Fewer Guardrails, Faster Approvals: How Bill C-39 Alters the Landscape on Environmental Assessment

The most recent sitting of federal Parliament brought with it a significant and consequential Bill amending almost all federal environmental laws, the *Canadian Energy Regulator Act*, and the *Impact Assessment Act*. Billed as creating investor certainty and streamlining developments, it foundationally undermines science in decision making, public participation, and undermines claims of balancing environmental outcomes with economic ones.

Bill C-39 or *An Act Respecting Certain Measures to Strengthen the Economy* completed Second Reading on October 8, 2026, and is currently in consideration with committee. As specified in the accompanying Cabinet Directive, the Bill "focuses on the federal efforts needed to build projects that will attract domestic and global investment, create jobs, and build a stronger economy." In concert with the *Building Canada Act* the Bill enables government to do away with detailed front end impact assessments with the clear, but unstated aim, of avoiding processes that might lead to a "no" (or broader public opposition) to development. This is done through four main themes each of which serves to shift the balance away from the protective purpose of many of the original sections.

1. Speed: compressed timelines increase the likelihood that projects proceed with a high degree of uncertainty about their effects;
2. Coordination: folding multiple federal authorizations into a single process and moving some assessments to other regulators can reduce duplication but may also result in less substantive oversight;
3. Regions of national interest: pre-approval of projects located within identified regions of national interest pre-supposes approvals that may otherwise serve to lessen adverse effects; and
4. Conditions catering to development over the protective purposes of conditions being issued in the first instance: across several acts, conditions must now consider their technical, economic, and practical feasibility; a determination that is undefined, not transparent, and which lacks public oversight.

We can see these focuses reiterated in the accompanying Cabinet Directive:[1]

i. "Federal regulatory decisions for projects are issued in no more than one year after the proponent provides a comprehensive application and the required information and studies.
ii. Federal regulatory reviews for projects described in section 5 are conducted in a coordinated manner.
iii. Increased confidence among Canadians, Indigenous Peoples, project proponents and investors that Canada's regulator system advances economic prosperity while upholding strong environmental protections and respecting Indigenous rights and interests, including modern treaty rights."

[1] Cabinet Directive, section 1 online: https://www.canada.ca/en/one-canadian-economy/services/simplifying-canada-process/cabinet.html [Cabinet Directive].

Taken together, these reiterate a one-year timeline for decisions, coordination between departments, and the elimination of procedural redundancies. It is not clear how any of the provisions increase Canadian confidence in environmental protection. The Bill also removes the sunset clause previously included in the *Building Canada Act*, which makes these powers permanent unless they are specifically changed or removed in the future.

We highlight those changes that will have the most significant impacts on environmental protection, walking through each of the Bill's seven divisions that make up Part 1: Build Canada Now.

Bill C-39: Summary of Changes at-a-Glance

Act	Key changes	Effect
Impact Assessment Act	• Federal authorizations folded into a single decision. • One-year decision target, with shorter time limits (information and studies 3 years to 365 days; review panels 600 to 300 days). • Minister or Canadian Nuclear Safety Commission (CNSC) can allow some construction activity before a decision statement. • Decision statements and conditions, including conditions under other federal laws, can be amended after the fact. • The CNSC becomes responsible authority for nuclear projects, and CER-regulated activities move out of impact assessment.	Faster, consolidated approvals. Decreases relevance of science in decision making. Can undermine procedural fairness in relation to access to information and the efficacy of hearings. (undermines meaningful public participation).
Building Canada Act	• New "regions of national interest" listed in Schedule 3. • Eligible projects in those regions are pre-approved. • Conditions can be changed after approval. • Public registry required. • Sunset clause removed.	Pre-approval replaces project-by-project review. Powers become permanent.

