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## Submission in Response to the Discussion Paper: *Getting Major Projects Built in Canada* — Proposed Legislative, Regulatory, and Policy Reforms

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### Introduction

Oceans North is a registered Canadian charity that works in deep partnership with Indigenous and coastal communities to ensure responsible governance of Canada's marine and freshwater ecosystems and to advance the marine energy transition.

We welcome the opportunity to respond to the Government of Canada's discussion paper on proposed reforms to its impact assessment and permitting regime.

We understand the economic and strategic imperative of advancing projects that can benefit Canada's economy and by extension Canadians. Efficiency is a worthy goal, and Canada's current impact assessment regime can be strengthened to drive more transparent and predictable decisions for proponents, communities, investors and governments. We have noted in this submission where we believe these improvements can be made in ways that not only serve project proponents, but all participants in the process.

While we see value in elements of this discussion paper, taken as a whole, we have significant concerns. **We urge the federal government to withdraw the proposed changes as written and bring forward a revised approach that reflects the input it receives; to provide a suitable window for consultation after actual legislation is drafted; and to ensure that any legislation ultimately tabled receives full study at committee.** Given the scale of the changes proposed, and their serious implications for the health and wellbeing of Canadians, the government has a duty to proceed with full accountability and transparency.

The government's discussion paper explains the value of impact assessment as follows:

*"Impact assessments and regulations are important because they protect the environment and ensure major projects are developed sustainably."*

This is a fundamentally incomplete explanation of why impact assessment is an essential public service.

The purpose of assessing project impacts extends well beyond facilitating sustainable development. Impact assessment protects the public interest by providing a critical line of defence between industrial development and the environmental, social, health, and economic costs that can arise when those projects are not assessed with people and the environment in mind.

The need to conduct a comprehensive study *before* a project is initiated emerged in direct response to repeated instances of industrial development causing serious and often irreversible harm to communities, economies, and ecosystems.

When project assessments are not conducted, or are conducted poorly, developments proceed that should never have been built, or should have been built with stronger guardrails, greater scrutiny, and clearer responsibilities borne by the proponent.

The costs of these failures fall on Canadians rather than on companies. Families bear the health impacts of pollution. Businesses that depend on healthy, functioning ecosystems lose the foundation of their livelihoods. And taxpayers are left to settle accounts on the public ledger, often at a cost that far exceeds any benefit the project delivered. Outcomes like these cannot credibly be described as "in the national interest."

We believe Canada can build its economy while honouring the rights of all Canadians to live in a healthy environment, to understand what they are being asked to pay for, and to hold their government accountable for any trade-offs made in their name.

Canada's own *Force of Nature Strategy* makes this point under Pillar 2, *Build Canada Well*:

*"Nature underpins much of our economic prosperity and climate action. It is essential to Canada's growth, security, and nation-building. When conservation and economic activities are seen as competing priorities this risks weaker conservation outcomes and project delays. However, these goals need not be at odds [...] Canada will integrate its nature and economic agendas to support timely development decisions while protecting nature. This work will be informed by science and proven tools like the mitigation hierarchy, which is a structured approach to avoiding, minimizing, mitigating, and then offsetting the environmental impacts of development. [...] When permitting is guided by sound science, regulators can help proponents adjust project designs to avoid or minimize environmental impacts—leading to fewer delays, better results, and responsible development."*

We were pleased to see the federal government include these considerations and commitments within its broader strategy on nature, but their underlying sentiment is

absent from the discussion paper we respond to today. On the contrary, the changes it proposes would work directly against these stated intentions. A number of proposals would fundamentally weaken environmental protections, undermine meaningful consultation with both Rightsholders and the broader public, and prioritize political discretion over scientific consensus and evidence-based decision-making.

## Detailed Concerns and Recommendations

### Concurrent Reviews and Compressed Timelines

The proposal to require all federal impact assessments and permit reviews to occur concurrently within a one-year review window reflects a fundamental misunderstanding of why these processes take time. Complex projects, particularly those affecting sensitive ecosystems, marine environments, and Indigenous Rights and territories, require careful review because their impacts are complex, interconnected, and often cumulative. Many review steps are sequential because later permits and conditions rely on information generated through earlier stages of assessment.

Compressing impact assessments and permit reviews into a single concurrent stream does not reduce the complexity of the projects; it reduces the rigour of evaluation. In practice, we are concerned that a rigid, one-year timeline will mean environmental and Indigenous rights considerations are assessed with less care, not handled more efficiently.

