

Comments on Bill 5
Standing Committee on the Interior
Federation of Ontario Cottagers' Associations

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FOCA is the only go-to provincial advocacy organization committed to sustaining and enhancing the Ontario cottage experience.

We work collaboratively to identify and address key issues by providing credible expertise, environmental stewardship, targeted programs and services, and a robust network of strategic partners.

Since 1963, FOCA has united Ontario's waterfront community. We are a non-profit membership organization representing over 525 lake, road, cottage, camp, and rural waterfront associations—together, 250,000 families and voters who steward 15,000 km of shoreline and 50 hectares of privately owned waterfront land from Kenora to Kingston, Lake Erie to north of Temagami. Our [2022 Economic Impact Study](#) confirmed that every 100 waterfront properties generate 63 jobs in Ontario, with 54 of those jobs in the community itself. Economically, there are approximately 248,763 waterfront properties across the province contributing \$11.44 billion in 2021.

The Federation of Ontario Cottagers' Associations is calling for the province to withdraw Bill 5. Our concerns directly relate to Schedules 2, 5, 7, 9 and 10 as described on the following pages.

The preamble to Bill 5 states in part that the government seeks to:

- Protect Ontario from global economic uncertainty by unleashing our economy;
- Unlock the potential of Ontario's critical minerals by streamlining approval processes for mining and critical infrastructure projects to achieve outcomes that fuel the economy while also creating jobs and protecting the strategic national mineral supply chain for the benefit of the people of Ontario and Canada; and
- Support the acceleration of provincial permitting and approvals for projects so Ontario can build mines and infrastructure faster, while ensuring environmental protection for future generations.

This bill fails to consider that the economy of Ontario is also built on the environment. Protecting Ontario's biodiversity isn't a barrier to economic success—it's the foundation of it. By protecting biodiversity and healthy ecosystems today, we secure resilient communities, a strong visitor economy, and sustainable growth for generations to come.

FOCA represents the voice of 250,000 waterfront property-owning families across Ontario. Since our founding in 1963, we have been strong advocates for policies that protect Ontario's lakes, rivers, and the ecosystems that support them. Cottagers represent a powerful economic force, owning over \$75 billion in real estate and spending \$8 billion annually on goods and services beyond their properties.

The stewardship efforts of our members contribute directly to Ontario's economy through tourism, property tax revenue, recreational spending, and cottage-related industries. As homeowners, boaters, and families, they drive demand for a wide range of products and services. A healthy waterfront is not just an environmental imperative—it's a foundational economic asset.

The threat of the application of Special Economic Zones anywhere in the province without guardrails and oversight is unconscionable. And blaming endangered species for the delay in being able to undertake projects is a smoke screen. There are many other barriers to getting mines and related infrastructure off the ground.

Ontario has been a leader for the last 18 years with the *Endangered Species Act*, although an Auditor General's report in 2021 suggested improvements to the way the act is administered. Together we can have both. We urge the Standing Committee to demand better from our government and make substantial changes to the acts before you.

Specifically, FOCA provides the following comments on Schedules 2 and 10 together, 5, 7 and 9 (with thanks to the Canadian Environmental Law Association for their research)

Schedules 2 and 10: Endangered Species Act (ESA) and Species Conservation Act (SCA):

Recommendations:

- a) ***Both Schedule 2 and Schedule 10 of Bill 5 should be immediately withdrawn by the Ontario government.*** At the same time, the Ministry of the Environment, Conservation and Parks should establish an open and accessible process for developing appropriate ESA amendments which help achieve the statute's current purposes: (a) identify species at risk (SAR) based on the best available scientific information, including information obtained from community knowledge and Indigenous traditional knowledge; (b) protect species that are at risk and their habitats and to promote the recovery of species that are at risk; and (c) promote stewardship activities to assist in the protection and recovery of species that are at risk.

- b) Amendments to the purpose of both schedules 2 and 10 should remove any reference to “taking into account social and economic considerations including the need for sustainable economic growth in Ontario.” Further, the purpose of the SCA should reflect the same purpose as the current ESA act which includes protection of species that are at risk and their habitats, promoting their recovery and promoting stewardship activities to assist in their protection and recovery.*
- c) Expand the definition of habitat in both ESA and SCA – to that which is in the current ESA and includes the “area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding”.*
- d) Incorporate sections 9 and 10 (1) of the ESA to the SCA.*
- e) Restore sections 11 to 16.1 of the current ESA supporting the development of recovery plans and stewardship actions.*
- f) Restore the language of the ESA Section 9 and 10 (1) within the SCA so that no person shall “kill, harm, harass, capture or take a living member of a species” at risk “or damage or destroy the habitat” of such species.*
- g) Restore the powers of COSSARO to list the species based on science and not politics.*
- h) Remove the option of a self registration system in the SCA in favour of the current (or improved) permitting system.*
- i) Retain the opportunity to financially compensate for lost habitat so that stewardship activities can benefit the species elsewhere.*