Act	Key changes	Effect
Canadian Energy Regulator Act	• CER takes over assessment and approval of pipelines, power lines and offshore renewable projects. • One-year timeline. • Pipelines under 300 km decided by the Commission within 300 days (was 450); longer pipelines still go to the Minister. • Extensions capped at 90 days. • Conditions must consider feasibility for project proponent.	Removes the integrated review panel and shortens the approval process.
Canadian Navigable Waters Act	• Conditions on s. 7(6) approvals must consider technical, economic, and practical feasibility for project proponents for certain projects.	Feasibility assessment lacks public participation or need for reasons, rationale, justification and comparison of alternatives
Canadian Environmental Protection Act, 1999	• Waste disposal permits can last longer than one year, and the Minister can suspend, revoke, vary or transfer them. • Conditions must consider feasibility for project proponents certain projects.	Focus shifts from environmental protection toward proponent cost.
Species at Risk Act	• Conditions on s. 73 permits and agreements must consider feasibility for project proponents certain projects.	Focus shifts away from protecting species through weakened conditions. Feasibility (and lack of guardrails) undermines statutory pre-condition requirements in s.73(3).

Act	Key changes	Effect
Fisheries Act	• Conditions on authorizations must consider feasibility for project proponents for certain projects. • Habitat replacement may be conducted by in-lieu payments. • Habitat credits become transferable between proponents.	Weaker guardrails. No statutory accountability (re-verification and additionality) set out for habitat credits systems. Fail to limit offsetting, habitat credits and banking for listed species (under the *Species at Risk Act*)

Common themes: speed, coordination, and conditions that account for the needs of the project proponent rather than the goals of the original restriction.

Division 1: *Impact Assessment Act*

One Process, One Year

Division 1 of the Bill focuses on amendments to the *Impact Assessment Act* (IAA) and reshapes the Act around two themes: folding federal approvals into a single impact assessment process and meeting a one-year decision timeline. Along the way, it gives ministers new powers to allow construction activity prior to a decision, grant other federal authorizations as needed, and change decision statements and conditions after the fact.

Coordination and Speed

The changes start in the preamble. Immediately, the Bill amends the preamble by adding:[2]

> "Whereas Parliament recognizes the importance of coordinating the impact assessment of designated projects and the review processes for certain federal authorizations that are required in respect of designated projects, and consultations with Indigenous groups in relation to the impact assessment of designated projects and those federal authorizations;" and
>
> "Whereas the Government of Canada is committed to ensuring that decision statements in respect of designated projects for which the Agency is the responsible authority are issued within one year after the proponent provides the required information or studies."

The preamble re-aligns the Act along two of the main themes highlighted throughout this Bill: 1. coordination of federal processes into a single approval process and 2. the requirement to issue decisions within one year of the receipt of an application.

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[2] Bill C-39, *An Act respecting certain measures to strengthen the economy,* 1st Sess, 45th Parl, 2026, s 2 (second reading October 8 2026) [Bill C-39].

The purpose of the IAA is similarly amended to "coordinate (a) the impact assessment of designated projects and the review processes for certain federal authorizations that are required under any Act of Parliament other than this Act in respect of designated projects; and (b) consultations with Indigenous groups in relation to the impact assessment of designated projects and these federal authorizations."[3]

The Act's amendments also appear to foundationally reject that activities may have unacceptable adverse effects in federal jurisdiction by enabling activities to proceed prior to a decision being made. Currently, section 7 of the IAA prohibits the proponent of a designated project from doing any act or thing in connection with the project if that act or thing may cause any adverse effects within federal jurisdiction.

Bill C-39 amends this list to allow for the issuance of orders (in the case of the Agency, by the Minister) or permits, in the case of the Canadian Nuclear Safety Commission (CNSC), with or without conditions to authorize an action that would otherwise cause adverse effects within federal jurisdiction if the Minister/Commission considers the action to be in the public interest prior to the issuance of a decision statement for the designated project.[4] The main concern with this change is that it sidesteps the impact assessment process in favour of an undefined "public interest" determination made by the Minister or CNSC, and effectively amounts to pre-emptive authorization of adverse effects.

Where deemed appropriate, remediation may be included as a condition, seemingly to mitigate these adverse effects; however, it is unclear how this would be sufficient depending on the type of adverse effects that may be allowed.[5] Further, a limitation is embedded stating that neither the Minister nor the CNSC can permit the proponent to carry out the whole of a designated project prior to the issuance of a decision statement, which should, in our view go without saying; however, it does suggest a wide opportunity for action before assessment and a decision has been completed and issued.

