of that relationship. As Nishnaabeg, our survival as a people hinges on the cultural, spiritual, and physical connection to the health of the lands, water and the animal and plant beings that inhabit them. This includes species such as ESA-listed boreal woodland caribou, lake sturgeon, and black ash. These animals and plants have historically provided us with not only food, clothing and shelter, but also the cultural and spiritual connection to our lands – that have been systematically stripped away by Crown conduct. In exchange for all that they provide us, we are responsible for doing our part to respect and take care of them.

For Biigtigong Nishnaabeg, protecting Ontario means protecting the plants and animals that we and our ancestors relied upon. Healthy lands, plants, and animals are the fundamental pillars of the ecological economy that has historically, and continues to, sustain us as Nishnaabeg. Our relationship with the plants and animals is fundamental to our culture. Any action, including the proposed legislative amendments, that threatens these beings poses as a profound threat to our identity, way of life, and cultural continuity as Nishnaabeg. The steep decline and mismanagement of the Lake Superior caribou provides a particularly poignant example of this.

Historically, our people relied on the boreal woodland caribou of the Lake Superior coast, harvesting them for sustenance. Over a century of landscape-level habitat fragmentation – either led or authorized by the Crown, and most often without our consent – has led to the near-extirpation of caribou from our territory. This has created conditions where it is no longer possible for community members to harvest caribou sustainably, according to our rights and traditions. The consequences of this extend beyond not having traditional foods to put on the table, or hides to use for clothing and crafting – it is in the hunt and on the land that we pass our traditional teachings down to the next generation. If there are not enough caribou left to hunt,

our youth miss out on the opportunity to learn about them: how to recognize them, where to find them, how to harvest them respectfully, how to dress and prepare them, what their meat tastes like and the best ways to cook it, what medicines and tools can be made from their unique parts, how to craft using their unique components such as tufting with their furs, what traditional Nishnaabeg lessons they can teach us, and most importantly – how to care for and protect them. Without having enough caribou on the land to see – let alone hunt – these teachings remain with Elder generations and are highly vulnerable to disappearance when our Elders pass.

In short, our cultural connection to caribou has faded as a direct result of these impacts and the Crown's caribou management decisions to date. In contemplating repealing the *Endangered Species Act*, the Crown is contemplating conduct that will further strain Biigtigong's already significantly adversely impacted Aboriginal and asserted title rights.

Biigtigong Nishnaabeg does not oppose sustainable critical mineral and economic development projects within our Aboriginal Title Claim Area. In fact, we have a strong track record of developing positive partnerships with proponents to advance projects that are important contributors to Ontario's local and provincial economies. However, any project within our Aboriginal Title and Rights Area must proceed on the basis of free, prior, and informed consent, and be guided by a mutual understanding of the benefits and impacts such projects will have within our territory. Additionally, the voices of other living beings must also be respected so that all of the Creator's beings are protected in accordance with our responsibilities as Nishnaabeg.

In our own experiences navigating the *Endangered Species Act* authorization process, we acknowledge that it has become slow and unnecessarily cumbersome. However, these challenges stem as a direct consequence of regulatory changes previously implemented by your government and not from the legislation itself.

In 2019, your government amended the permitting framework by requiring Ministerial, rather than expert staff, approval for all permits. This introduced a multi-stage review process and significantly reduced the number of personnel responsible for administering authorizations administering authorizations. These changes have directly contributed to the inefficiencies you now cite as justification for overhauling the legislation. In other words, you have worsened the problem that you are now seeking to fix and are attempting to escape accountability for your actions.

Repealing the *Endangered Species Act* is neither a proportional nor an appropriate response to this self-created regulatory mismanagement dilemma your government has created and now seeks to resolve. Instead, Ontario should prioritize administrative and procedural reforms to ensure to address the inequities created by its own regulatory decisions. Below, we outline our key concerns and offer recommendations for how administrative reforms to the *Endangered Species Act* can be more justly and effectively implemented.

Issues & Recommendations

1. Species Classification and Listing

We firmly oppose Ontario's proposal to eliminate the mandatory listing of species at risk and to grant the Minister with discretionary authority over the addition to, or removal of, the list of protected species. Introducing additional discretionary mechanisms undermines the transparent intent and scientific integrity of the government's stated objectives. Abandoning a

comprehensive decision-making process based on the best available Western science and Indigenous Knowledge only serves to weaken the integrity of species protection efforts.

Instead of removing the automatic listing process, we recommend that Ontario improve its efforts to communicate and publicize new Committee on the Status of Species at Risk in Ontario (COSSARO) assessments and pending species listings to project proponents. This would allow proponents to ensure that they are appropriately and conservatively accounting for all potentially affected at-risk species in their environmental assessment processes and in developing project design and protection measures accordingly.

Ontario must also ensure that the MECP is adequately resourced to develop clear guidelines for species protection in a timely manner and to prevent further project delays. This will assist with responding to inquiries from project proponents and their consultants that may arise with pending or newly listed species.