Explanation:

The ESA amendments contained in Schedule 2 of Bill 5 do not address the serious issues raised to date by environmental organizations and the Auditor General in their 2021 report about the current

version of the legislation. On the contrary, Schedule 2 contains numerous amendments which, if enacted, will inappropriately narrow the scope of the *ESA* and significantly impair the law's overall effectiveness and enforceability. Clearly that is the intent of the modifications to the *ESA* and its ultimate repeal bringing in a significantly watered down version of the act in the form of the *SCA*.

Both Schedule 2 and Schedule 10 propose to fundamentally alter the purpose of the *ESA* by inserting language that now expressly requires decision-makers to consider socio-economic factors when administering the legislation: *"To provide for the protection and conservation of species while taking into account social and economic considerations including the need for sustainable economic growth in Ontario."*

When economics is weighed with species protection, invariably species lose, as those making the decisions can rarely equate the value of a species with the value of a dollar. The *ESA* is not intended to serve as a catalyst for economic development but is instead aimed at securing the protection and recovery of species of flora and fauna in Ontario to ensure that they do not become extinct, extirpated, endangered, or threatened. Protecting SAR cannot be "traded off" or "balanced" against the perceived need for more economic growth across Ontario. In our view, protecting SAR is the higher priority given that they are limited in their numbers and distribution and they should rightfully constrain economic development and resource extraction to alternate areas, rather than have development or resource extraction constrain species protection.

Equally problematic is the new definition of habitat that limits "habitat" to residences actually or "habitually" occupied by animal SAR. Schedule 2 and 10 of Bill 5 fundamentally fail to safeguard the other types of critical habitat needed for a species' full range of life cycle needs including life processes such as reproduction, rearing, hibernation, migration or feeding. None of us would survive if our habitat protections were so prescribed.

Schedule 10 then provides a further gloss on the new definition of “habitat” by specifying that “for greater certainty, the definition of ‘habitat’ in subsection (1) does not include an area where the species formerly occurred or has the potential to be reintroduced unless existing members of the species depend on that area to carry on their life processes” (section 1(2) of SCA). This provision is modelled on an existing provision in the current *ESA*, but it undoubtedly provides a further (and needless) restriction on the interpretation and application of “habitat” for the purposes of SCA implementation.

Schedule 2 proposes to wholly delete – but not replace – sections 11 to 16.1 of the current *ESA* which outline how the government will respond to listing of a species in developing recovery plans toward eventual delisting and enable the Minister to enter into stewardship agreements and landscape agreements for the purpose of assisting in the protection or recovery of a species. And Schedule 10 does not provide any alternative.

It should be noted that most of the above-noted sections were amended or enacted by the Ontario government in its controversial overhaul of the *ESA* in 2019. However, the environmental rationale for now repealing these updated sections has not been presented by the province to date. Taken together, sections 11 to 16.1 form an essential component of the current *ESA* regime, and it is unconscionable that Ontario is now proposing to completely withdraw from implementing recovery strategies and management plans. Listing an at-risk species under the amended *ESA* but committing to no governmental action to bring the species back from the brink is tantamount to admitting a critically ill patient to a hospital but administering no health care to ensure the patient’s recovery.

The SCA expressly gives Cabinet permissive authority to “deviate” from COSSARO classification. Giving Cabinet virtually unfettered discretion over listing decisions under the SCA is an unjustifiable

rollback from the current *ESA*. The automatic listing process under the current *ESA* is widely regarded by civil society as a long-standing strength of the current law. Accordingly, the SCA's meagre stipulation that Cabinet “may” make a listing regulation for extirpated, endangered, or threatened species represents an unacceptable and unaccountable substitute for the current listing process. The SCA provides no schedules identifying the species under consideration for inclusion in (or exclusion from) the new regulation. We are not starting from zero in the development or application of this proposed act. If SCA survives it must start with a scientifically derived list.

The current *ESA* contains two general prohibitions which arguably serve as the centrepiece of the legislation: (a) the section 9 prohibition which, among other things, provides that no person shall “kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species”; and (b) the section 10 prohibition which provides that “no person shall damage or destroy the habitat” of an endangered, threatened, or certain extirpated species.