Addition of a New Responsible Authority

Another significant theme throughout these amendments is the decision to expand the potential 'responsible authority' for projects, which will now refer (unless otherwise specified by regulation or order) either to the CNSC for those projects that fall under the *Nuclear Safety and Control Act* and the Impact Assessment Agency (the "Agency") for designated projects linked to the Agency.[6] If there are two designated projects closely related that have different responsible authorities then cooperation between the two responsible authorities is expected.

The Bill also removes the ability to designate activities under the Act which are regulated by the *Canadian Energy Regulator Act*, thereby further eroding (and removing) the role of the Agency.[7]

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[3] Bill C-39, s 4(1).
[4] Bill C-39, s 5.
[5] Bill C-39, s 5(6).
[6] Bill C-39, s 8.
[7] Bill C-39, s 8.

Time Limits

The Bill shortens several time limits throughout the impact assessment process, with an apparent focus on compressing the time to get a project decision to within one year.

- **Information and studies**: Under section 19(1), proponents previously had three years to provide information or studies required under the notice of commencement for an impact assessment. The new limit is 365 days.[8]
- **Review panels**: The time limit for a review panel to submit a report to the Minister **decreases** from 600 days to 300 days.[9]
- **Overall timeline**: The Minister must issue a decision statement in respect of a designated project within 365-days of the day on which the Agency posts notice of the project. If no decision statement is issued within 365 days after the Agency posts notice of the project, the Minister must publish a notice explaining the delay and providing a new proposed timeline.[10]

One Decision Window for Multiple Authorizations

The Bill amends the Act to centralize federal coordination by creating a single decision window for multiple federal authorizations. Section 43 of the Bill or "Federal Authorizations in Schedule 5 – Notice, Information and Consultations" deals with coordination and information sharing between federal authorities to enable project approvals.[11] The goal is to ensure that no barriers to federal approvals exist for designated projects under the authority of the Agency. Note that this section does not apply to projects that are designated as a national interest project in section 2 of the *Building Canada Act*. The most significant addition is the new section 64.2 which states that "before issuing a decision statement under section 65 in respect of a designated project, the Minister must" either:[12]

1. decide whether to grant every federal authorization required under a provision set out in column 2 of the new Schedule 5;[13] or
2. if the provision allows it, decide whether to grant the authorization or refer the decision to the Governor in Council.

The result is a single decision window in which all required federal authorizations for a project can be granted at one time. Notably, the Minister or Governor in Council must also make a determination that the adverse effects are not likely to be significant, or that they are justified in the public interest – a very broad finding.[14]

If the Minister issues a decision statement and a notice of determination in respect of the designated project has not been posted, the Minister may decide whether to grant any federal

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[8`] Bill C-39, s 16.
[9] Bill C-39, s 32.
[10] Bill C-39, s 50(7).
[11] Bill C-39, s 43.
[12] Bill C-39, s 49.
[13] Schedule 5 will set out the Acts of Parliament or regulations that apply to the new sections of the IAA referencing additional federal authorizations and the Governor in Council may, by order, amend Schedule 5 adding, replacing, or deleting the name of an Act or regulation.
[14] Bill C-39, s 44.

authorization required or refer the decision to the Governor in Council.[15] When making this decision, the Minister or Governor in Council must determine whether the adverse effects within federal jurisdiction and the direct or incidental effects are not likely to be significant or are justified in the public interest and these federal authorizations can only be granted if all requirements in relation to the authorization are met and conditions may be included.[16]

Once a decision statement has been issued, the Bill enables the Minister to amend conditions of approval including adding, removing, or amending a condition if the Minister is of the opinion that doing so will not increase the extent to which the effects indicated in the report with respect to the impact assessment of the designated project are significant.[17] Previously, the standard prevented the amendment or removal of conditions if there was an adverse effect.[18] With the change from adverse to significant, it becomes easier to amend conditions despite impacts to the environment or other similar impacts.