The discussion paper assumes that legislative and regulatory requirements are the primary cause of project delays. In practice, many delays are driven by commodity volatility and not at all by environmental or Indigenous consultation requirements. Where delays occur outside of the commodity cycle, we urge the government to explore capacity and resource constraints for proponents, Indigenous governments, regulators, and expert departments that hinder the ability to complete necessary work in a timely manner. Baseline environmental studies often require multiple field seasons. Indigenous communities are routinely expected to participate in numerous concurrent regulatory processes with insufficient funding and technical support. Federal departments themselves frequently face staffing shortages that slow review timelines.

If the objective is to improve efficiency, Canada should prioritize investments in targeted departmental capacity, Indigenous participation funding and support, baseline science, cumulative effects monitoring, and regional planning. These measures would address many of the practical causes of delay while preserving environmental protections and constitutional obligations.

Oceans North strongly recommends that this proposal be removed, as it is in direct contravention with the concept of robust, meaningful impact assessment.

## Regional Assessments, Plans and Economic Zones

Oceans North sees genuine potential in the concept of creating economic zones where certain activities and projects could reasonably proceed. Regional and strategic assessments, which evaluate classes of activity across a corridor, zone, or ecosystem rather than project by project in isolation, are legitimate and effective planning tools.

These assessments, which typically involve land use or marine spatial planning, are often stronger than project by project reviews. They can map cumulative effects, identify ecologically and/or culturally sensitive areas, determine the types of development that are compatible with local conditions, and engage Indigenous Rightsholders and communities in a way that reflects the continuous and often transboundary nature of ecosystems, species, and impacts. Done well, they create greater certainty for communities, Rightsholders, regulators, and proponents alike, because foundational questions about what can happen and where have been agreed upon largely in advance. Designed in this spirit, "Federal Economic Zones" would be a genuine improvement on the current system.

We are concerned, however, that potential revisions to existing environmental regulations instead propose that the Governor in Council have authority to decide that certain developments within specific zones are pre-approved by class or type, captured most clearly in the statement that "setting up these zones ahead of major developments would remove the need for separate project reviews."

Regional assessment can and should inform and strengthen project reviews, but it cannot replace them. A regional or strategic assessment can helpfully identify that a given area is generally suitable for certain types of infrastructure, but it cannot evaluate the specific impacts of an individual project's construction and operations.

Oceans North recommends that the Government redesign this proposal as a co-managed regional planning tool, one that resolves foundational questions about what can happen and where before individual projects begin, rather than replacing reviews

Recent land use planning efforts in British Columbia, the Yukon, and Nunavut have facilitated consultation as well as sought to balance conservation and economic development aspirations. Marine spatial planning has been underway in several regions in Canada and should be funded and prioritized as new or expanded industrial activity in the ocean is advanced. Further, such comprehensive planning processes can ensure that consultation is broad across several potential land and sea uses, including conservation, while creating enhanced predictability for all land and sea users over a longer time frame.

## Modification of Project Conditions and Expanded Political Discretion

The discussion paper proposes two separate ministerial powers to modify environmental conditions after assessments are completed: authorizing the Minister of Environment, Climate Change and Nature to adjust impact assessment conditions "in exceptional circumstances," and authorizing the Minister of One Canadian Economy to adjust environmental conditions for "projects of national interest, when needed."

On the first power: allowing post-approval modification of conditions creates a renegotiation pathway that proponents will use. "Exceptional" is left undefined in the paper and will expand over time through use and precedent. Assessment conditions lose their deterrent and protective value if both parties know from the outset that they can be revisited after the fact. Further, unilateral ministerial modification of conditions established through a process that included Indigenous consultation would likely trigger a fresh duty to consult, a serious legal requirement unaddressed by this discussion paper.

The second power is more concerning still. The Minister of One Canadian Economy holds a mandate that is explicitly and solely economic. Granting that Minister authority to override or modify environmental conditions on projects deemed to be of national interest is a structural conflict of interest. The proposal sets out no standard the Minister would apply, no evidentiary requirement, and no recourse for affected communities or Rightsholders. It is also unclear how this power would interact with the jurisdiction and accountability of the Minister of Environment, Climate Change and Nature, or whether a decision made under this authority could be judicially reviewed on the same grounds as an assessment decision.

Finally, the paper proposes removing the authority of the Fisheries Minister in major project approvals, despite that Minister's broad statutory responsibilities to protect fish and fish habitat under the *Fisheries Act*. Concentrating decision-making authority in a single minister whose mandate does not include fisheries protection would effectively strip one of Canada's most important environmental statutes of its application to the projects most likely to affect fish and fish habitat. Oceans North strongly opposes this change.

We recommend that the Government withdraw proposals 6.6 and 6.7 in their current form. If the Government believes there are legitimate cases where conditions require adjustment after project approvals have been completed, it should establish a formal process that requires a public evidentiary record, meaningful Indigenous consultation and, where a modern treaty is engaged, the consent of the relevant Indigenous government or co-management body.

