Legal Advocates for Nature's Defence

Informational Briefing Note

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Unpacking the implications of Bill C-39, the *Building Canada Strong Act*

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About Bill C-39

Bill C-39, the *Building Canada Strong Act,* was tabled on September 21, 2026. Bill C-39 builds on the dangerous foundations set by Bill C-5 (now the *Building Canada Act*) and introduces a new 'Region of National Interest' threat to Indigenous rights and nature, with significant implications for the proposed Ring of Fire area in Treaty 9 territory.

As of today, October 20th, the Bill has passed second reading in the House of Commons and has been referred to the Legislative Committee on Bill C-39 to study the Bill, hear from witnesses, review public submissions and suggest amendments. The Bill is also undergoing a 'pre-study' in the Senate by a Special Senate Committee on Bill C-39.

Bill C-39 amends 18 environmental, transportation, and labour-focused laws, amends the *Federal Courts Act,* amends four regulations, repeals one law and enacts one new law. Bill C-39 is divided into three Parts:

Part 1, 'Build Canada Now', is focused on speeding up project reviews and decision making, and is divided into seven divisions:

1) Amending the *Impact Assessment Act ("IAA")*
2) Amending the *Building Canada Act ("BCA")*
3) Amending the *Canadian Energy Regulator Act ("CERA")*
4) Amending the *Canadian Navigable Waters Act ("CNWA")*
5) Amending the *Canadian Environmental Protection Act ("CEPA")*
6) Amending the *Species At Risk Act ("SARA")*
7) Amending the *Fisheries Act ("FA")*

Part 1 operationalizes the proposals put forward by the federal government earlier this year in their Getting Major Projects Built in Canada Discussion Paper. Among its various problematic proposals is the creation of regions of national interest ("RONI") through regional assessments ("RA"), within which projects would effectively be pre-approved. Because the Ring of Fire area is currently undergoing a RA, we are concerned that Bill C-39 will create a region of national interest in that area and pre-approve development at the cost of constitutionally protected and internationally recognized Indigenous rights, the environment and our democracy. Our submission in response to this Discussion Paper is available here.

Part 2, 'Keep Canada Moving', is focused on developing trade corridors to expand trade, and is divided into eight divisions, amending seven Acts and enacting one new Act. Part 2 essentially operationalizes the proposals put forward by the federal government earlier this year in their Strengthening One Canadian Economy through Trade and Transportation Discussion Paper.

Part 3, 'Canada Strong for All', is focused on reducing the occurrence of work stoppages, and is divided into three divisions, amending the *Canada Labour Code* and *Wage Earner Protection Program Act.* According to the Canadian Union of Postal Workers, among other things, "the Bill gives the Minister the explicit power to 'take any measure' to end a legal strike which they think could have a negative impact on the 'national interest'" and extends the conciliation period (i.e. the length of time a union must wait before it can exercise its right to strike) from 60 to 90 days. The Canadian Union of Public Employees passed a resolution vowing to defy Bill C-39 as it limits the constitutional right to strike.

This briefing note focuses on Part 1 of Bill C-39, with a few comments regarding Part 2.

Key Areas of Concern

As expanded on below, Bill C-39 prioritizes the interests of industry over the inherent and constitutional rights of Indigenous peoples, government principles of transparency and accountability, and Canada's obligations to conserve biodiversity and take action against climate change.

Part 1, 'Build Canada Now'

Part 1 is focused on speeding up federal project reviews and decision-making, including by:

1. Authorizing establishment of Regions of National Interest ("RONI")

Bill C-39 amends the *BCA* to expand its focus from advancing projects of national interest to advancing "projects that are in the national interest and projects of an eligible type within a region of national interest".[1] Bill C-39 (s 103) also adds new sections (ss 8.3-8.7) to the BCA, describing the process through which RONIs can be created in areas that have undergone RAs:

1) The Governor in Council ("GiC") will, by order, on the recommendation of the Minister, designate a RONI if they are of the opinion that it is in the national interest, by adding the following information to Schedule 3 of the *BCA:*
    a) The name of the region;
    b) Detailed description of the region, including the geographic area that it covers;
    c) The types of projects that are eligible within the region and any criteria that must be met; and
    d) The information that a proponent must provide to the Minister to establish that their project meets the criteria.

