



May 16, 2025

Ministry of Citizenship and Multiculturalism
Ministry of Environment, Conservation and Parks
Ministry of Energy and Mines

Re: Omnibus Bill 5: Protect Ontario by Unleashing our Economy Act, 2025, including:
ERO 025-0380 Proposed interim changes to the Endangered Species Act and a proposal for the Species Conservation Act;
ERO 025-0409 Proposed amendments to the Mining Act, Electricity Act, and Ontario Energy Board Act;
ERO 025-0418 Proposed Amendments to the Ontario Heritage Act; and
ERO 025-0391 Proposed Special Economic Zones Act

To whom it may concern,

We thank you for the opportunity to provide input to the proposed *Protect Ontario by Unleashing our Economy Act* posted April 17 on the environmental registry.

We provide these comments in our capacity as Wildlife Conservation Society (WCS) Canada scientists, leading research and policy development related to species and ecosystems to inform conservation decisions. Our expertise is relevant to several of the proposals contained within Bill 5. Our work focuses on conservation and scientific research in biodiversity, ecological integrity, forests and peatlands, cumulative impacts, wildlife, fisheries and climate change. We also work actively in partnership with Indigenous communities, where invited, to advance their stewardship priorities. We are affiliated with global WCS programs in more than 60 countries and active at the science-policy interface in Canada and internationally.

Our overarching concern is that the proposals outlined in Bill 5 Schedules 2, 5, 7, 9 and 10 of Bill 5 will have serious negative impacts for ecosystems and people in Ontario and these proposals, collectively, are not in the public good. As such, we strongly urge that Bill 5, along with these Schedules, are immediately withdrawn. We see these proposals as aiming to consolidate power to the Province in a manner that would see unacceptably negative impacts on the environment, Indigenous Rights and the overall democratic process. Further, despite the rhetoric that these changes are necessary to advance economic interests, the proposed changes will not address government-identified barriers that impede mining and critical infrastructure projects in Ontario.

Our comments below elaborate on our overarching concern and provide additional details about our concerns related to: 1) The public consultation process and the purported purpose of the proposals; and 2) Indigenous Rights and the failure of the proposals to reflect the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) including its requirement to obtain the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples when making decisions about their homelands.

We then provide specific comments on the: 1) Proposals to make changes to the Endangered Species Act and ultimately replace it with the Species Conservation Act; 2) Proposed changes to the Mining Act; 3) Proposed changes on the Ontario Heritage Act; and 4) Proposed Special Economic Zones Act.

Overall comments on Bill 5 and the associated processes

Consultation Process:

The Environmental Bill of Rights, 1993 requires that the Minister consider the complexity of the matters at hand as well as the degree of public interest on these matters when determining whether an extended notice period is warranted to facilitate public consultation. Bill 5 addresses complex matters of significant public interest such that an extended notice period should have been granted. Bill 5 was released with multiple Schedules that collectively outline numerous regulatory changes and new decision-making frameworks on the afternoon before the Easter long weekend holiday with a comment period of only 30 days. This was followed quickly by the Bill passing second reading and being referred to the Standing Committee on the Interior, all within three weeks of release. The Province's approach demonstrates a disrespect for Indigenous Rights and represents a disingenuous mode of public consultation that is not fulfilling the requirement for meaningful engagement prior to decision making required under the Environmental Bill of Rights, 1993.

Indigenous Rights:

If approved, Bill 5 would seriously erode Indigenous Rights and eliminate pathways for Indigenous Peoples to be part of decision-making about the resources within their homelands. This is contrary to Ontario's duty to consult meaningfully with Indigenous Peoples prior to all decisions that affect their rights, and as a partner in the federation, Ontario must go further to align its legal frameworks with UNDRIP and its principle of FPIC that Canada has committed to uphold.

Comments on specific postings within the Environmental Registry of Ontario

Specific comments on Schedule 2, proposed repeal of the Endangered Species Act and Schedule 10, proposed Species Conservation Act (ERO 025-0380):

The proposed changes outlined in Schedule 2 aim to revise the Endangered Species Act (ESA) as an interim measure until it is ultimately repealed through Schedule 10 and replaced with the Species Conservation Act (SCA) as a severely weakened and ineffective Act to address at-risk species. The proposed interim changes to the ESA, and its eventual repeal and replacement by the SCA, would make species protections afforded by the SCA so extraordinarily weak that this new Act would be effectively meaningless. These changes would see a shift to mostly voluntary measures for species protections without enforcement or monitoring and shift a science-based listing process to a political process based on ministerial discretion. This would move the province further in the regressive direction that has already diminished the ESA since its creation through changes by successive governments that have weakened species protections and increased the number of at-risk species, as identified in a comprehensive 2021 report by the Ontario Auditor General (OAG)¹. The current proposals, if approved, will only further exacerbate these issues. What is critically needed instead is amendments to the ESA that re-establish strong species protections and re-align the Act with its original purpose.