2. Redefining Protections

We are extraordinarily concerned by Ontario's proposal to refine the definition of protected habitat to an animal's dwelling place (e.g., den, nest) or vascular plant's critical root zone. This proposal either reflects a lack of understanding of, or blatant disregard for, Ontario's diverse species and how they use different habitats to carry out critical life processes. Ecologists and wildlife biologists would tell you that this approach is incredibly simplistic and counter-intuitive to any aspiration of providing real protection for species at risk. Protecting an immediate dwelling space but not the surrounding habitat is akin to avoiding a person's house but demolishing the rest of their neighbourhood including grocery stores, hospitals, and roadways, and expecting them to survive.

We have further questions on how this would be defined for species such as boreal woodland caribou that do not have obvious, discrete dwelling places (e.g., a den or nest) and instead use large swaths of seasonal ranges for life processes such as breeding and wintering. To date, no information has been provided on the habitat regulations and how these will be developed for Ontario's diverse, at-risk taxa, considering their unique life history requirements.

It is not acceptable to proceed with this sweeping change in the absence of transparent information on how habitat regulations will be developed for Ontario's diverse taxa. Ontario must refrain from implementing this change until it has fulfilled its legal obligation to engage in extensive, transparent, and meaningful consultation on the development of habitat regulations, particularly with Indigenous Nations whose rights may be adversely impacted.

3. Recovery Plans and Documents

We strongly disagree with Ontario's proposal to remove the requirement to develop recovery strategies, management plans, response statements, and species progress reports. We fail to see how this important strategic planning and transparency mechanism interferes with housing, transit, and critical infrastructure project timelines. If anything, these documents provide coordinated and consistent guidance to proponents on priorities and scoping for beneficial actions required for authorizations.

It will not be appropriate to rely on federal processes, as these consider species threats and strategies for protection at a much larger spatial scale, and do not necessarily account for the unique habitats and biodiversity of Ontario. In addition, this would leave gaps (i.e., for species

that are currently provincially, but not federal listed) and inconsistencies in the level of protection (i.e., for species that may be classified as endangered provincially, but threatened federally). It is overly simplistic and incredibly misleading to suggest to the public that federal and provincial recovery plans and documents can be used interchangeably. It is our opinion that this will generate even more confusion and lack of clarity for proponents attempting to develop species protection measures associated with their sustainable development projects. Moreover, it is inappropriate to pass the buck to Canada to develop strategic guidance for species protection and recovery in our unique province.

If Ontario is truly attempting to achieve a better balance between protecting species and ensuring critical economic development projects can proceed in a predictable manner, it must continue to develop these foundational guiding documents (e.g., management plans, recovery strategies). They could be improved upon by adding general guidelines for proponents on species mitigation, monitoring, compensation, and adaptive management requirements for specific development project types.

4. Registration-first Approach

Ontario's proposal to replace the existing ESA permit application process with a "registration-first approach", removes critical oversight from qualified MECP staff and effectively circumvents the Crown's duty to consult affected First Nations. It is our position that this is the most cavalier and egregious change being proposed, as it would further erode and encourage bypassing the Crown's duty to consult obligation with First Nations, particularly where inherent Aboriginal and treaty rights intersect with species at risk and habitat protections.

As stated above, Biigtigong Nishnaabeg does not oppose reasonable economic development in our Aboriginal title claim area and we have a proven track record of developing productive partnerships with industry. However, this is grounded in a requirement to proceed with economic development in a sustainable and environmentally conscious manner.

It is important for Ontario to be aware that the "registration-first approach" to permitting does not absolve the Crown of its constitutional obligation to fully and meaningfully consult Biigtigong Nishnaabeg regarding species at risk matters prior to the onset of disruptive activities. So Ontario is aware, Biigtigong Nishnaabeg will not tolerate a standard for species at risk impact assessment, mitigation, measures to achieve overall benefit, and overall authorization that falls below the protections currently required under the *Endangered Species Act, 2007*. In other words, we shall not provide consent for companies to put shovels in the ground before we are fully satisfied that species at risk have been considered and will be protected. We argue that relying upon this requirement alone (in the absence of sufficient species at risk legislation), will provide even less clarity and consistency for proponents, resulting in further delays to progress on critical infrastructure.

As we have previously highlighted, the process for receiving authorizations under the *Endangered Species Act* can be improved upon by adding clear and consistent guidance to existing strategy documents (e.g., management plans, recovery strategies, etc.) and appropriately resourcing the MECP to attend to authorization processes in a timely and efficient manner.

5. Removal of "Recovery" goals from the *Species Conservation Act, 2025*

We are extraordinarily concerned by Ontario's proposal to remove species "recovery" from the purpose of the *Species Conservation Act, 2025*, effectively replacing it with protection only and "taking into account social and economic considerations". With this modified purpose, Ontario is signalling it believes the current state of wildlife populations and their critical habitats in the province is acceptable, when in fact, it is not. This would virtually ensure that populations will continue to decline. Applying this logic to the case of the Lake Superior caribou within Biigtigong Nishnaabeg's Aboriginal title area, you are effectively telling us that our rights and cultural connection to caribou – which you have systematically stripped away – will never be reclaimed so long as your government is in power.