    The GiC will also have the power to amend or delete a RONI. This seemingly gives the GiC sweeping powers to decide the size of the RONI and what projects would be eligible, with no clear oversight or transparency mechanisms.

2) A RONI can only be designated in a region where a RA has been conducted, and the GiC must "take into account" any report that results from that RA. This language creates ambiguity as to exactly what bearing the findings of the RA will have on the GiC's ability to designate a RONI.

3) Before designating a RONI, the GiC "may consider any factor that the [GiC] considers relevant", including the extent to which a project can:
    a) strengthen Canada's autonomy, resilience and security;
    b) provide economic or other benefits to Canada;
    c) have a high likelihood of successful execution;
    d) advance the interests of Indigenous peoples; and
    e) contribute to clean growth and to meeting Canada's objectives with respect to climate change.

[1] Sections 94, 95 and 97 of Bill C-39 amend the title, preamble, and purpose of the *BCA,* respectively.

These factors are full of vague, undefined terms, and are framed to only consider the positive impacts. The GiC will also have highly discretionary powers to interpret each factor and decide which factors to consider. Further, there is no mention of Canada's environmental obligations, including biodiversity commitments, and only mentions the "interests" of Indigenous peoples (not their rights or Canada's obligations under the *United Nations Declaration on the Rights of Indigenous Peoples* ("*UNDRIP*")).

4) Importantly, there are no real consultation obligations that must be fulfilled before designating a RONI. Instead, the Minister must "be satisfied" that "adequate consultations have been conducted" with Indigenous peoples whose rights may be adversely affected, either by way of the RA or by any other means. This is extremely concerning because:
    a) Consultation is subject to the Minister's satisfaction (which is vague and unreliable); and
    b) The consultation conducted through an RA - which is an entirely separate process for an entirely different purpose - can be relied on as consultation for a RONI designation.

   There is no mention at all of consulting with the public.

5) Within 30 days after a RONI is designated, it will be posted to a public registry (i.e. there is no notice period, and no public comment period). The Minister will then, on a project-by-project basis within the RONI, issue a '**deemed authorization document**' that acts as a substitute for all of the required federal approvals and permits specified under Schedule 2 of the *Building Canada Act*, including those under the *IAA*, *Fisheries Act, Species at Risk Act*, and *Migratory Birds Convention Act,* among many others. Importantly, the legislation deems all determinations, findings, and opinions required for those authorizations to be made in favour of allowing the project to proceed. This effectively predetermines and pre-authorizes key project decisions that would otherwise have to be independently assessed under federal laws, undermining independent oversight and further weakening environmental safeguards.

6) Before issuing this 'deemed authorization document', there are certain obligations the Minister must fulfill. However, these obligations are significantly weaker than those the Minister must fulfil before issuing a 'deemed authorization document' for a Project of National Interest ("PONI"). For instance:
    a) The Minister must simply be "satisfied" that Indigenous peoples have been consulted, but does not have "ensure that a process is established that allows for the active and meaningful participation of the affected Indigenous peoples and that a report of the consultation process and results is made available to the public within 60 days" (which is a requirement for PONIs under s 7(2.1) of the *BCA*);
    b) The Minister does not have to make publicly available the information and documents used to issue the 'deemed authorization document' (which is a requirement for PONIs under s 7(9) of the *BCA*);
    c) Before adding, amending or removing any conditions set out in the 'deemed authorization document', the Minister does not have to release important information to the public, such as what these conditions are, the risks of such conditions, what

mitigation measures were implemented, reasons for why recommendations from other federal departments regarding the project were not accepted, and the full contents of the studies and impact assessments conducted regarding the project (which is a requirement for PONIs under s 8.1(1)-(3) of the *BCA*); and

d) Before adding, amending or removing any conditions set out in the 'deemed authorization document', the Minister does not have to table a report in each House of Parliament containing the above-mentioned important information nor explain their decisions in establishing the conditions (which is a requirement under s 8.1(4) of the *BCA*), thereby removing another accountability mechanism.

Why this matters: Pre-approving projects (retroactive, existing, and future) within the geographic scope of a RA would effectively render both the impact assessment and RA processes meaningless, unravelling years of input and review, and nullifying the critical recognition that there be a cumulative effects review proportional to the scale of the impacts on Indigenous rights, lands and waters.

