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SUBMISSION TO THE LEGISLATIVE COMMITTEE ON BILL C-39

Le français suit

Nature Canada recognizes that Canada is in difficult straits, and agrees that Parliament and the federal government must move urgently to make it easier for Canadians to build economic resilience, preserve our national sovereignty, and protect our standard of living. It is precisely because of this that we are gravely concerned by Bill C-39.

In its current form, the Bill would paralyze major projects through uncertainty and delay, undermine the rule of law, set back the cause of Indigenous reconciliation, and diminish the environmental standards that sustain both our quality of life and the natural world as a good in itself.

We appeal to the federal government to withdraw Bill C-39 in its entirety. Failing this, we urge the Committee to bring forward amendments to the Bill to blunt its worst effects.

Critical Flaws and their Remedies

(a) The Bill would undermine the rule of law, by shifting power away from strong institutions that operate publicly, towards powerful ministers who deliberate behind a veil of Cabinet secrecy. The Bill's provisions to allow ministers to license favoured corporations or projects to use a fast-track around the environmental assessment procedures that apply to everyone else, would inevitably lower public confidence in all outcomes.

Our recommendations to improve the Bill in this regard are as follows:

- Inasmuch as these new discretionary powers are being justified by urgent need during an ongoing trade crisis, the powers should be subject to a comprehensive review by House of Commons and Senate Standing Committees, informed by independent assessments, every five years.

- Clauses 98, 100, 109, 110, and 111 would remove the sections of the Building Canada Act that confine ministers' powers to issue regulations to exempt enumerated projects from other laws, to a period of five years after the coming into effect of the Act. These Clauses should be struck out in their entirety. In the alternative, the Clauses could be replaced with ones that permit these powers to be extended only by a comprehensive parliamentary review every five years, and a vote of assent by both the House of Commons and the Senate.

(b) The Bill proposes to authorize Ministers to create "Regions of National Interest", where environmental standards would be attenuated and environmental assessment processes abbreviated, while neither providing a definition of a justifying "national interest" nor placing any limits on the size or placement of these regions. As written, the Bill could empower ministers to declare all of Canada to be a Region of National Interest at their discretion, or to establish such regions in conserved or in ecologically-sensitive areas.

Our recommendations to improve the Bill in this regard are as follows:

- Any decision to create a Region of National Interest must be subject to a legally-binding condition that it may not cross into protected areas, such as National Parks, Marine Protected Areas, UNESCO World Heritage Sites, Indigenous Protected and Conserved Areas, or recognized OECMs, or Key Biodiversity Areas, and must complement (and must not diminish) Canada's ability to meet its international commitments under biodiversity or species at risk treaties or Canada's 2030 Nature Strategy.

- Clauses 98 and 103 should be amended so that the Building Canada Act makes clear that in designating an area a Region of National Interest, the Minister must give highest priority to projects that promote nature-positive economic activity.

(c) The federal government's parallel publication of a Cabinet Directive to accompany C-39 demonstrates a salutary acknowledgement of the importance of constraining C-39 powers under a mitigation hierarchy, ecological mapping, and cumulative effects. However, that acknowledgement makes the failure to embed those principles in C-39 itself unjustifiable.

Our recommendations to improve the Bill in this regard are as follows:

- The substance of the Cabinet Directive must be embedded in the legislation itself, so it carries the binding force of law.

- Clauses 3, 20, 47, and 48 should be amended so Ministerial determinations and decisions under the Impact Assessment Act must result in a net gain in environmental quality or habitat, and must not derogate from the federal government's ability to meet its targets as outlined in Canada's 2030 Nature Strategy as filed with the UN Convention on Biological Diversity.

- Clauses 125 and 128 should be amended so that Ministerial decisions under the Canadian Energy Regulator Act must consider whether all feasible measures have been taken to avoid, minimize, mitigate, and (only as a last resort) offset harmful impacts, and that in all cases, the outcome where these powers are exercised must be a net gain in viable habitat or biodiversity.

- Clause 160 should be amended to make explicit that the Minister may only issue an order under the Canadian Navigable Waterways Act to provide an exemption, if the Minister is satisfied by objective scientific evidence that negative environmental consequences would be negligible.

- Clause 177 should be amended to make explicit within the Species at Risk Act that mitigation measures to be used under a mitigation hierarchy model must result in a net gain in environmental quality, habitat, or biodiversity, and no net loss in any of these measures.

- Clauses 180 and 183 should be modified so that activities authorized by the Minister under the Fisheries Act must avoid, minimize, mitigate, and (only as a last resort) offset harmful impacts, and that in all cases, the outcome where these powers are exercised must be a net gain in viable habitat.

(d) The Bill opens up the possibility that applicants for environmental approvals could be allowed to begin their industrial projects before the environmental assessment process is concluded. No

responsible investor would wish to begin a major project, if there were a real possibility that the project might yet be declined or significantly modified by regulators; no citizen in a democracy could have confidence in the rigour of an assessment process that allows the applicant to proceed, as if the outcome were a foregone conclusion.

Our recommendation to improve the Bill in this regard are as follows:

- The Bill should be amended to remove any option to begin substantial work on a project while the environmental assessment process remains incomplete.

About Nature Canada

Nature Canada is one of our country's oldest conservation institutions. We include a network of 1200 local organizations, and have about 250 000 individual members across every province and territory. Our mandate is to protect Canada's lands, waters, and biodiversity.

MÉMOIRE AU COMITÉ LÉGISLATIF SUR LE PROJET DE LOI C-39

Nature Canada reconnaît que le Canada traverse une situation difficile et convient que le Parlement et le gouvernement fédéral doivent agir de toute urgence pour aider les Canadiens et Canadiennes à renforcer leur résilience économique, à préserver notre souveraineté nationale et à protéger notre niveau de vie. C'est précisément pour cette raison que le projet de loi C-39 nous préoccupe au plus haut point.

Dans sa forme actuelle, le projet de loi paralyserait de grands projets en créant de l'incertitude et des retards, porterait atteinte à la primauté du droit, ferait reculer la cause de la réconciliation avec les Peuples Autochtones et affaiblirait les normes environnementales qui soutiennent à la fois notre qualité de vie et le monde naturel en tant que bien en soi.