The Governor in Council or responsible Ministers will also have the power to amend conditions if they are of the opinion that doing so is in the public interest even if doing so will result in significant adverse effects.[19] This enables changes to a decision statement, including conditions, after the fact, which make the reliance on these decisions weaker and undermines the public accountability of the impact assessment process. New IAA sections 68.1 enable similar powers for the CNSC.[20] In fact, this ability to amend decisions after the fact extends all the way to federal authorizations granted under a separate piece of federal legislation. Changes now enable the Minister responsible for the IAA to add, remove or amend conditions established in respect of another federal authorization.[21] This is a significant change because these conditions are generally added for a reason, often primarily to lessen the environmental or health effects associated with that authorization. Further, there is no statutory process for evaluating or challenging these changes (except through judicial review).

Division 2: *Building Canada Act*

This section includes amendments to the *Building Canada Act*. You can read more about the original Act here and here.

Regions of National Interest

The *Building Canada Act* was first designed to fast track projects deemed by the federal government as being in the national interest. These amendments continue this focus with one of the most significant updates being the creation of “regions of national interest”. In fact, both the long title of the Act and the preamble will be amended to include “region of national interest.”[22]

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[15] Bill C-39, s 56.
[16] Bill C-39, s 56.
[17] Bill C-39, s 56.
[18] *Impact Assessment Act,* SC 2019, c 28, s 1, s 68(2) (current as of October 2026).
[19] Bill C-39, s 53(1).
[20] Bill C-39, s 54.
[21] Bill C-39, s 56.
[22] Bill C-39, ss 85 & 94.

The Government of Canada describes these regions as including “areas such as transportation or energy corridors, telecommunications networks, energy production and transmission systems, and industrial regions.”[23] Regions would be established under the IAA and if an area is listed as a Region of National Interest, developments that qualify within that region can be considered as ‘pre-approved’.[24] The stated goal of these changes would be to “simplify permitting, reduce the need for individual project reviews in areas with multiple similar projects, lower investor risk, and support earlier, more coordinated long-term regional development planning.”[25] The background document published alongside the introduction of this Bill does state that both the Nature Strategy and mitigation hierarchy principles will help with the identification and assessment of these regions.[26] However, these are not included as regulatory requirements in the Bill. The Cabinet Directive also states that one of the objectives is to support the application of the mitigation hierarchy but stresses that this is to be done “while considering cost-effectiveness and efficiency.”[27]

A new section enables the Governor in Council, on the Minister’s recommendation, to add a region of national interest to Schedule 3 of the Act. Each listing must include:[28]

- the region’s name and a detailed geographic description;
- the types of projects eligible for approval within the region;
- any criteria these projects must meet prior to eligibility; and
- any information that a project proponent must provide to establish that their project meets that criteria.

Before a region can be declared a ‘region of national interest’ a regional assessment under the *Impact Assessment Act* or applicable territorial law must have been conducted.[29] Factors in the decision to designate a region of national interest may include “the extent to which projects of an eligible type within that region 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.”[30] The Minister must also be satisfied with the consultation done both with provincial or territorial governments and Indigenous peoples, as appropriate.

This is problematic on at least two fronts. First, regional assessments are not a replacement for project specific impact assessments, as project specific impacts may not be known, nor cumulative effects clearly understood, at the stage of regional assessment. Second, there are no substantive regulations governing the carrying out of regional assessments, including whether environmental limits must be established for regions, the nature and formality of public

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[23] One Canadian Economy, “Bill C-39 Introduction”, section 1.4 online: https://www.canada.ca/en/one-canadian-economy/news/2026/09/cabinet-directive.html [Bill C-39 Introduction].
[24] Bill C-39 Introduction, section 1.4.
[25] Bill C-39 Introduction, section 1.4.
[26] Bill C-39 Introduction, section 1.4.
[27] Cabinet Directive, sections 1 and 3.
[28] Bill C-39, s 103.
[29] Bill C-39, s 103.
[30] Bill C-39, s 103.

participation (including the bringing and testing of evidence informing the regional assessments), and the overall scope of regional assessments and how they account for overall impacts on the environment.