The RA for the Ring of Fire area has been referred to as a "historic achievement" following "three years of persistent efforts by First Nations to secure the Government's agreement to a regional assessment that is co-led in partnership between First Nations and Canada."[2] The RA is meant to "advance its commitments to reconciliation through meaningful demonstration of respect for First Nations' inherent authority regarding the future of their territories and peoples, and their right to free, prior and informed consent," and is "an important step to building the experience, trust, and capacity needed on all sides to advance Nation-to-Nation relationships."[3] As stated in the Terms of Reference:

> In the face of changes that could impact this area and the surrounding sensitive region, this Regional Assessment is an effort to uphold First Nations' and the Government of Canada's responsibilities to make careful and informed decisions. First Nations and Canada undertake it knowing that, given the growing climate and biodiversity crises, these decisions will be globally significant.[4]

Weaponizing the outcomes of the RA process to justify accelerated development in a RONI would fly in the face of reconciliation and reinforce the Crown's colonial legacy of overriding Indigenous rights, including the right to protect and conserve the environment.[5]

The Crown must ensure that the Final Report of the Ring of Fire RA will not be used – by way of a RONI – to approve and fast-track development in the assessment area, which is within Treaty 9 territory.

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[2] Regional Assessment Working Group, "Terms of Reference for the Regional Assessment in the Ring of Fire Area" (20 January 2025), p 5 [**Terms of Reference**]. An overview of the process is depicted on page 13 of the Interim Report for the RA within the Ring of Fire Area (20 January 2026). Please note that this is not an endorsement of the "co-led" process - we maintain our position that the process ought to be Indigenous led.

[3] Terms of Reference (20 January 2025), p 5.

[4] Terms of Reference (20 January 2025), p 5.

[5] *United Nations Declaration on the Rights of Indigenous Peoples,* Article 29(1).

Rights-holders who have been actively engaged in the RA process since its inception[6], including the Friends of the Attawapiskat River, have been continuously assured that the RA would not excuse any Ring of Fire-related projects from individual impact assessments. These assurances that were made during the earliest of discussions with then Environment Minister, Hon. Steven Guilbeault, in July 2022 and ultimately reflected in the Terms of Reference for the RA. The language in the Terms of Reference is unequivocal: RAs "[do] not replace the need for project-specific assessments".[7]

Additionally, the risks posed by the proposal to enable RONIs (previously termed Federal Economic Zones[8]) are exacerbated by the province of Ontario's introduction of Special Economic Zones ("SEZ") legislation by way of Bill 5, *Protect Ontario by Unleashing Our Economy Act, 2025* which similarly provides the Crown with unrestricted powers to decide where, and to whom, laws will or won't apply. The Discussion Paper stated that cooperation between federal and provincial governments is "essential to make [RONIs and SEZs] work effectively" and "would allow projects to be fast-tracked under both federal and provincial regimes".[9] We are extremely concerned that Bill C-39 will allow Canada and Ontario to effectively create an entirely lawless zone in the proposed Ring of Fire area by establishing both a RONI and SEZ, respectively.

Furthermore, the increased threats to the proposed Ring of Fire area under Bill C-39 – specifically, accelerating development without Indigenous consent nor a comprehensive assessment of the social, environmental and human health effects – demonstrates the Crown's lack of respect for Indigenous jurisdiction over their lands and waters. Indigenous communities and organizations have been actively seeking to protect the Hudson-James Bay lowlands from mining development. For instance:

- The Mushkegowuk Council of Chiefs passed a resolution designating the Ring of Fire as a protected homeland, within which no development can take place without free, prior and informed consent
- The Friends of the Attawapiskat River issued a Declaration of Protection for Lands and Waters in 2023
- Various Indigenous, environmental and civil society organizations called for a moratorium in the Ring of Fire to protect watersheds and Indigenous rights in 2021

The inherent, Treaty and internationally recognized human rights of Indigenous peoples, including the right to protect and conserve their lands and waters, must be respected.