Nous demandons au gouvernement fédéral de retirer le projet de loi C-39 dans son intégralité. À défaut, nous exhortons le Comité à proposer des amendements au projet de loi afin d'en atténuer les pires effets.

Lacunes critiques et remèdes proposés

A. Le projet de loi porterait atteinte à la primauté du droit en transférant le pouvoir d'institutions fortes fonctionnant de manière transparente vers de puissants ministres qui délibèrent sous le voile du secret du Cabinet. Les dispositions du projet de loi permettant aux ministres d'autoriser des entreprises ou des projets privilégiés à contourner, par une procédure accélérée, les processus d'évaluation environnementale qui s'appliquent à tous les autres, diminueraient inévitablement la confiance du public envers tous les résultats.

Nos recommandations pour améliorer le projet de loi à cet égard sont les suivantes :

- Dans la mesure où ces nouveaux pouvoirs discrétionnaires sont justifiés par un besoin urgent lors d'une crise commerciale en cours, ces pouvoirs devraient être soumis à un examen exhaustif par les comités permanents de la Chambre des communes et du Sénat, appuyé par des évaluations indépendantes, tous les cinq ans.
- Les articles 98, 100, 109, 110 et 111 supprimeraient les articles de la *Loi visant à bâtir le Canada* qui limitent les pouvoirs des ministres de prendre des règlements pour exempter les projets énumérés de l'application d'autres lois, à une période de cinq ans après l'entrée en vigueur de la Loi. Ces articles devraient être entièrement supprimés. Autrement, ils pourraient être remplacés par des dispositions stipulant que ces pouvoirs ne peuvent être prolongés que par un examen parlementaire exhaustif tous les cinq ans et par un vote d'approbation de la Chambre des communes et du Sénat.

B. Le projet de loi propose d'autoriser les ministres à créer des « régions d'intérêt national », où les normes environnementales seraient assouplies et les processus d'évaluation environnementale abrégés, sans pour autant fournir une définition de l'« intérêt national » justifiant cette mesure, ni imposer de limites quant à la taille ou à l'emplacement de ces régions. Tel qu'il est rédigé, le projet de loi pourrait habiliter les ministres à déclarer tout le Canada comme une région d'intérêt national à leur discrétion, ou à établir de telles régions dans des aires conservées ou écologiquement sensibles.

Nos recommandations pour améliorer le projet de loi à cet égard sont les suivantes :

- Toute décision de créer une région d'intérêt national doit être soumise à une condition juridiquement contraignante lui interdisant d'empiéter sur une aire protégée, telle que les parcs nationaux, les aires marines protégées, les sites du patrimoine mondial de l'UNESCO, les aires protégées et de conservation autochtone (APCA), les AMCEZ reconnues, ou les zones clés pour la biodiversité (KBA), et elle doit compléter (et non diminuer) la capacité du Canada à respecter ses engagements internationaux au titre des traités sur la biodiversité ou les espèces en péril, ou de la Stratégie pour la nature 2030 du Canada.

- Les articles 98 et 103 devraient être modifiés de manière à ce que la *Loi visant à bâtir le Canada* précise que, lors de la désignation d'une région d'intérêt national, le ministre doit accorder la plus haute priorité aux projets qui favorisent une activité économique favorable à la nature.

C. La publication parallèle par le gouvernement fédéral d'une directive du Cabinet pour accompagner le projet de loi C-39 témoigne d'une reconnaissance salutaire de l'importance de restreindre les pouvoirs prévus par le C-39 en vertu d'une hiérarchie des mesures d'atténuation, de la cartographie écologique et des effets cumulatifs. Cependant, cette reconnaissance rend d'autant plus injustifiable le fait de ne pas intégrer ces principes dans le projet de loi C-39 lui-même.

Nos recommandations pour améliorer le projet de loi à cet égard sont les suivantes :

- La substance de la directive du Cabinet doit être intégrée dans la loi elle-même, afin qu'elle ait force de loi contraignante.
- Les articles 3, 20, 47 et 48 devraient être modifiés afin que les déterminations et décisions ministérielles au titre de la *Loi sur l'évaluation d'impact* se traduisent par un gain net pour la qualité de l'environnement ou l'habitat, et ne doivent pas déroger à la capacité du gouvernement fédéral d'atteindre ses cibles telles que définies dans la Stratégie pour la nature 2030 du Canada, déposée auprès de la Convention des Nations Unies sur la diversité biologique.
- Les articles 125 et 128 devraient être modifiés afin que les décisions ministérielles prises en vertu de la *Loi sur la Régie canadienne de l'énergie* tiennent compte de la question de savoir si toutes les mesures réalisables ont été prises pour éviter, minimiser, atténuer et (en dernier recours seulement) compenser les effets néfastes, et que dans tous les cas, l'exercice de ces pouvoirs doive aboutir à un gain net pour l'habitat viable ou la biodiversité.
- L'article 160 devrait être modifié pour préciser explicitement que le ministre ne peut prendre un arrêté en vertu de la *Loi sur les eaux navigables canadiennes* pour accorder une exemption que s'il est convaincu, par des preuves scientifiques objectives, que les conséquences environnementales négatives seraient négligeables.
- L'article 177 devrait être modifié pour préciser explicitement dans la *Loi sur les espèces en péril* que les mesures d'atténuation à utiliser selon le modèle de hiérarchie des mesures d'atténuation doivent se traduire par un gain net pour la qualité de l'environnement, l'habitat ou la biodiversité, et aucune perte nette pour aucune de ces mesures.
- Les articles 180 et 183 devraient être modifiés afin que les activités autorisées par le ministre en vertu de la *Loi sur les pêches* évitent, minimisent, atténuent et (en dernier recours seulement) compensent les effets néfastes, et que dans tous les cas, l'exercice de ces pouvoirs doive aboutir à un gain net pour l'habitat viable.