We outline our concerns about specific changes proposed in Schedule 2 and Schedule 10:

- i) *False premise that most permitting under the ESA is cumbersome.* The 2021 OAG report provides a detailed analysis of the implementation track record since 2013 for the 95 percent of permitting that is already subject to a registration system. The report found no delays in the

¹ Office of the Auditor General of Ontario. 2021. Value-for-Money Audit: Protecting and Recovering Species at Risk. https://www.auditor.on.ca/en/content/annualreports/arreports/en21/ENV_ProtectingSpecies_en21.pdf

issuance of these permits due to automatic approval by the Province without review, a lack of compliance monitoring of permit holders, and undue influence by proponents to obtain routine exemptions. The rationale provided for the proposed SCA is that “instead of waiting for the Ministry to approve permits, most proponents will be able to begin an activity immediately after registering”. In fact, this approach has already been delivered for most permits already subject to the permit-by-rule system used since 2013 for most species. As the OAG report conveys, this approach has contributed to the negative impacts noted for at-risk species.

- ii) *Removal of species recovery and the requirement for recovery strategies.* Species recovery would no longer be a focus of the Act and would be replaced by “conservation”. While conservation can involve a range of initiatives, some may not be related to species recovery that involves a direct focus on restoring listed species and the ecosystems they depend on (i.e., their critical habitats). Recovery strategies and plans identify what is required to halt or reverse the decline of species. The proposed approach to shift to “conservation” would be a regressive move away from the original aim of the ESA focused on species recovery.

Canada’s 2030 Nature Strategy² commits to halting and reversing species extinction and biodiversity loss to meet international protection targets for biodiversity and stabilize and improve species’ status as outlined in the 2022 Kunming-Montreal Global Biodiversity Framework³. It is critical that Ontario plays a key role in the implementation of Canada’s 2030 Nature Strategy, which requires strong provincial legislation such as the original ESA with its purpose of species recovery through the development and implementation of recovery strategies. If Schedule 2 is amended as proposed, Ontario would not meet its requirements as a partner in the federation.

- iii) *Narrowing the definition of habitat.* Animal species’ habitat would be limited to the immediate areas around their dwelling places and the habitat of vascular plant species would be limited to only their critical root zones. For all species, the broader areas upon which they depend at different stages of their life cycles would be removed from the definition. We strongly oppose the change in the definition of “habitat” to exclude any language for life processes of “migration” and “feeding”, which were previously included in the 2007 ESA definition of habitat. Animal species’ habitat cannot exclude these critical life processes inherent to species’ habitat and biological needs. The stated need for these changes is that the current definition of habitat creates uncertainty for development. However, it is critical to have protective measures on a scale that restores and sustains endangered species. Removing protections related to habitat used for migration and feeding will inevitably cause further declines and hinder species recovery.

The ESA already needed to be strengthened given the recent (2019) changes made by the Ford government that diminished the Act since its creation. The changes proposed in Schedule 2 and the ultimate creation of the Species Conservation Act would be in the opposite and regressive direction rather than in a forward-looking direction as was envisioned by the 2007 ESA.

² Canada’s 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada. <https://www.canada.ca/en/environment-climate-change/services/biodiversity/canada-2030-nature-strategy.html>

³ <https://www.cbd.int/gbf>

- iv) *Removal of prohibition on species harassment.* The proposed amendment to remove “harass” from “harm and harass” in the ESA would be out of alignment with the federal Species at Risk Act that prohibits any person from killing, harming or harassing listed species. It is critical that the prohibition of harassing a species is maintained to avoid negative impacts to species’ behaviour or life processes that ultimately cause population declines by reducing their ability to survive and reproduce.
- v) *Alteration of the automatic listing of species at risk.* The current requirement to list species classified as extirpated, endangered, threatened species or special concern would become optional and entirely at Ministerial discretion, regardless of their COSSARO status. Such an approach would be political not based on independent scientific evidence and objective criteria and without requirements for transparency or accountability.
- vi) *Removal of responsibility for migratory birds and aquatic species.* It needs to be made explicit that with the removal of these responsibilities, whether they would be given to the federal government.
- vii) *Replacement of Species at Risk Stewardship program.* This has been an important program under the ESA that supports Indigenous communities and other groups to undertake stewardship and research activities to support the recovery of species at risk. The stated aim of the proposal to remove this program and to instead invest in broader voluntary activities is ambiguous and without any details.
- viii) *Removal of powers from enforcement officers.* The current powers of enforcement officers would be removed to issue stop orders to individuals that contravene protections in the ESA. Instead, there would be Ministerial discretion to issue mitigation orders. However, mitigation attempts only after impacts already occur would not prevent adverse impacts from occurring as do stop orders.
- ix) *Reduction of transparency and accountability.* This problematic approach would occur through removing requirements for the Province to make a range of information and reporting publicly available, including tracking of species protection and recovery.
- x) *Closure of the Species Conservation Action Agency.* Given that this agency was only established in 2021 to administer and manage the Species at Risk Conservation Fund, it is unclear why it would be disbanded so soon. This requires clarification.