Alarmingly, these two broad prohibitions are not being carried forward into the SCA. Instead, Schedule 10 proposes two new (and much narrower) prohibitions: (a) the section 15 prohibition that “no person shall engage in an activity that is likely to result in a species no longer living in the wild in Ontario”; and (b) the section 16 prohibition that no person shall engage in a “registerable activity” or “permit activity” unless they are duly registered or obtain a SCA permit as may be applicable.

The SCA contains no reference to killing or harming individual members of a SAR or destroying or damage their habitat, which constitutes the greatest threat to such species. Instead, section 15 seems directed at protecting species from becoming extirpated in Ontario. While this may be a laudable objective, the vague wording of section 15 may render it virtually unenforceable. Unlike section 9 of the *ESA*, this new prohibition is not aimed at individual members of the species but is

instead targeting unspecified activities that “likely” pose a population-level threat to the species as a whole. However, in cases involving individual takings of species members or localized habitat harm, it may be exceptionally difficult to prove, beyond a reasonable doubt, that the defendant’s alleged misconduct will likely cause the entire Ontario population to suddenly become extirpated. This SCA prohibition is inadequate and ineffective, and it represents an unjustifiable rollback from sections 9 and 10 of the current *ESA*.

The SCA proposes a self registration system allowing numerous registrations without any rigorous upfront analysis. The evaluation of impacts on *SAR* is not a simple activity given that there is often less known about them than other species. Impacts can be from multiple sources and requires a competent specialist to evaluate the proposal and determine the protection, mitigation and potentially compensation requirements. The protection of these species is not served by a “permit-by-rule” approach embedded in the SCA.

Schedule 5: Mining Act:

Recommendation: *The purpose section in the Mining Act should be amended to state that mining in Ontario should be undertaken in a culturally, socially, environmentally, and economically sustainable and responsible manner. And further that the **purpose section should reflect a commitment to prevent impacts on public health and safety and the environment as opposed to simply minimizing them.***

While mining projects are necessary, they can leave a legacy of environmental impacts that can become the responsibility of the province to manage and remediate. It is less expensive to ensure effective and adequate treatment of mine waste from the outset of the project.

Schedule 7: Ontario Heritage Act

Recommendation: The government should revise Schedule 7 to make it explicitly preventive in protecting Indigenous heritage, including cultural, religious, and spiritual sites and practices failing which the government should withdraw Schedule 7.

FOCA supports Indigenous communities by endorsing recommendations to revise Schedule 7 to make it explicitly preventive in protecting Indigenous heritage, including cultural, religious, and spiritual sites and practices..

Schedule 9: Special Economic Zones

Recommendation: Schedule 9 should be withdrawn in its entirety

Schedule 9 seeks to provide untrammelled discretion to the provincial Lieutenant Governor in Council and the Minister to designate special economic zones, trusted proponents, a class of persons as trusted proponents, designated projects or a class of projects as designated projects, without any legislated criteria or boundaries. Instead, sections 2(2), 3(3) and 4(3) provide untrammelled discretion to the Lieutenant Governor in Council to establish criteria to define these terms by regulation.

Likewise, sections 5 and 6 seek to provide untrammelled discretion to exempt or modify any legislative, regulatory, other instrument, municipal by-law or municipal instrument from applying to a trusted proponent or designated project within a special economic zone.

Without any detail about what legislative, regulatory or other requirements will apply to projects or proponents moving forward, Schedule 9 raises serious concerns about whether the health and safety of people and the environment will be protected.

Further, the preamble to Bill 5 states that the bill is intended to unlock “the potential of Ontario’s critical minerals by streamlining approval processes for mining and critical infrastructure projects to achieve outcomes that fuel our economy while also creating jobs and protecting the strategic national mineral supply chain – all for the benefit of the people of Ontario and Canada.” If this is truly its purpose then there should be no reason not to provide definitions, scope, guidance and guardrails for application of the legislation. At this time, it appears that any project, anywhere, could be given approval to proceed all without the benefit of public or municipal review.

As outlined at the beginning of our submission, Ontario is home to over a quarter million lakes, many of which are the treasured places of hundreds of thousands of Ontarians. Without the application of laws, regulations and by-laws, the health and safety of people and the environment cannot be assured. Floodplains (*Conservation Authorities Act*), drinking water (*Clean Water Act*), pollution (*Environmental Protection Act*) to name a few are not red tape but essential to ensuring long term community and environmental sustainability. FOCA urges the Government of Ontario to withdraw Bill 5 in its entirety. Ontario’s economy and environment are not mutually exclusive. One cannot flourish without the other.