D. Le projet de loi ouvre la possibilité que les demandeurs d'approbations environnementales soient autorisés à entamer leurs projets industriels avant la conclusion du processus d'évaluation environnementale. Aucun investisseur responsable ne souhaiterait entamer un grand projet s'il existait une possibilité réelle que le projet soit par la suite refusé ou considérablement modifié par les organismes de réglementation ; aucun citoyen dans une démocratie ne pourrait avoir confiance en la rigueur d'un processus d'évaluation qui permet au demandeur d'aller de l'avant, comme si le résultat était joué d'avance.

Notre recommandation pour améliorer le projet de loi à cet égard est la suivante :

- Le projet de loi devrait être modifié pour supprimer toute possibilité d'entamer des travaux substantiels sur un projet tant que le processus d'évaluation environnementale n'est pas terminé.

À propos de Nature Canada

Nature Canada est l'une des plus anciennes institutions de conservation de notre pays. Nous regroupons un réseau de 1 200 organisations locales et comptons environ 250 000 membres individuels dans chaque province et territoire. Notre mandat est de protéger les terres, les eaux et la biodiversité du Canada.

Appendix:

Notwithstanding our recommendations above, in cooperation with our national partners, Nature Canada supports the following list of amendments to the bill.

Annex. Full text of amendments

Bill C-39, An Act respecting certain measures to strengthen the economy (Building Canada Strong Act), Part 1

October 2026

Each amendment is drafted as a committee motion keyed to the page and line numbers of Bill C-39 as introduced at first reading on September 21, 2026, and numbered in the order the Committee will consider it. Each motion is followed by a plain-language description of what it does and why. The legislative wording is offered to assist the Committee and is subject to confirmation of its drafting form and references by the Office of the Law Clerk and Parliamentary Counsel.

1 | Clause 3 | Impact Assessment Act, s. 2, new definitions protected area and sensitive area

Motion. That Bill C-39, in Clause 3, be amended by adding after line 27 on page 2 the following: “protected area means an area that is reported as a protected area in the Canadian Protected and Conserved Areas Database maintained by the Department of the Environment, or an area that is established or designated under an Act of Parliament to achieve the long-term conservation of nature. (aire protégée) sensitive area means critical habitat, as defined in subsection 2(1) of the Species at Risk Act, or a protected area. (zone sensible)”

What it does. Adds two definitions to section 2 of the Impact Assessment Act. A protected area is an area reported as a protected area in the Canadian Protected and Conserved Areas Database, or established or designated under an Act of Parliament to achieve the long-term conservation of nature. A sensitive area is critical habitat under the Species at Risk Act, or a protected area. Amendments to other Acts refer to these definitions rather than repeating them.

Why. Several amendments need a boundary that is already drawn and already public. Both parts of these definitions are: critical habitat is identified under the Species at Risk Act and published on its registry, and the database is the Government’s own record of the areas it counts toward its protection commitments. Defining the terms once, by reference to records that already exist, lets a proponent know on day one whether a site is affected, and needs no new designation or Cabinet step.

2 | Clause 5 | Impact Assessment Act, s. 7(6) (replaced) and new s. 7(8)

Motion. That Bill C-39, in Clause 5, be amended (a) by replacing lines 21 to 31 on page 4 with the following: “(6) If the Minister permits a proponent to do an act or thing under paragraph (3)(d), or the Canadian Nuclear Safety Commission permits a proponent to do an act or thing under paragraph (3)(e), the Minister or the Commission, as the case may be, must establish conditions requiring the proponent to remediate any adverse effects within federal jurisdiction caused by the doing of that act or thing, to avoid contravening subsection 35(1) of the

Fisheries Act or section 32, 33 or 58 of the Species at Risk Act and to avoid destroying any part of the critical habitat of a wildlife species listed in Schedule 1 to that Act, to restore the site to its previous condition if the designated project does not proceed and to provide, before doing that act or thing, financial security sufficient to cover the cost of that remediation and restoration." (b) by adding after line 35 on page 4 the following: "(8) The Minister is not authorized under paragraph (3)(d), and the Canadian Nuclear Safety Commission is not authorized under paragraph (3)(e), to permit a proponent to do an act or thing (a) in a sensitive area; or (b) unless its adverse effects can be mitigated and can be fully reversed if the designated project does not proceed."

What it does. Keeps the Minister's power, and the Canadian Nuclear Safety Commission's, to allow work to begin before the impact assessment decision, and sets the conditions that must attach to it: the work must not contravene subsection 35(1) of the Fisheries Act or sections 32, 33 and 58 of the Species at Risk Act, must not destroy critical habitat, and the site must be restored if the project does not proceed, with financial security posted before the work starts. New subsection 7(8) keeps early work out of a sensitive area and allows it elsewhere only where its effects can be mitigated and fully reversed.

Why. The purpose of early work is to save time on a project that proceeds. Work that can be reversed, with security posted in advance, keeps the assessment decision open and protects the public from restoration costs if a project is refused. The Fisheries Act and Species at Risk Act prohibitions referred to already apply to the proponent, and the bar on destroying critical habitat extends the same protection to early work. Early work that would harm fish habitat or a listed species still needs its own permit. The power, and the time it saves, remain.

3 | Clause 16 | Impact Assessment Act, s. 19(2)

Motion. That Bill C-39, in Clause 16, be amended by replacing lines 25 to 28 on page 13 with the following: "(2) The responsible authority may extend the time limit by any period that is necessary for the proponent to provide the responsible authority with the information or studies (a) on the proponent's request; or (b) on its own initiative, if it is of the opinion that the information or studies include field studies that can be carried out only during a particular season or over more than one year."

What it does. Allows the responsible authority to extend the time for providing information or studies on its own initiative, not only at the proponent's request, where the studies include field work that can be done only in a particular season or over more than one year.

Why. This is a power, not a duty, used only where seasonal or multi-year field work is needed. Under the Bill, an assessment is terminated if the studies are not provided in time, so an extension can avoid a restart.

4 | Clause 16 | Impact Assessment Act, s. 19(6) (amended) and new s. 19(6.1)

Motion. That Bill C-39, in Clause 16, be amended (a) by replacing lines 9 and 10 on page 14 with the following: "under section 20.1, the Agency may, with the agreement of the relevant federal authority and if the Agency is satisfied" (b) by adding after line 14 on page 14 the following: "(6.1) Subsection (6) does not apply if any of the information or studies that the proponent has not provided relate to a wildlife species listed in Schedule 1 to

the Species at Risk Act or its critical habitat, as defined in subsection 2(1) of that Act, or to fish habitat, as defined in subsection 2(1) of the Fisheries Act."