These proposals also raise serious questions about the accountability and transparency of the decision-making process. Ministerial adjustment of conditions after an assessment is

complete, or political exemption from statutory environmental thresholds, could substantially alter the outcomes of processes that have involved years of technical review and Indigenous consultation. We recommend that any reforms maintain and strengthen, rather than reduce, the independence of impact assessment review.

Several proposals in the discussion paper transfer significant authority from independent regulatory bodies to Ministers, or create new mechanisms for political override of scientific and expert conclusions, including the authority for the Minister of Environment, Climate Change and Nature to adjust impact assessment conditions "in exceptional circumstances"; the authority for the Minister of One Canadian Economy to adjust environmental conditions for "projects of national interest"; the power for the Governor in Council to exempt projects from the SARA jeopardy test; and the pre-approval for project development within Federal Economic Zones by Governor in Council order.

Taken together, these measures represent a significant shift away from independent, evidence-based regulatory review and toward politically directed project approvals. Robust independent assessment processes exist because ministerial decision-making alone cannot manage the complexity of environmental and social impacts, and because credible, legally defensible decisions require independence from the immediate political interests of the government of the day. While the current government has made meaningful environmental commitments, a future government could disregard them entirely, leaving projects subject to increasing political motivation.

Strictly politically motivated decisions on ecosystem management in Canada have had historically disastrous consequences. The collapse of the northern cod fishery remains a stark example of this. Through the late 1980s, scientists within the Department of Fisheries and Oceans as well as independent reviewers warned that the stock was in serious decline and that catch levels had to be cut sharply in response. Ministers, facing intense pressure to protect jobs in Atlantic Canada, repeatedly set total allowable catches well above scientific advice. The result was the total collapse of the stock and subsequent 1992 moratorium: the largest single layoff in Canadian history, with some 30,000 people out of work overnight, the erosion of hundreds of coastal communities, and a stock that more than three decades later still has not recovered to historical levels. The core lesson underscored by this case study is not that decision-makers act in bad faith, but that when political motivation is permitted to displace scientific and evidence-based decision making, the consequences can be irreversible, and the economic costs ultimately far exceed those the political intervention was designed to avoid.

## Meaningful Consultation with Indigenous Peoples

Throughout the discussion paper, Indigenous consultation is framed primarily in terms of efficiency: "better and more efficient outcomes," "simplified," "coordinated," "avoiding consultation fatigue."

We are particularly concerned that "consultation fatigue" appears to be deployed rhetorically to justify reducing the number and depth of consultation processes, rather than to address the legitimate problem that Indigenous communities are under-resourced to participate meaningfully in overlapping processes. The appropriate response to consultation fatigue is to adequately resource Indigenous participation, not to reduce the consultations themselves.

The proposal to establish a Crown Consultation Hub within the Impact Assessment Agency of Canada (IAAC) raises several significant questions. While single-window coordination has the potential to reduce duplication, there is a real risk that centralizing consultation within IAAC will reduce the quality and depth of engagement with affected Indigenous Peoples by streamlining out the specialized knowledge and relationships that exist within individual departments.

Indigenous participation should not be viewed solely as a constitutional obligation. Increasingly, projects developed through meaningful Indigenous partnership, co-management, and shared decision-making are among the most efficiently deployed and consistently approved (e.g., Marathon Palladium mine). Indigenous governments possess place-based knowledge, long-term stewardship experience, and relationships with affected communities that can strengthen project design, improve environmental outcomes, reduce conflict, and increase investor confidence. The objective should therefore be to improve the quality of Indigenous participation rather than simply reduce the number of consultation processes.

Consultation must be led by officials who have both the relevant technical expertise and genuine relationships with affected communities. We recommend that any coordination model explicitly provide for adequate resourcing of Indigenous participation, maintain departmental expertise in consultation, and be co-designed with Indigenous Rightsholders rather than imposed on them.

We also note that the proposal does not address the relationship between Crown consultation and the rights of Peoples living under modern treaties, land claims agreements, or self-government agreements, in which consultation obligations are already

defined. The Hub must not override or diminish obligations that flow from these agreements.

### Issues related to the Fisheries Act and the SARA "Jeopardy Test"

The proposal to grant the Governor in Council the ability to exempt specific projects from the "jeopardy test" under the *Species at Risk Act* is alarming. The jeopardy test is a scientific threshold: it establishes the point beyond which additional harm to a listed species makes recovery statistically unlikely or impossible. It is the last statutory protection before extinction is effectively authorized. An override mechanism for SARA's jeopardy test is not an appropriate tool for managing the tension between economic development and species survival.

This proposal creates significant uncertainty for proponents. If a project proceeds on the basis of a political exemption from a scientific recovery threshold, the likelihood of litigation, judicial review, and public opposition increases substantially. Such exemptions may therefore undermine the very certainty and predictability these reforms seek to achieve.