We also strongly oppose Bill C-39's proposed approach to consultation regarding RONI designations, for three main reasons:

1) **Relying on consultation that was conducted as part of the RA as proof of consultation for a**

[6] The Friends of the Attawapiskat River's continued opposition to resource extraction projects in the area where the Ring of Fire is proposed is documented on our Resources page, including submissions regarding provincial and federal impact assessments, policies and guidelines, laws and regulations, and the Regional Assessment.
[7] Terms of Reference (20 January 2025), p 17.
[8] RONIs were originally termed Federal Economic Zones ("FEZ") in the Discussion Paper, but were likely re-named due to the growing public concern around Ontario's plans to establish Special Economic Zones.
[9] Discussion Paper, Proposal #5.

RONI designation is unethical and illogical. The purpose of a RA is to study the positive and negative impacts (including cumulative impacts) of past, current and future activities within a species region on Indigenous peoples and their rights, the environment, social conditions, the economy, and human health.[10] Contrastively, the purpose of a RONI is to urgently advance projects that support Canada's economy, sovereignty, and security. RAs and RONI designations are extremely different in their processes, purposes and outcomes – one is focused on information gathering and assessing cumulative social and environmental effects of potential development in a region, whereas the other is focused on choosing a geographic area within which projects will be "advanced through an accelerated process that enhances regulatory certainty and investor confidence"[11]. Co-opting the thoughts, concerns and perspectives shared during an RA will further fracture Crown-Indigenous relationships and violate Indigenous peoples' right to free, prior and informed consent.

2) **A RONI will encompass various projects, and consultation must be undertaken for each project, with each Indigenous community who may be affected**. This is necessary to uphold the constitutional duty to consult and the internationally and domestically recognized Indigenous right to free, prior and informed consent.
3) **There is no mention of public participation opportunities in the RONI designation process**, which goes against the principles of transparency, accountability and participation, which Canada has identified necessary to strengthen public trust in government and the health and effectiveness of our democracy.[12]

2. Transferring decision-making powers from the Impact Assessment Agency to industry-aligned regulators

Part 1 proposes to shift the responsibility for review and decision-making of certain projects from the Impact Assessment Agency of Canada ("Agency") to the Canadian Nuclear Safety Commission ("CNSC") and Canada Energy Regulator ("CER") – regulators that are known for their bias and lack of public trust.

The CNSC would be responsible for conducting impact assessments for nuclear and uranium projects. The *IAA* would be amended to bring the CNSC under its purview, meaning that the responsibilities of the Agency under the *IAA* (i.e. to conduct an IA using a science-based, participatory process) would now be transferred to the CNSC for nuclear projects. The CNSC will conduct the IA and determine whether adverse effects within the federal jurisdiction are likely to be significant, and if so, to what extent. The final determination of whether these significant adverse impacts are justified in the public interest will remain with the GiC.

Moreover, the CER would be responsible for reviews of international and interprovincial pipelines, transmission lines, and offshore renewable energy projects, which would no longer require an impact

[10] Agency, "Regional Assessments".
[11] Bill C-39, ss 95(2) and 97.
[12] Canada, "Government of Canada Trust and Transparency Strategy".

assessment under the *IAA*. Instead, these projects would be unilaterally reviewed by the CER under their own process. Additionally, the CER will have the power to:

- Decide whether to authorize the construction and operation of a pipeline or power line requiring less than 300km of new right of way (pipelines and power lines that require more than 300km of new right of way will still require approval by the GiC);
- Order an approval or exemption from all or part of the approval process after a proponent applies for a pipeline (new or extension) that do not require more than 40km of new right of way; and
- Order an approval or exemption from all or part of the approval process after a proponent applies for a pipeline (new or extension) that requires more than 40km of new right of way if the CER believes it is in the public interest.

Why this matters: These amendments would remove the responsibility of conducting impact assessments from the federal organization with the most expertise, namely the Agency. The Agency is tasked with administering the *IAA*, "to ensure the most complex projects in Canada, the ones with the post potential for serious adverse effects in federal jurisdiction, are assessed and designed in a way that protects the environment and Indigenous rights".[13] There is no guarantee that the CER's or CNSC's review processes would meet all substantive requirements of the *IAA*, including an assessment of cumulative effects, alternatives, climate obligations, public participation, Indigenous rights impacts, and sustainability. The CER and CNSC are also unlikely to adequately scrutinize the risks of energy and nuclear projects by virtue of being 'captured regulators' that advance the interests of the industry they are tasked with regulating, instead of the interests of the public. Removing the requirement of an impact assessment entirely for certain energy projects, and delegating the impact assessment review from the Agency to the CNSC, undermines the role of the Agency and will undoubtedly reduce the quality of review.