What it does. Before the assessment clock may start without studies the proponent has not yet provided, the Agency needs the agreement of the federal authority responsible for the related permit, not only its views. The clock cannot start without studies relating to a species listed under the Species at Risk Act, its critical habitat or fish habitat.

Why. Field studies of species and fish habitat are the studies that cannot be caught up later, and they inform choices about site and design while harm can still be avoided. Studies for other permits, such as navigable waters and disposal at sea permits, can still be deferred, with the agreement of the department that will decide the permit.

5 | Clause 20 | Impact Assessment Act, s. 22(1)

Motion. That Bill C-39, in Clause 20, be amended by replacing lines 20 and 21 on page 15 with the following: "review panel, must take into account the following factors, which include the effects of the designated project on biodiversity:"

What it does. Adds the effects of a designated project on biodiversity to the factors that every impact assessment of a designated project must take into account under subsection 22(1) of the Impact Assessment Act. The amendment changes only the opening words of that subsection, which clause 20 replaces.

Why. No factor in subsection 22(1) names biodiversity. Effects on listed species and critical habitat are already required in the assessment of designated projects by section 79 of the Species at Risk Act; biodiversity is the gap. It is assessed in the same report, on the same clock, with no new step, and naming it settles a scoping question early rather than in comments or in court.

6 | Clause 62 | Impact Assessment Act, new s. 75.1

Motion. That Bill C-39, in Clause 62, be amended by replacing lines 24 to 28 on page 40 with the following: "75.1 The Agency must establish a participant funding program to facilitate consultations with Indigenous groups in relation to (a) federal authorizations that are required under a provision set out in column 2 of Schedule 5 in respect of designated projects; (b) documents issued under subsection 7(1) or 8.4(1) of the Building Canada Act; and (c) regional assessments conducted under section 92 or 93 in respect of an area that is, or is proposed to be, the subject of an order under subsection 8.2(1) or (3) of the Building Canada Act."

What it does. Provides that the Impact Assessment Agency must, rather than may, establish a participant funding program for consultations with Indigenous groups, and extends the program to consultation on documents issued under the Building Canada Act and on the regional assessments regions of national interest rely on.

Why. The Government has said the changes will maintain consultations. On the fast track the timelines are short, and a funding program that must exist, and that reaches the processes the Bill creates, helps Indigenous communities take part within them.

7 | Clause 96 | Building Canada Act, s. 2, definition of authorization (amended) and new definitions of area under study for protection and protected area

Motion. That Bill C-39, in Clause 96, be amended (a) by replacing lines 19 and 20 on page 71 with the following: "project to be carried out, in whole or in part, but does not include a decision statement issued under the Impact Assessment Act or any other approval, decision or instrument required under that Act. (autorisation)" (b) by replacing lines 23 and 24 on page 71 with the following: "area under study for protection means an area, other than a protected area, that the Minister of the Environment, the Minister of Fisheries and Oceans or the minister responsible for the Parks Canada Agency has publicly stated is being considered for establishment or designation under an Act of Parliament to achieve the long-term conservation of nature, or for reporting in the Canadian Protected and Conserved Areas Database maintained by the Department of the Environment as a protected area, and in respect of which that minister has not since made public a decision not to proceed and that establishment, designation or reporting has not yet occurred. (aire à l'étude en vue de sa protection) protected area has the same meaning as in section 2 of the Impact Assessment Act. (aire protégée) region of national interest means a region named in Schedule 3. (région d'intérêt national)"

What it does. Brings the Impact Assessment Act definition of protected area into the Building Canada Act, and defines an area under study for protection: an area that a named federal Minister has publicly stated is being considered for designation under an Act of Parliament for long-term conservation, or for reporting as a protected area in the federal database, until that Minister decides not to proceed or the protection is in place. Part (a) also takes approvals under the Impact Assessment Act, including the decision statement, out of the definition of authorization, so a fast-track document cannot stand in for them and their findings are not deemed.

Why. The definition follows the same two routes that make an area protected, so an area moves from under study to protected with no gap. Only a public statement by one of three named federal Ministers starts the status, so a province's or territory's own announcement does not. Part (a) removes one thing from the fast track, approvals under the Impact Assessment Act, so that the decision on an assessment is made on the evidence rather than deemed, in line with the Government's statement that the requirements that apply will not change.

8 | Clause 100 | Building Canada Act, new s. 8(5) and (6)

Motion. That Bill C-39, in Clause 100, be amended by adding after line 21 on page 72 the following: "(4) Section 8 of the Act is amended by adding the following after subsection (4): (5) The Minister must, without delay, amend a document issued under subsection 7(1) to add every condition that the minister responsible for the enactment under which an authorization specified in the document is required advises is necessary to meet the requirements of that enactment, and is not authorized to remove or amend such a condition under subsection (1) without that minister's agreement. (6) Conditions set out in or added to a document issued under subsection 7(1) must give effect to the mitigation hierarchy. Adverse environmental effects are to be avoided, then minimized, then restored on site, and offset only as a last resort and only where the effects can be offset.

For that purpose, (a) a measure may be relied on only to the extent that the earlier measures are not feasible; (b) a cheaper offset is not a reason to treat avoidance or minimization as not feasible."

What it does. Adds two subsections to section 8 of the Building Canada Act. The Minister must add to a national interest project document every condition that the Minister responsible for an authorization advises is necessary to meet the requirements of that Minister's own Act, and cannot remove or amend such a condition without that Minister's agreement. Every condition in the document, including one added later, must follow the mitigation hierarchy: avoid, then minimize, then restore on site, and offset only as a last resort. Placed as new subsections, they leave subsection 8(1) as the Bill, or any amendment the Committee adopts to it, provides.

Why. The Government has said the requirements and standards that apply will not change. The Minister responsible for a permit is the one who knows what that permit's law requires, and setting those conditions on that advice puts them on a clear footing from the start. The hierarchy puts in order the measures a condition may rely on, so an offset cannot stand in for avoiding harm that can be avoided.