The new *Building Canada Act* section 8.3(1) is where another significant shift occurs.[31] Once the Minister is satisfied that an eligible project in a listed region meets the newly proposed Schedule 3 criteria,[32] every determination, finding and opinion needed for an authorization is deemed to have been made in favour of the project. In effect, the project is pre-approved. The Minister must then issue authorizations for that project (new section 8.4 of the *Building Canada Act*).[33] Authorization conditions are still meant to include Indigenous consultation, although it is unclear how a pre-approval of this kind could be cancelled during the consultation process without potential legal or economic repercussions.

As elsewhere in the Bill, the Minister retains the power to add, remove, or amend conditions on a project authorization issued by a different department or under a different federal Act.[34] Although consultation with the minister responsible for the enactment is required, the authority to remove a condition after the fact remains within the authority of the Minister responsible for the *Building Canada Act*. This type of post-approval change in conditions serves to undermine the original impact-condition calculus and lessens public confidence in the process.

The Bill does retain levels of access to information as it requires the posting of project and regions of national interests on an online public registry.[35] The registry must include information about each project and why it is in the national interest; the extent to which the project is expected to meet the outcomes set out in section 5(6) of the Act, those being strengthening Canada's autonomy, resilience, and security; providing economic or other benefits; having a high likelihood of successful execution; advancing the interests of Indigenous peoples; and contributing to clean growth and meeting Canada's climate change objectives; detailed cost estimates; and estimated timelines for completion.[36]

Division 3: *Canadian Energy Regulator Act*

Division 3 of Bill C-39 includes significant amendments to the *Canadian Energy Regulator Act*. The Canadian Energy Regulator (CER) is the regulator responsible for pipeline, power line and offshore energy projects that fall within federal jurisdiction and in this part of the Bill the focus of amendments is on coordinating "review processes for federal authorizations" and Indigenous consultation through the Act.[37] This coordination is intended to allow for the new federal timeline of one year for project approvals. For example, the preamble of the CER Act will now state that federal authorizations in relation to pipelines, power lines, and offshore renewable energy

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[31] Bill C-39, s 103.
[32] Note that Schedule 3 has not yet been populated.
[33] Bill C-39, s 103.
[34] Bill C-39, s 100.
[35] Bill C-39, s 103, citing new section 8.7.
[36] Bill C-39, s 103 citing new section 8.7(2).
[37] Bill C-39, s 118.

projects are to be made within one year after the project proponent provides the required information or studies.[38]

The Bill also shifts the approval and assessment of CER regulated projects away from the IAA to being governed by the CER Act.[39] This removes the integrated review panel that previously consisted of coordination between the CER and the Impact Assessment Agency, moving the full assessment and approval to the CER.[40]

Coordination of Federal Authorizations

To further this goal of coordination the Bill states that the Chief Executive Officer "may work with federal authorities to ensure that (a) review processes for federal authorizations that are required under any Act of Parliament in respect of pipelines, power lines or offshore renewable energy projects are coordinated; (b) consultations with the Indigenous peoples of Canada in relation to the processes referred to in paragraph (a) are coordinated; and (c) federal authorizations that are required under any Act of Parliament in respect of pipelines, power lines or offshore renewable energy projects are, to the extent possible, issued at the same time."[41]

Pipeline Approvals

The Bill sets out new processes for obtaining pipeline certificates depending on whether a pipeline right of way is over or under 300 km.

If a right of way is less than 300 km, the company must file a map including any necessary details and showing the general location of the pipeline and must make the application public.[42] The Commission will then make their decision about the pipeline rather than passing a recommendation on to the Minister, as is required by the current law. A report on the decision must be made public within 300 days of a submitted application, shortened from the previous timeline of 450 days. Extensions can be provided if necessary to fulfill the Crown's duty to consult but not for longer than 90 days. Extensions are also restricted with this change, as the Minister previously had the authorization to grant one or more extensions of the time limit with no restrictions on reason or length of the extension. The final decision is also made by the Commission rather than the Minister which it seems is intended to remove a step in the process.