As with item #3 above, we fail to see how attempting to promote species recovery on a province-wide scale interferes with housing, transit, and critical infrastructure project timelines. At their core, Schedules 2 and 9 of Bill 5 are about ushering along critical economic development projects during a time of nationwide economic instability, and the removal of "recovery" goals from our species at risk legislation simply does not contribute to this. If Ontario truly wants to continue to "drive species protection and conservation" while prioritizing economic needs, it will ensure species "recovery" is not removed from the purpose of our species at risk legislation.

Implications for Caribou in Ontario and Our Aboriginal Title Claim Area

Finally, we wish to bring attention back to the implications of Ontario's proposed changes on boreal woodland caribou in Ontario, including our critically imperiled and culturally significant caribou. It has been acknowledged that critical caribou habitat remains unprotected in Ontario and that measures to develop and implement this are long overdue. This is especially pronounced for the Lake Superior Coast Range, which has been reduced to under seventy-five (75) individuals being extirpated from the mainland Lake Superior coast and restricted to inhabiting offshore island refuges, and are ultimately, far from achieving self-sustaining status.

The Caribou Conservation Agreement signed by Canada and Ontario in 2022 signaled to a collective commitment to do better by Ontario's boreal woodland caribou. In June 2023, the federal cabinet contemplated issuing a protection order for caribou habitat in Ontario, based on the Minister of Environment and Climate Change Canada's (ECCC's) recommendation and report pointing to the lack of protections from forestry and early exploration mining, both of which are exempt from the habitat provisions of the ESA. While federal cabinet ultimately declined to interfere, it stated that it would give Ontario until April 2024 to strengthen its provincial measures for caribou habitat protection. Now in May 2025, we are left deeply frustrated by Ontario's swing in the opposite direction with this proposal to outright repeal the *Endangered Species Act, 2007*. It is our position that this will only invite the federal government to exercise its intervention powers under Section 34 the *Species at Risk Act, 2002*, which, at this point, Biigtigong Nishnaabeg would wholeheartedly support.

As previously expressed in our comments on the Proposed Draft Management Plan for the Lake Superior Coast Range and Discontinuous Distribution (letter to [REDACTED], dated February 12, 2025), it is our position that Ontario's vision, goals, and detailed action plan for this range must be significantly improved. We are deeply concerned that, not long after Ontario has committed to taking one step forward, it is now taking two giant steps back with respect to the protection and recovery of one of our most culturally significant species.

Conclusion

Biigtigong Nishnaabeg recognizes that there is a need to ensure that authorizations under the *Endangered Species Act, 2007* do not substantially interfere with economic development progress in Ontario. However, it is – and always will be – our position that this cannot occur at the expense of the environment, the proper fulfillment of the Crown's duty to consult Biigtigong Nishnaabeg, or to the detriment of species at risk populations and habitats in our Aboriginal Title Claim area.

We oppose Ontario's proposed interim changes to the *Endangered Species Act, 2007* and proposal for the new *Species Conservation Act, 2025* on these bases. We further demand that the province immediately halt the progression of Bill 5 through the Ontario Legislature until meaningful two-way dialogue on this matter can be held and a more balanced solution can be developed. As a first step in this process, we request a meeting with you and relevant ministers to discuss the issues raised in this enclosed letter, including but not limited to:

- Ontario's efforts to first consider administration and process improvements to the *Endangered Species Act, 2007*; and
- Ontario's plan for fulfilling its legal obligation to consult and accommodate our community for any adverse impacts to our rights and title claim resulting from this proposed legislative change.

With Respect,

[REDACTED]

[REDACTED], Chief, Biigtigong Nishnaabeg

CC: The Honorable [REDACTED], Premier of Ontario, [REDACTED]
The Honorable [REDACTED] Minister of Energy and Mines,
[REDACTED], Chair, Standing Committee on the Interior, [REDACTED]
[REDACTED], First Vice-Chair, Standing Committee on the Interior, [REDACTED]
[REDACTED], Second Vice-Chair, Standing Committee on the Interior,
[REDACTED]
[REDACTED], Member, Standing Committee on the Interior, [REDACTED]
[REDACTED], Member, Standing Committee on the Interior, [REDACTED]
[REDACTED], Member, Standing Committee on the Interior, [REDACTED]
[REDACTED], Member, Standing Committee on the Interior,
[REDACTED]
[REDACTED], Member, Standing Committee on the Interior, [REDACTED]
[REDACTED], Member, Standing Committee on the Interior, [REDACTED]
[REDACTED], Committee Clerk, Standing Committee on the Interior, [REDACTED]
[REDACTED], Deputy Minister, MECP, [REDACTED]
[REDACTED], Director, Species at Risk Branch, MECP, [REDACTED]

[REDACTED], Director, Caribou Conservation Section, MECP,
[REDACTED]
[REDACTED], Manager, Caribou Conservation Section, MECP, [REDACTED]
[REDACTED], Director of Sustainable Development, Biigtigong Nishnaabeg,
[REDACTED]
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[REDACTED], Wildlife Biologist, ArborVitae Environmental Services, [REDACTED]
[REDACTED], Wildlife Coordinator, Biigtigong Nishnaabeg, [REDACTED]