9 | Clause 102 | Building Canada Act, s. 8.1(3)

Motion. That Bill C-39, in Clause 102, be amended by replacing lines 20 to 23 on page 73 with the following: "(3) The Minister must, not later than 30 days after the day on which a document is issued under subsection 7(1), make public the information set out in paragraphs (1)(a) to (e) and, for each authorization specified in the document, an explanation, obtained from the minister responsible for the enactment under which it is required, of why it was granted, taking into account the matters to which the determinations, findings and opinions deemed under subsection 6(1) relate."

What it does. Adds to what must be made public within 30 days after a national interest project document is issued an explanation, obtained from the Minister responsible for each authorization, of why it was granted, taking into account the matters on which findings are deemed to be made.

Why. The explanation follows the form the Species at Risk Act already uses for every species permit (subsection 73(3.1)). It adds no step before the document issues, and lets a finding the law treats as already made still be seen and tested.

10 | Clause 103 | Building Canada Act, new s. 8.2(1.1) and (1.2)

Motion. That Bill C-39, in Clause 103, be amended by adding after line 4 on page 74 the following: "(1.1) The Governor in Council is not authorized to make an order under subsection (1) or (3) that includes in or adds to the geographic area of a region of national interest any part of a protected or conserved area. In this section, protected or conserved area means a protected area, as defined in section 2, or an area that is reported as an other effective area-based conservation measure in the Canadian Protected and Conserved Areas Database maintained by the Department of the Environment. (1.2) The Governor in Council is not authorized to make an order under subsection (1) or (3) that includes in or adds to the geographic area of a region of national interest any part of an area under study for protection unless the minister who publicly stated that the area is being considered for protection has agreed in writing."

What it does. Bars an order that includes in a region of national interest any part of a protected area or of an area reported in the federal database as an other effective area-based conservation measure. An area under study for protection may be included only with the written agreement of the federal Minister who announced the study.

Why. Protected and conserved areas are recognized for their long-term conservation value and count toward Canada's goal of protecting 30 per cent of lands and waters by 2030. Settling at the boundary, once, the conflicts that would otherwise surface project by project tells proponents which land in a region is open. Requiring the agreement of the Minister who announced a study, rather than an outright bar, means announcing a study costs nothing, so the amendment does not discourage new protected areas.

11 | Clause 103 | Building Canada Act, new s. 8.2(5)(c) and (5.1)

Motion. That Bill C-39, in Clause 103, be amended by replacing lines 23 to 25 on page 74 with the following: "any applicable territorial law; (b) the Governor in Council must take into account any report that results from that regional assessment; and (c) the regional assessment must have been completed within the five years before the day on which the order is made, must cover the whole geographic area of the region, including any area to be added by the order, and every type of project that is eligible within it, and must have taken into account the factors set out in subsection 22(1) of the Impact Assessment Act, to the extent that they can apply to projects of each eligible type within the region, and the effects on biodiversity and on species at risk, as defined in subsection 2(1) of the Species at Risk Act, and their habitat, including critical habitat, as defined in that subsection. (5.1) A project all or part of which is to be carried out in the critical habitat of a wildlife species listed in Schedule 1 to the Species at Risk Act does not meet the criteria set out in Schedule 3."

What it does. Requires the regional assessment a region relies on to have been completed within five years, to cover the whole region and every eligible project type, and to have taken into account the factors in subsection 22(1) of the Impact Assessment Act and the effects on biodiversity and on species at risk and their habitat. A project in the critical habitat of a listed species does not meet the region's criteria.

Why. Project assessments in a region rely on the regional assessment, and the Bill directs them to leave out what it covered. Requiring a region to rest on a recent assessment that covered the whole region, biodiversity and species is what lets later decisions rely on it.

12 | Clause 103 | Building Canada Act, new s. 8.2(5.2), (11) and (12)

Motion. That Bill C-39, in Clause 103, be amended (a) by adding after line 25 on page 74 the following: "(5.2) Subsection (5) does not apply to an order under subsection (3) that only reduces the geographic area of a region of national interest, removes a type of eligible project or narrows the criteria referred to in paragraph (1)(c)." (b) by adding after line 21 on page 75 the following: "(11) Within 90 days after an event referred to in subsection (12) occurs, the Minister must review the designation of the region and each document issued under subsection 8.4(1) in respect of a project in the region that may affect the species, habitat or component of the environment concerned and, despite subsection 8.4(7) and after the consultations required by subsection 8.5(3), add or amend, under subsection 8.5(1), any condition that is necessary to avoid or lessen the adverse

effects of the project on that species, habitat or component. (12) The events are the following, in respect of a region of national interest and, in the case of paragraphs (a), (b) and (d), a wildlife species listed in Schedule 1 to the Species at Risk Act whose range overlaps its geographic area: (a) an order is made under section 27 of that Act in respect of the species; (b) critical habitat, as defined in subsection 2(1) of that Act, of the species is identified under that Act; (c) a limit on change to a component of the environment that is set out in the report of the regional assessment referred to in paragraph (5)(a) or in the criteria set out in Schedule 3 for the region is reached; or (d) a court sets aside an order or decision made under section 27 of that Act in respect of the species."

What it does. Requires the Minister, within 90 days of a species being listed or reclassified under the Species at Risk Act, the identification of critical habitat, a court setting aside a listing decision, or a stated limit on change being reached, to review the region and the documents issued in it, and add or amend conditions where needed. An order that only shrinks a region or narrows its criteria no longer needs a new regional assessment.

Why. Nothing in the Species at Risk Act attaches to a region order: its duties are triggered by a project or a permit. Without this amendment, nothing requires a region to be revisited when a species is listed or its critical habitat identified after the region is designated. The 90 days is an outer limit and the review comes after documents have issued, so it delays no decision; and an order that only shrinks a region becomes faster.