If a pipeline right of way is more than 300 km, an application for a certificate must be filed including a map, any necessary details, and showing the general location and plans for the pipeline.[43] For these pipelines the Commission must still prepare and submit a recommendation regarding whether the pipeline is and will be required by the present and future public convenience and necessity to both the Minister and to the public.[44] Time limits are also included for applications more than 300 km long and the Commission's report must be submitted to the Minister no longer than 180 days after the day of the complete application with the Minister able

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[38] Bill C-39, s 118.
[39] Bill C-39, s 121.
[40] Bill C-39 Introduction, section 1.3.1.
[41] Bill C-39, s 127.
[42] Bill C-39, s 128.
[43] Bill C-39, s 128.
[44] Bill C-39, s 128.

to extend the time line if required to fulfill the duty to consult although, again, this extension may not be for longer than 90 days.[45]

Finally, as we see throughout the Bill, amendments now state that if conditions are attached to a decision or order made by the Commission, they must consider the technical, economic and practical feasibility of the conditions.[46]

Division 4: *Canadian Navigable Waters Act*

Approval Conditions under Section 7(6)

This section of the Bill proposes changes to the *Canadian Navigable Waters Act*. Specifically, these amendments focus on the types of terms and conditions that can be attached to approvals issued under section 7(6) of the Act. Section 7(6) approvals allow for work that may interfere with navigation, including by changing the water level or water flow of a navigable water. Without such an approval, this type of work is not allowed (in relation to the waterbodies found in the schedule of the Act). With the Bill C-39 changes, any terms and conditions that will be attached to such an approval must "take into account the technical, economic and practical feasibility of the terms and conditions" if they are related to:[47]

(a) a *designated project,* as defined in section 2 of the *Impact Assessment Act*;
(b) a project that is regulated under the *Canadian Energy Regulator Act*; or
(c) a project that is a work prescribed in regulation.

Division 5: *Canadian Environmental Protection Act, 1999*

Waste Disposal Permits

In this section of the Bill, amendments focus on permits currently available under the *Canadian Environmental Protection Act, 1999* [CEPA]. Section 127 of CEPA currently enables the Minister to "issue a permit authorizing the loading for disposal and disposal of waste or other matter." Bill C-39 amendments would expand the opportunity for permits lasting beyond one year if specified by the Minister and sets out new opportunities for the Minister to suspend, revoke, or vary a permit or transfer a permit if requested by the permit holder and the prospective transferee.[48]

Conditions to a permit issued under this section will also now be required to take into account the "technical, economic and practical feasibility of the conditions if the permit authorizes a person to engage in an activity that is (a) related to a designated project, as defined in section 2 of the *Impact Assessment Act;* (b) regulated under the *Canadian Energy Regulator Act*; or (c) prescribed by regulations."[49] This requires significant consideration of the needs of project proponents when deciding on conditions for a permit rather than a focus on protection of the environment and minimizing harm related to disposal of waste. This type of restriction on conditions is prevalent throughout the amendments in Bill C-39 and suggests that permits to perform what would otherwise have been actions in contravention of the Act in question will now

[45] Bill C-39, s 128.
[46] Bill C-39, s 125.
[47] Bill C-39, s 159.
[48] Bill C-39, s 166.
[49] Bill C-39, s 167.

be more permissive and geared towards lowering cost for the project proponent. Generally, we can assume that any conditions imposed on a permit are feasible and adding a secondary feasibility assessment emphasizes convenience over the protective mandate of these conditions.

In addition to these changes, the Minister now has the sole discretion to exempt a waterway from provisions of the Act that protect these waterways from deposits or dewatering.[50]

Division 6: *Species at Risk Act*

Section 73 Permits

Division 6 of Bill C-39 proposes a single change to the *Species at Risk Act* [SARA]. Specifically, to section 73 which enables permits. Currently, section 73(1) of the SARA enables the competent minister to "enter into an agreement with a person, or issue a permit to a person, authorizing the person to engage in an activity affecting a listed wildlife species, any part of its critical habitat or the residences of its individuals." These permits authorize harm that would otherwise not be allowed under the SARA. The proposed change requires the Minister to consider "the technical, economic and practical feasibility" of any terms and conditions added to an agreement or permit under section 73 if it:[51]

(a) "is related to a *designated project,* as defined in section 2 of the *Impact Assessment Act;*
(b) is regulated under the *Canadian Energy Regulator Act*; or
(c) is prescribed by the regulations or that belongs to a class of activities that is prescribed by the regulations."