3. Ignoring UNDRIP, UNDA

Under the *United Nations Declaration on the Rights of Indigenous Peoples Act* ("*UNDA*"), Canada is required to ensure that the laws of Canada are consistent with *UNDRIP.* However, Bill C-39 makes no mention of *UNDRIP* or *UNDA.*

UNDRIP is only mentioned once in the *BCA:* the government of Canada, per the preamble of the *BCA,* is committed to respecting the rights of indigenous peoples set out in *UNDRIP.* While this is a step ahead of Bill C-39, it is important to note that preambles are not legally binding (they are instead meant to help interpret and apply the legislation). The *BCA* does not mention *UNDA.*

Why this matters: Failure to mention *UNDRIP* or *UNDA* in Bill C-39 sends a message that upholding the rights and principles enshrined in *UNDRIP,* and domestically committed to via *UNDA,* including the principle of free, prior and informed consent, is not a priority for the federal government.

[13] Impact Assessment Agency of Canada, "Mandate of the Impact Assessment Agency of Canada" (last modified December 2 2025).

4. Limiting access to justice

Bill C-39 amends the *Federal Courts Act* to grant the Federal Court of Appeal ("FCA") – instead of the Federal Court ("FC") – exclusive jurisdiction to hear judicial reviews of the GiC's decisions under the *BCA* to designate PONIs and now RONIs. This is concerning because it reduces opportunity for judicial oversight. Ordinarily, an application for judicial review would be heard by the FC, whose decision could then be appealed to the FCA. A party could then ultimately seek leave to appeal to the Supreme Court of Canada ("SCC"). Under Bill C-39, however, these judicial reviews would be heard at first instance by the FCA, removing a level of appeal. The only other opportunity for further appeal would be to seek leave to the SCC, and there is no guarantee that leave would be granted. While one has the *right* to appeal a decision of the FC to the FCA, this is not the case for appeals to the SCC. Appealing to the SCC requires permission from the court, which is only granted for a few cases every year.

Additionally, Bill C-39 seeks to 'immunize' decisions to designate RONIs from judicial review, thereby removing a key pathway to seek justice through the court system. Bill C-39 requires that, within 30 days after an order is made under the *BCA* to designate a RONI, important details of the region to which the order relates must be published by the Minister of One Canadian Economy on the public registry. However, per the Federal Courts Rules, one would have only 30 days to file a judicial review of the decision to designate a RONI. This presents a conflict because, for example, if the decision to designate a RONI was made on September 1, but the details of the decision necessary to understand the implications of the designation is not posted on the registry until October 1 (i.e. 30 days after the decision was made), it would be impossible to challenge that decision (by filing an application for judicial review) before the deadline of October 1.

5. Amending, adding or removing conditions of authorization

Bill C-39 amends the *BCA* to expand the Minister's powers to adjust or remove conditions of approval. For instance:

- The Minister can add, remove or amend any condition of authorization that was granted for a PONI *before* the project was designated as a PONI (s 101)
- The Minister can add, remove or amend any condition set out in the 'deemed authorization document' for a PONI (s 100) whereas under the current *BCA,* the Minister can only add or amend conditions but cannot remove them
- The Minister can add, remove or amend any condition set out in the 'deemed authorization document' for a RONI project, and can add additional authorizations and conditions (s 103)

Similarly, Bill C-39 amends the *IAA* to expand the Minister's powers to adjust or remove conditions of approval. For instance:

- The Minister of the Environment (on behalf of the Agency) can amend a decision statement that they issue, including to add, remove or amend any condition or modify the project's description, if doing so will not increase the significance of the adverse effects of the project (note: the Minister cannot amend the actual decision)
- The Minister of the Environment (on behalf of the Agency) jointly with the Designated Minister can amend a decision statement that they issue, including to add, remove or amend any

condition, even if doing so will increase the significance of the adverse effects of the project, if they are of the opinion that it is in the public interest