13 | Clause 103 | Building Canada Act, new s. 8.2(7.1)

Motion. That Bill C-39, in Clause 103, be amended by adding after line 12 on page 75 the following: "(7.1) In deciding whether to make an order under subsection (1), (3) or (4) in respect of a region, the Governor in Council must consider, as one of the factors referred to in subsection (6), the extent to which projects of an eligible type within that region can avoid adverse effects on biodiversity, on protected or conserved areas and on species at risk, as defined in subsection 2(1) of the Species at Risk Act, and their habitat, including critical habitat, as defined in that subsection."

What it does. Requires Cabinet, in deciding whether to create, change or remove a region of national interest, to consider whether projects of an eligible type in the region can avoid adverse effects on biodiversity, on protected or conserved areas and on species at risk and their habitat. It counts as one of the factors in subsection 8.2(6), so any provision that refers to those factors also reaches it. Placed as its own subsection, it leaves the list in subsection 8.2(6) as the Bill, or any amendment the Committee adopts to it, provides.

Why. The factors in the Bill cover security, economic benefit, likely success, Indigenous interests and clean growth; none concerns biodiversity or protected areas, and all are optional. The decision stays Cabinet's and nothing waits on it. What changes is that the conservation cost of a region is weighed, and on the record, when the order is made.

14 | Clause 103 | Building Canada Act, new s. 8.3(1.1) to (1.4) and (4)

Motion. That Bill C-39, in Clause 103, be amended (a) by replacing line 29 on page 75 with the following: "be carried out in whole or in part. (1.1) Subsection (1) does not apply to the opinions referred to in paragraphs 73(3)(a) to (c) of the Species at Risk Act, including for the purposes of section 74 of that Act; the Minister must

form each of those opinions on the basis of the evidence and after consultation with the competent minister, as defined in subsection 2(1) of that Act. (1.2) Despite subsections 8.4(1) and (4), the document referred to in subsection 8.4(1) is not, when issued or as amended, to specify an agreement or permit under section 73 of the Species at Risk Act, or an authorization that has the same effect under section 74 of that Act, unless those opinions have been formed in respect of the activity to which it relates, or to specify an authorization referred to in subsection (1.3) unless the determinations, findings and opinions referred to in that subsection have been made or formed. (1.3) Subsection (1) does not apply to any determination, finding or opinion that has to be made or formed in order for an authorization to be granted in respect of any part of a project that is to be carried out in a protected area or in an area under study for protection; the Minister must make or form each of them on the basis of the evidence and after consultation with the minister responsible for the enactment under which the authorization is required. (1.4) Subsections (1.1) to (1.3) apply in respect of a national interest project, and for that purpose a reference in those subsections to subsection (1) is a reference to subsection 6(1), a reference to subsections 8.4(1) and (4) is a reference to subsections 7(1) and (3) and a reference to the document referred to in subsection 8.4(1) is a reference to a document issued under subsection 7(1).” (b) by adding after line 3 on page 76 the following: “(4) Before the document referred to in subsection 8.4(1) is issued, or is amended under subsection 8.5(2) to add an authorization, the Minister must obtain from the minister responsible for the enactment under which each authorization specified in it is required, that minister’s assessment, based on the evidence, of the determinations, findings and opinions deemed under subsection (1) in respect of that authorization.”

What it does. Subsection 8.3(1), as enacted by clause 103, deems every finding needed for an authorization in a region of national interest to be made. This amendment excepts the three opinions required by subsection 73(3) of the Species at Risk Act, and the findings needed for an authorization for work in a protected area or an area under study for protection. The Minister must form them on the evidence after consulting the responsible Minister, and the regional document cannot include the authorization until that is done. Subsection (1.4) applies the same rules to national interest projects.

Why. Subsection 73(3) of the Species at Risk Act sets out what Parliament requires before a species at risk permit can issue, including that the activity will not jeopardize the survival or recovery of the species. Forming those opinions on the evidence puts the basis for each permit on the record. The opinions are formed on information already before the Minister. Every permit stays inside the fast track.

15 | Clause 103 | Building Canada Act, new s. 8.4(7.1) and (7.2)

Motion. That Bill C-39, in Clause 103, be amended by adding after line 17 on page 77 the following: “(7.1) The Minister must set out in the document every condition that the minister consulted under paragraph (2)(c) advises is necessary to meet the requirements of the enactment under which the authorization is required, and is not authorized to remove or amend such a condition under section 8.5 without that minister’s agreement. (7.2) Conditions set out in the document, including any added or amended under section 8.5, must give effect to the mitigation hierarchy. Adverse environmental effects are to be avoided, then minimized, then restored on site, and offset only as a last resort and only where the effects can be offset. For that purpose, (a) a measure

may be relied on only to the extent that the earlier measures are not feasible; (b) a cheaper offset is not a reason to treat avoidance or minimization as not feasible."

What it does. Requires the regional document to carry every condition that the Minister consulted on an authorization advises is necessary to meet the requirements of that Minister's own Act, and bars removing or amending such a condition without that Minister's agreement. Every condition in a regional document, including one added or amended later, must also follow the mitigation hierarchy: avoid, then minimize, then restore on site, and offset only as a last resort.

Why. As with #8, for regions: conditions are set on the advice of the department that knows the permit. The hierarchy puts in order the measures a condition may rely on, so an offset cannot stand in for avoiding harm that can be avoided.

16 | Clause 107 | Building Canada Act, s. 19(2)

Motion. That Bill C-39, in Clause 107, be amended by replacing lines 10 to 16 on page 82 with the following: "(2) If a project of an eligible type that is within a region of national interest and that the Minister is satisfied meets the criteria set out in Schedule 3 is also a designated project, any impact assessment of the project need not cover effects, other than effects on a wildlife species listed in Schedule 1 to the Species at Risk Act, or on a sensitive area, as defined in section 2 of the Impact Assessment Act, that the Minister is satisfied have been adequately assessed, at the scale of the site of the project, in a regional assessment referred to in paragraph 8.2(5)(a) that meets the requirements of section 8.2."

What it does. Changes subsection 19(2) so that a project's impact assessment need not cover, rather than must not cover, effects already assessed in a regional assessment, and only where the Minister is satisfied that those effects were adequately assessed at the scale of the project site. This provision can never be used to leave out effects on species listed under the Species at Risk Act or on sensitive areas.