Canada currently has more than 600 species listed under SARA. Granting the Governor in Council the power to override this threshold, even with a stated "high threshold to be met," means that political and economic interests could determine that the value of a project outweighs the survival of a species. The "all reasonable efforts" standard referenced in the proposal is unquantified and unenforceable as currently described.

We are particularly concerned about the implications for marine species that are critical to Arctic ecosystems and of profound cultural and subsistence importance to Inuit and other coastal Indigenous Peoples. These species are already under significant pressure in a region particularly vulnerable to climate change.

We note that *R v. Sparrow* and subsequent Supreme Court jurisprudence establish that the Crown bears a heavy burden before it can justify infringements of Aboriginal rights, including rights tied to the species that Indigenous Peoples depend upon. Any mechanism that allows political override of scientific thresholds protecting those species raises serious legal questions under section 35 of the Constitution.

Additionally, the proposal to make permits for fish and fish habitat "more flexible" for offsetting does not specify what these flexibilities would entail. That vagueness is itself a problem: unlike the proposals that specify procedural changes for pipelines and nuclear projects with some precision, this one is open-ended in both scope and application.

Offsetting is not an exact science, and the evidence consistently shows that habitat offsets frequently fail to restore the ecological function of what is lost. A review of more than 500 fish habitat compensation projects in Canada found that only approximately half were

likely to achieve the Fisheries Act objective of no net loss, highlighting the difficulty of replacing ecological function once habitat has been damaged.

The mitigation hierarchy—avoid, minimize, mitigate, and only then offset as a last resort—exists for good reason. Offsetting should remain a measure of last resort, available only once proponents have demonstrated that harm is unavoidable and followed the mitigation hierarchy committed to in the *Force of Nature Strategy*.

We further note that no efforts have been made to advance proactive fish habitat protection through the Minister's existing power under the *Fisheries Act* to establish "ecologically significant areas," despite that power having been in the Act since 2012. Cumulative effects on fish passage are already a serious concern, particularly for linear infrastructure including pipelines, transmission lines, and roads, yet the current proposal does not address the need to better assess and mitigate crossing impacts as part of these reforms. We recommend that Canada use the tools it already has, including the Public Registry of *Fisheries Act* authorizations, the power to proactively identify and protect fish habitat, and the promised mapping of carbon and biodiversity areas to inform high-quality offsetting in the rare cases where it is used as a last resort.

## Conclusion

Oceans North supports the goal of making major project reviews more efficient, transparent, and predictable for all involved.

However, the experience of the courts shows that cutting corners on assessment and consultation does not accelerate projects; in fact, the opposite is true. In *Clyde River v. Petroleum Geo-Services Inc.*, the Supreme Court of Canada unanimously quashed the National Energy Board's authorization of seismic testing off Baffin Island because the consultation with the Inuit of Clyde River, whose marine harvesting Rights are protected under the Nunavut Agreement, had been inadequate and had fallen short in several respects. The accommodations offered were dismissed as insignificant concessions that gave the community no assurance their Treaty Rights had been treated as Rights rather than as an afterthought. The Court was unequivocal that approvals which do not satisfy the duty to consult should be quashed, and it pointedly observed that "judicial review is no substitute for adequate consultation," and that true reconciliation is rarely achieved in courtrooms. As the SCC noted in its final decision in this case, "No one benefits—not project proponents, not Indigenous Peoples, and not non-Indigenous members of affected communities—when projects are prematurely approved only to be subjected to litigation."

The proposals of greatest concern in this discussion paper reflect a fundamental misunderstanding of the value of Canada's impact assessment regime. We reiterate that, while imperfect, impact assessment in Canada protects the public through independent, evidence-based review — a safeguard that purely political approvals cannot provide

Decisions made on political discretion alone will not withstand legal scrutiny, and at worst, projects improperly assessed will result in real and irreversible harm to invaluable ecosystems and the communities that depend on them for survival, impacts to human health and wellbeing that cannot be offset or quantified financially, and a cost to the taxpayer that would far exceed the benefit of any single project.

We strongly urge the Government of Canada to reconsider the most problematic elements of what is being proposed, and to reorient its thinking towards driving efficiency through proper resourcing of regional planning and mapping processes, which would support its overarching goal of creating more certainty and fewer hurdles in its pursuit of development.

The choice facing Canada is not between development and environmental sustainability. It is between creating legally vulnerable approvals that risk harming individuals, communities, and economies that depend on functional ecosystems, and creating durable approvals that are evidence based, transparent, and uphold Canada's responsibility to Rightsholders and the public. Any reforms should focus on improving coordination, increasing capacity, strengthening regional planning, and supporting Indigenous partnership, rather than reducing the scientific and legal foundations upon which successful projects depend.