Currently, section 73(3) sets out certain pre-conditions which state that an agreement or permit may only be entered into or issued if (a) all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted; (b) all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and (c) the activity will not jeopardize the survival or recovery of the species.

The Bill C-39 changes suggest that permit conditions will now need to consider economics and practicalities for the project proponent when establishing, amending, or adding conditions to permits under this section. In effect, this places an additional layer of discretion that appears, on its face to counter the pre-condition determinations already in the Act.

> You can read more about this section of the SARA here.

In general, this change shifts the focus away from conditions that protect species at risk as much as possible towards conditions that benefit, or at least have a lower degree of impact on, project proponents in the enumerated instances. It seems that the new focus on practicality may undermine the ability to ensure the pre-conditions as set out in section 73(3). It is worth

[50] Bill C-39, s 160.
[51] Bill C-39, s 176.

considering how we can balance “the technical, economic and practical feasibility” with the need to ensure that “all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted”. For example, a “best solution” may be economically feasible at $100/barrel of oil but not at $60. Does our protection of species nearing extirpation or extinction now get dictated by some undefined economic calculus? Species and habitat protection has clearly never been economically palatable otherwise we would not need the SARA.

This type of consideration for the needs, costs, and work associated with project conditions is a common thread throughout many of the amendments in this Bill, serving, overall, to shift the focus away from the broader purposes of these federal laws, often environmental protection, towards a focus on ensuring project proponents are not hindered by these conditions.

Division 7: *Fisheries Act*

Conditions on Fisheries Authorizations

The *Fisheries Act* includes important restrictions against “any work, undertaking or activity, other than fishing, that results in the death of fish” and “any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat”. [52] There are also already exceptions embedded in the Act which enable a person to carry on such a work, undertaking or activity if an exception such as an approval applies.[53] With these changes, Bill C-39 directs the Minister, when applying conditions to authorize activities, to take into account the “technical, economic and practical feasibility of the conditions if the authorization relates to a work, undertaking or activity” related to a designated project, regulated under the *Canadian Energy Regulator Act,* or prescribed through regulations when adding.[54]

As noted above, these changes to conditioning appear to be focused on applying a lens to conditioning based on nebulous determinations of feasibility. This in turn will likely encourage proponents taking positions on feasibility in conditions that will drive or influence discretion in a way that undermine the protective purposes of the Act.

Habitat Credits

Bill C-39 establishes a “system for the creation, allocation, transfer, use, revocation, tracking and management of habitat credits.”[55] Habitat credits are defined in the Act as “a unit of measure that is agreed to between any proponent and the Minister under section 42.02 that quantifies the benefits of a conservation project.”[56] With these changes, habitat credits can be transferred between project proponents or other entities and obligations attached to the credit will transfer, binding successive holders of the credit. It may also enable third party groups to generate habitat credits and sell them to project proponents. Details are to be set out in regulation.[57]

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[52] *Fisheries Act,* RSC 1985, c F-14, s 34.4(1) & 35 [*Fisheries Act*].
[53] *Fisheries Act,* s 35(2).
[54] Bill C-39, s 183.
[55] Bill C-39, s 185.
[56] *Fisheries Act,* s 42.01.
[57] Bill C-39, s 187.

The Minister may also make regulations enabling certain circumstances "in which a person who is authorized to carry on a work, undertaking or activity" to pay a fee in lieu of offsetting the harmful effects of the work, undertaking or activity on fish or fish habitat.[58]

Habitat banking and credit systems have been used in various areas, with limited environmental success. Species at risk habitat should be specifically excluded from these banking systems as the impact on a species for habitat restoration failure is too grave. Issues around habitat offset systems also include issues around additionality (i.e., would the restoration have been legally required in any event or does it constitute double counting), monitoring of long-term success, the absence of remedies for failed restoration, and verification and accountability systems for the operation of the bank and credit system.

Read more about changes to the *Fisheries Act* and associated regulations here.