Why. Only effects the Minister is satisfied the regional assessment adequately examined at the scale of the site can be left out. Effects on listed species and sensitive areas stay in, as they would for any project.

17 | Clause 110 | Building Canada Act, s. 22(2)

Motion. That Bill C-39, in Clause 110, be amended by replacing lines 1 to 3 on page 83 with the following: "(2) The Governor in Council is not authorized to make regulations under subsection (1) while Parliament is prorogued or dissolved, or in respect of any provision of the Species at Risk Act or of any Act of Parliament under which a protected area, as defined in section 2, is established or designated, or of regulations made under any of those Acts."

What it does. Provides that the power to exempt national interest projects from other laws by regulation cannot be used in respect of the Species at Risk Act, or of any Act under which a protected area is established or designated, or of regulations made under those Acts.

Why. The Government has said the Bill does not change the requirements or standards that apply. This amendment puts that on the face of the Act for species at risk and protected areas. Nothing changes for a named project unless the exemption power were to be used to switch those laws off.

18 | Clause 119 | Canadian Energy Regulator Act, s. 2: definition new right of way (amended) and new definitions protected or conserved area and sensitive area

Motion. That Bill C-39, in Clause 119, be amended (a) by replacing line 24 on page 86 with the following: “line or an all-season public highway, and also includes land that is to be developed for a pipeline, an international power line or an interprovincial power line within a sensitive area, even if it is alongside and contiguous to such an area of land, unless that land has previously been developed for any of those purposes. (nouvelle emprise) protected or conserved area has the same meaning as in subsection 8.2(1.1) of the Building Canada Act. (aire protégée ou de conservation)” (b) by adding after line 32 on page 86 the following: “sensitive area has the same meaning as in section 2 of the Impact Assessment Act. (zone sensible)”

What it does. Counts land within a sensitive area that has not previously been developed for a pipeline, power line, railway or highway as new right of way, even where a line runs alongside an existing corridor, and brings into the Canadian Energy Regulator Act the definitions of sensitive area and protected or conserved area.

Why. Only new clearing in a sensitive area counts toward the thresholds; everywhere else the corridor discount stands. Where it does move a line into a longer approval route, that is the route Parliament set for lines of that size.

19 | Clause 125 | Canadian Energy Regulator Act, new s. 65.2

Motion. That Bill C-39, in Clause 125, be amended by adding after line 4 on page 88 the following: “65.2 (1) Taking feasibility into account under section 65.1 does not permit conditions that provide less protection than is necessary to ensure that the project will meet the requirement in paragraph 73(3)(c) of the Species at Risk Act in respect of any wildlife species listed in Schedule 1 to that Act that the project may affect and will support that species’ recovery, will meet the requirements of any Act of Parliament under which a protected area, as defined in section 2 of the Impact Assessment Act, that the project may affect is established or designated, and will result in no net loss of fish habitat, as defined in subsection 2(1) of the Fisheries Act. (2) Conditions must give effect to the mitigation hierarchy, with a view to a net gain for the environment. Adverse environmental effects are to be avoided, then minimized, then restored on site, and offset only as a last resort and only where the effects can be offset. For that purpose, (a) a measure may be relied on only to the extent that the earlier measures are not feasible; (b) a cheaper offset is not a reason to treat avoidance or minimization as not feasible. (3) If effects remain that can be neither avoided nor offset, the Commission must make public its reasons for issuing the document of authorization.”

What it does. Adds a new section 65.2 after the feasibility rule in section 65.1. Taking feasibility into account does not permit conditions below what is needed for no jeopardy to listed species and support for their recovery, the requirements of any Act of Parliament under which an affected protected area is established, and no net loss of fish habitat. Conditions follow the mitigation hierarchy. Where effects remain that can be neither

avoided nor offset, the Commission publishes its reasons for issuing. Placed as its own provision, it leaves section 65.1 as the Bill, or any amendment the Committee adopts to it, provides.

Why. The Bill requires decision makers to take the feasibility of conditions into account. The amendment keeps that and adds only a floor, so that cost cannot take protection below one built on existing laws: the no jeopardy test for listed species, the Acts under which protected areas are established, and no net loss of fish habitat, which is federal policy today. There is no refusal gate and no extra step.

20 | Clause 128 | Canadian Energy Regulator Act, new ss. 183(2), 186(2), 186.2(2): new paragraph (b.1)

Motion. That Bill C-39, in Clause 128, be amended (a) by adding after line 4 on page 90 the following: "(b.1) the effects of the pipeline on critical habitat, as defined in subsection 2(1) of the Species at Risk Act, and on protected or conserved areas, and the extent to which it is consistent with any recovery strategy or action plan under that Act;" (b) by adding after line 20 on page 92 the following: "(b.1) the effects of the pipeline on critical habitat, as defined in subsection 2(1) of the Species at Risk Act, and on protected or conserved areas, and the extent to which it is consistent with any recovery strategy or action plan under that Act;" (c) by adding after line 19 on page 95 the following: "(b.1) the effects of the pipeline on critical habitat, as defined in subsection 2(1) of the Species at Risk Act, and on protected or conserved areas, and the extent to which it is consistent with any recovery strategy or action plan under that Act;"

What it does. Adds to the factors the energy regulator considers for pipelines, in each of its three factor lists, the effects on critical habitat and on protected or conserved areas, and the pipeline's consistency with recovery strategies and action plans under the Species at Risk Act. The new paragraph follows paragraph (b), so paragraph (a) on environmental effects is left as the Bill, or any amendment the Committee adopts to it, provides.

Why. A factor weighed in the existing review, not a new step. It appears in each of the three factor lists so that it reaches the certificate decision, the report and the conditions.