- The GiC can amend a decision statement that they issue, including to add, remove or amend any condition, even if doing so will increase the significance of the adverse effects of the project, if they are of the opinion that it is in the public interest
- The CNSC can amend a decision statement that it issues, including to add, remove or amend any condition or modify the project's description, if they are of the opinion that doing so will not increase the significance of the adverse effects of the project (note: the CNSC cannot amend the actual decision)

Why this matters: Conditions of approval are put in place to prevent and mitigate harm, and are imposed after the risks of a project are assessed. Granting the federal government the power to retroactively amend or remove conditions of approval will allow for the removal of key safeguards that were imposed on a proponent to protect the environment, Indigenous rights and the rights of the public.

Additionally, Bill C-39 seeks to dilute the authority of the Minister of the Environment by requiring that impact assessment decisions for projects with potentially significant adverse federal impacts be made *jointly* between the Minister of the Environment and a 'Designated Minister'. The Designated Minister will, according to the Cabinet Directive on Bill C-39, be the "Minister responsible for the relevant sector" (i.e. likely the Minister of Transport or the Minister of One Canadian Economy, neither of whom have the mandate or expertise to engage in meaningful, comprehensive environmental decision-making).

6. Coordinating review processes to speed up approvals

For a designated project (i.e. project subject to an IA), Bill C-39 proposes to coordinate the impact assessment process with other review processes for federal authorizations. The coordination of review processes will now be a cornerstone of the *IAA* - specifically, it will be identified as an objective of the Agency, a new purpose of the *IAA,* and added to the preamble (which informs how the *IAA* is to be interpreted and applied).

Bill C-39 also introduces a one year decision-making window for projects under the authority of the Agency (i.e. all designated projects that are not under the CER's or CNSC's authority) and under the authority of the CER (i.e. pipelines, designated power lines, and offshore renewable energy projects). This means that after all the information and studies have been submitted, the Minister/CER will issue a decision statement within one year.

When issuing the decision statement, the Minister of the Environment can - at the same time - grant certain federal authorizations that are required for the project (rather than requiring separate permitting processes). The authorizations eligible for this coordinated approach are listed in a **new Schedule 5 of the *IAA*,** and include authorizations to:

- Kill fish and destroy their habitat under the *Fisheries Act*
- Dispose of waste at sea under the *Canadian Environmental Protection Act*
- Harm species at risk and their habitat under the *Species At Risk Act*

- Exempt rivers, streams or waters from prohibitions against disposal of sawdust, stone and other rubbish into navigable waters, under the *Canadian Navigable Waters Act*
- Interfere with navigation, such as by changing water flow, under the *Canadian Navigable Waters Act*

Why this matters: The IA and other federal review processes for each project will trigger the duty to consult with many potentially impacted Indigenous communities. Every community must be afforded the time and capacity support needed to understand the potential impacts of each authorization and have their concerns heard and addressed before they can be in a position to grant their free, prior and informed consent. Imposing a one year timeline on the duty to consult violates constitutionally protected Indigenous rights and does not advance reconciliation. Additionally, imposing such an accelerated timeline on federal review processes necessarily means that scientific rigour, public participation, and inclusion of Indigenous perspectives will be compromised.

7. Authorizing harm before IA is complete

Bill C-39 amends the *IAA* to allow project proponents to do things that may cause negative effects within federal jurisdiction (e.g. Indigenous rights, migratory birds, fish and fish habitat), even before the impact assessment for the project is complete.

For major projects, the Minister (on behalf of the Agency) can authorize harmful activities before the IA is complete, including authorizations under Schedule 5[14], if they decide it is in the "public interest".

For nuclear and uranium projects, the CNSC can also authorize harmful activities before the IA is complete if they decide it is in the "public interest". The CNSC can also grant authorizations under Schedule 5 before the IA is complete in certain circumstances (i.e. if they determine it is necessary to complete the IA, although it is unclear under what circumstances conducting harmful activities would be necessary to complete an IA).