Themes

Across these amendments, a few main themes seem to reoccur.

Speed: the first is a focus on speedy decision-making. The one-year decision target set out in the Cabinet Directive and the preambles shows up in shortened time limits throughout. Proponents' information deadlines under the *Impact Assessment Act* drop from three years to 365 days, review panel reports from 600 days to 300, and pipeline decisions under 300 km from 450 days to 300. Extensions are capped and ministers gain the ability to allow some activity before a decision statement is issued.

Faster decisions may be feasible where there exists extensive baseline data around environmental and ecological factors in a study area but that rarely is the case. Further, reviewing available data, identifying, and understanding the extent of uncertainty and seeking follow up studies to appropriately identify project effects all take time. By compressing timelines, it is almost guaranteed that projects will go ahead with a high degree of uncertainty about the project effects. In this way, arbitrary timelines may facilitate economic development, but they also directly undermine any substantive notion of "sustainable development".

Further, shortening the time in which decisions must be made will often be contrary to meaningful public participation. For projects with significant impacts the impacted public must be given sufficient time to receive, review, and analyze project impacts and evidence (along with outside experts for review and analysis, and possible investigation). The regulatory process should also ensure substantive procedural rights including access to information, rights to a hearing, and rights to bring evidence and test the other sides evidence.

Coordination: The Bill pulls separate federal decisions into fewer processes. For example, a single decision window lets multiple federal authorizations be granted together and the Canadian Energy Regulator takes over assessment and approval for pipelines, power lines, and offshore renewable projects. Coordination can reduce duplication, but it also moves decisions

[58] Bill C-39, s 189.

away from the ministers and regulators who made them under their own Acts, and into a single process with a broad public interest test. This change has the potential to mean that a Minister with a mandate for environmental protection is no longer in charge of approvals or decision-making.

Regions of National Interest: The creation of regions of national interest takes the Bill's emphasis on speed and coordination a step further, from individual projects to entire areas. Once a region is listed in Schedule 3 of the *Building Canada Act,* eligible projects located within that region are deemed pre-approved. In practice, this moves the key approval decision away from a project-by-project analysis towards an undefined and, at this stage, informal regional assessment process. Procedural rights that currently are provided for in activity specific assessments are removed or undermined.

Conditions shaped around the proponent: In the *Canadian Energy Regulator Act*, *Canadian Navigable Waters Act*, *Canadian Environmental Protection Act, 1999*, *Species at Risk Act* and *Fisheries Act*, conditions on permits and approvals must now consider their technical, economic and practical feasibility for certain projects. The same shift appears elsewhere: conditions can be amended after the fact, including conditions set under other federal laws, and the test for changing a decision statement moves from whether effects are adverse, to whether they are significant. Together these changes shift the focus from the goals of the original restriction, such as protecting fish habitat, species at risk, or navigable waters, toward the cost and convenience of compliance.

The question must be asked whether such conditions were being put on authorizations in the first instance, and if so, what was the rationale for these conditions? A phrase like "practical feasibility" is so open ended as to be meaningless. Is something not "practical" because it costs money, or otherwise limits operations? Similarly, what is or isn't "economically feasible"? How is feasibility measured against significant adverse effects? Are the gravity and probability of environmental effects now irrelevant considering the vague economic or practical feasibility assessments of a given condition?

Combined with the removal of the sunset clause, which makes these powers permanent, the effect is a system built to approve and build projects quickly, with any protective conditions able to be easily adjusted or discarded once a decision is made. Much will depend on details not yet in front of us: which regions are listed as regions of national interest, which projects and activities are prescribed by regulation, and how often the public interest provisions are used. However, as we stated in our original work on the *Building Canada Act,* often haste makes waste and quality should not come at the sake of convenience.

Overall, Bill 39 further undermines federal impact assessment processes and environmental assurances. Any notion of balancing of environmental considerations with economic development (and the underlying interest of investors) appears to be broadly abandoned and foundational aspects of public participation and valuing community interests in a development are similarly undermined. The Bill represents a broader tendency federally and provincially around deregulation and an undermining of central environmental principles of public participation, the precautionary principle, and science-based decision making.