Specific comments on Schedule 5, proposed changes to the Mining Act (ERO 025-0409):

Our primary concern with Schedule 5 is that the proposed changes to the Mining Act outlined in Schedule 5 are ambiguous around how the Mining Lands Administration System (MLAS) would be controlled and how prospector’s licences would be issued, posing the risk that there would be reduced transparency for mineral exploration. Ministerial power and discretion would also be increased such that the Province’s commitment to respect Indigenous rights and duty to meaningfully consult are undermined. Approval of these changes will only exacerbate the existing issues with the current mineral claims system established by the Ford government in 2018 that does not require Indigenous consultation, and is already a source of conflict and has seen recent legal actions launched by some First

Nations in northern Ontario^{4,5}. What is instead critically needed are amendments to enhance the current Mining Act to address its existing issues and move it in a forward-looking direction rather in the regressive direction that has been proposed.

Specific comments on Schedule 7, proposed Amendments to the Ontario Heritage Act (ERO 025-0418):

The approval of this proposal would create a serious risk for archeological sites that may no longer be assessed prior to developments. The premise contained in Schedule 7 about archeological assessments causing delays of project approvals is entirely false. The actual source of such delays is the Province's continued underfunding of the Ministry of Citizenship and Multiculturalism that has oversight for these assessments.

The proposed amendments in Schedule 7, particularly the immunity clause that could prevent Indigenous Peoples from pursuing legal action against the Province or proponents when developments are approved or undertaken in the absence of archaeological assessments, convey a disregard of Indigenous Rights as well as UNDRIP. It is critical that Indigenous Peoples are fully informed about the archeological sites in their homelands prior to any potential impact by proposed developments. This requires strong legislation that provides protection for archeological sites and appropriate funding

Specific comments on Schedule 9, proposed Special Economic Zones Act (ERO 025-0391):

The proposed Special Economic Zones Act (SEZ Act) in Schedule 9 would enable the Province to unilaterally establish Special Economic Zones (SEZs) in which exemptions could be granted to what are characterized as "trusted proponents" for projects designated by the Province. Schedule 9 does not include any criteria for how trusted proponents and designated projects would be identified, stating only that this will be set out later in regulations that will be developed. This approach would involve exemptions from numerous provincial laws and regulations, including those related to municipalities, and simplified requirements to achieve faster provincial approvals of projects. We anticipate that this would include the removal of current requirements for exploration plans and permits within SEZs, exacerbating the existing issues with lack of consultation and transparency around mining claims and early mineral exploration mentioned above.

Although Schedule 9 indicates that SEZs would be designated for economic purposes, since there is no clear purpose or conditions included in the Act, there is nothing indicating that these zones couldn't be used to give exemptions for other purposes, or with any criteria or safeguards to ensure these zones are used in the public interest.

The proposed SEZ Act that would enable the Province to unilaterally establish SEZs would also give unprecedented power to the Minister related to all developments with these zones. In addition to providing the Minister with the ability to fast track or bypass environmental impact assessments in a designated SEZ, we have serious concerns that expedited projects will not be required to submit mine

⁴ Law, S. (2024). Grassy Narrows First Nation taking Ontario to court over Mining Act, lack of consultation on land claims. <https://www.cbc.ca/news/canada/thunder-bay/grassy-narrows-first-nation-mining-act-legal-action-1.7260724>

⁵ Law, S. (2024). 6 First Nations challenge Ontario's Mining Act, a month after similar legal action by Grassy Narrows. <https://www.cbc.ca/news/canada/thunder-bay/first-nations-mining-act-court-application-1.7292351>

closure plans nor associated financial assurances that are required before advanced exploration under the Mining Act. Already, Ontario has 5,526 non-rehabilitated abandoned legacy mines without progressive rehabilitation plans from before closure plans were required⁶. The potential for any development projects within the SEZ to advance without effective impact assessment and closure plans is unacceptable and would lead to long term negative impacts on people and the environment in favour of short-term financial gain in designated SEZs.

The profound issues related to the lack of purpose and conditions for the proposed Act create an opportunity for government corruption and would severely diminish the ability of Indigenous Peoples to be part of decision-making processes and planning for potential developments in their homelands. The proposed enabling of the Minister to designate SEZs and apply exemptions under the SEZ Act to select proponents and projects is also out of alignment with Ontario's own Critical Minerals Strategy which states that "robust consultation processes for all mineral development opportunities and always respects Indigenous rights".

Already, Ontario lacks requirements for environmental assessment for private sector projects including mining development, and has been cutting regulatory requirements, oversight and safeguards. Opportunities for assessment of environmental, economic, and social impacts of new projects is already limited, as are opportunities for meaningful consultation with Indigenous Peoples. However, this current proposal is a blatant endorsement of the Province's support for fast-tracking specific proponent interests at the expense of Indigenous rights and interests, as well as the interests of citizens in the region and the entire Ontario public.

We strongly urge careful consideration of the numerous concerns we have highlighted and to immediately withdraw Bill 5 and Schedules 2, 5, 7, 9 and 10.

We welcome further opportunities to discuss this important topic.

Sincerely,

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⁶ https://www.geologyontario.mndm.gov.on.ca/AMIS_Description.html