Why this matters: Allowing the government to allow projects to begin certain harmful activities, before the IA is complete, goes against the precautionary principle, which requires the government to take measures to anticipate and *prevent* environmental degradation. The precautionary principle states that when an activity poses threats of serious or irreversible harm, a lack of full scientific certainty should not be used as a reason to postpone preventative actions to protect the environment.[15] An IA is a fundamental component of applying the precautionary principle, as it allows the government to assess the potential for harm *before* authorizing projects and activities. Canada is legally required, under both international and domestic law, to uphold this principle, including in the development and implementation of laws and policies.[16] The precautionary principle is domestically enshrined in various environmental laws, including the *IAA,* the *Canadian Environmental Protection Act,* and the *Oceans Act.*

[14] See section 6 of this Briefing Note for more information on Schedule 5.
[15] Rio Declaration on Environment and Development, UN Conference on Environment and Development, UN Doc A/CONF 151/Rev 1 (1992), Principle 15.
[16] *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town),* 2001 SCC 40 at para 30.

This approach also allows the government to weaponize the concept of "public interest" by granting them highly discretionary powers to make this decision, with no transparency or accountability mechanisms in place.

8. Prioritizing technical and economic feasibility over environmental protection

Bill C-39 amends various environmental laws to require that decision-makers, before establishing certain conditions or terms, must take into account whether those terms and conditions are technically, economically and practically feasible. For example, under the *Fisheries Act,* before establishing, adding or amending any conditions under an authorization issued for proponents to kill fish or destroy fish habitat, the Minister must take into account the technical, economic and practical feasibility of the conditions. These amendments effectively dilute the protections that were intended under the environmental laws, by imposing a new balancing exercise on decision makers to weigh "technical, economic and practical feasibility" which are all undefined terms.

9. Weakening the Fisheries Act

Bill C-39 amends the *Fisheries Act* to create a new system where proponents will be allowed to pay a fee (which is often affordable for large proponents) to harm fish habitat, instead of the current system where proponents would have to 'offset' the harm they create by creating new habitat in the affected watershed. This new system introduces fish habitat offset credits that can be bought, sold or traded.

10. Making fast-tracking powers permanent

When the *BCA* was passed last year, it included an assurance – known as a 'sunset clause' – that the GiC's extraordinary and discretionary powers to designate PONIs would only last for five years. Sunset clauses are important for reducing executive overreach and preventing the sweeping powers conferred under the *BCA* from becoming permanent with no oversight from the legislature. However, Bill C-39 amends the *BCA* to remove this 'sunset clause', essentially granting the federal government unrestricted powers to designate PONIs (and now also RONIs), despite their significant social and environmental implications, with no temporal limits.

<u>Part 2, 'Keep Canada Moving'</u>

Part 2 of Bill C-39 is focused on accelerating and expanding trade and transportation, including by:

1. Establishing National Trade Corridors

Bill C-39 amends the *Canada Transportation Act* to allow the Minister of Transport to designate geographic areas as National Trade Corridors. The Bill does not expand on how these Corridors will be designated, what criteria must be met, or what terms or conditions must be in place to safeguard the environment, Indigenous rights, and the rights of the public. The Bill also does not explain the implications of designating a Corridor, and questions therefore remain as to whether this power is akin to the proposed establishment of RONIs.

2. Creating new advisory bodies

Bill C-39 also amends the *Canada Transportation Act* to allow the Minister of Transport to establish the National Trade Corridors Council, intended to "monitor the movement of goods in trade corridors, analyze disruptions that may affect trade corridors and make recommendations and provide advice to that Minister". However, the Bill does not expand on who would be on this Council, how they are appointed, and what mechanisms are in place to ensure that diverse perspectives are represented. There is no mention of Indigenous representation on the Council.

The Strengthening One Canadian Economy through Trade and Transportation Discussion Paper, released earlier this year, contemplated the creation of a new "advisory group on trade corridors" composed of industry leaders, but this language does not appear in Bill C-39. It is unclear whether this is the same as the Council, but if it is, we are extremely concerned about the possibility of an advisory group being wholly composed of industry leaders who are solely representing commercial interests.

Bill C-39 also contemplates the creation of Indigenous Advisory Committees by port authorities. However, there is no information on how the Committees will be built and who will be able to participate, which raises concerns that members will be 'cherry-picked' depending on their political views and interests. Further, the port authority would only be required to consult the Committee once a year, which does not suggest that the Committee will have an active role in decision-making.