21 | Clause 146 | Canadian Energy Regulator Act, new ss. 262.1(2), 263.1(2), 263.3(2): new paragraph (b.1)

Motion. That Bill C-39, in Clause 146, be amended (a) by adding after line 27 on page 103 the following: "(b.1) the effects of the power line on critical habitat, as defined in subsection 2(1) of the Species at Risk Act, and on protected or conserved areas, and the extent to which it is consistent with any recovery strategy or action plan under that Act;" (b) by adding after line 2 on page 106 the following: "(b.1) the effects of the power line on critical habitat, as defined in subsection 2(1) of the Species at Risk Act, and on protected or conserved areas, and the extent to which it is consistent with any recovery strategy or action plan under that Act;" (c) by adding after line 26 on page 108 the following: "(b.1) the effects of the power line on critical habitat, as defined in subsection 2(1) of the Species at Risk Act, and on protected or conserved areas, and the extent to which it is consistent with any recovery strategy or action plan under that Act;"

What it does. Adds the same factor for international and interprovincial power lines, in each of their three factor lists, after paragraph (b).

Why. Keeps the pipeline and power line regimes consistent; a factor weighed in the existing review, not a new step.

22 | Clause 160 | Canadian Navigable Waters Act, new s. 24(1.2)

Motion. That Bill C-39, in Clause 160, be amended by adding after line 6 on page 115 the following: "(1.2) The Minister is not authorized under subsection (1), and the Governor in Council is not authorized under subsection (1.1), to exempt from the application of any of sections 21 to 23 any part of any rivers, streams or waters that is located in a sensitive area, as defined in section 2 of the Impact Assessment Act."

What it does. Provides that neither the Minister nor Cabinet may exempt any part of a river, stream or water that is in a sensitive area from the prohibitions in sections 21 to 23 of the Canadian Navigable Waters Act.

Why. The prohibitions on depositing material and lowering water levels limit fill and drawdown outside approved works. Only waters in a sensitive area lose the option of an exemption; everywhere else the new ministerial power works as the Bill intends.

23 | Clause 161 | Canadian Navigable Waters Act, new para. 28(1)(h.1)

Motion. That Bill C-39, in Clause 161, be amended by replacing lines 9 and 10 on page 115 with the following: "(h.1) excluding any structure, device or other thing from the definition work in section 2, other than one located in a sensitive area, as defined in section 2 of the Impact Assessment Act;"

What it does. Provides that the new power to exclude a structure, device or thing from the definition of work by regulation does not extend to one located in a sensitive area.

Why. Only structures in a sensitive area are affected; everywhere else the new regulation-making power works as the Bill intends.

24 | Clause 167 | Canadian Environmental Protection Act, 1999, new s. 129.1(1) to (4)

Motion. That Bill C-39, in Clause 167, be amended (a) by replacing line 7 on page 117 with the following: "129.1 (1) Before establishing any conditions in a permit re-" (b) by replacing line 9 on page 117 with the following: "it or varying any such conditions, the Minister may take" (c) by adding after line 19 on page 117 the following: "(2) Taking feasibility into account does not permit conditions that provide less protection than is necessary for the protection referred to in subsection 129(1), including of a wildlife species listed in Schedule 1 to the Species at Risk Act and of its critical habitat, as defined in subsection 2(1) of that Act. (3) Conditions shall give effect to the mitigation hierarchy, with a view to a net gain for marine life. Adverse effects are to be avoided, then minimized, then restored on site, and offset only as a last resort and only where the effects can be offset. For that purpose, (a) a measure may be relied on only to the extent that the earlier measures are not feasible; (b) a cheaper offset is not a reason to treat avoidance or minimization as not feasible. (4) If effects remain that can be neither avoided nor offset, the Minister shall make public the reasons for issuing or renewing the permit."

What it does. Provides that the Minister may, rather than shall, take feasibility into account in setting conditions on a disposal at sea permit, and that doing so does not permit conditions below the protection subsection 129(1) is aimed at, for marine life, legitimate uses of the sea and human life, expressly including

listed species and their critical habitat. Conditions follow the mitigation hierarchy, and reasons are published where effects remain that can be neither avoided nor offset.

Why. Weighing feasibility becomes optional, which saves time on routine permits, and the floor is the protection subsection 129(1) is aimed at. There is no refusal gate.

25 | Clause 170 | Canadian Environmental Protection Act, 1999, new para. 135(3)(g)

Motion. That Bill C-39, in Clause 170, be amended by replacing line 41 on page 118 with the following: "the purposes of paragraph 129.1(1)(c)."

What it does. Corrects the cross-reference in paragraph 135(3)(g) to follow the renumbering made by #24.

Why. Without this correction, the Bill's own cross-reference would point to a provision that no longer exists once #24 is adopted.

26 | Clause 177 | Species at Risk Act, new s. 73.1(3) and (4)

Motion. That Bill C-39, in Clause 177, be amended by adding after line 26 on page 122 the following: "(3) Taking feasibility into account does not permit terms and conditions that provide less protection than is necessary to meet the requirement in paragraph 73(3)(c) and the purposes set out in subsection 73(6) in respect of the listed wildlife species to which the agreement or permit relates, including minimizing the impact of the activity on its critical habitat and the residences of its individuals. (4) Terms and conditions must give effect to the mitigation hierarchy, with a view to the recovery of the listed wildlife species to which the agreement or permit relates and to a net gain in its habitat. Adverse effects on that species, its critical habitat and the residences of its individuals are to be avoided, then minimized, then restored on site, and offset only as a last resort and only where the effects can be offset. For that purpose, (a) a measure may be relied on only to the extent that the earlier measures are not feasible; (b) a cheaper offset is not a reason to treat avoidance or minimization as not feasible."

What it does. Adds two subsections to new section 73.1 of the Species at Risk Act. Taking feasibility into account in setting the terms of a species at risk agreement or permit does not permit terms below the no jeopardy requirement in paragraph 73(3)(c) and the purposes in subsection 73(6), and terms follow the mitigation hierarchy with a view to recovery of the species and a net gain in its habitat. Placed as its own provision, it leaves subsection 73.1(1) as the Bill, or any amendment the Committee adopts to it, provides.

Why. The floor cites the Act's own tests, and the hierarchy applies whenever terms are set. It adds no new step.

27 | Clause 179 | Fisheries Act, new s. 16.1

Motion. That Bill C-39, in Clause 179, be amended by replacing lines 9 to 12 on page 123 with the following: "count in the accounts of Canada, recorded separately in that Fund and used, in the watershed of the work, undertaking or activity in respect of which the fees were paid or, if the Minister makes public, before the fees are used, the reasons why that is not possible, in the nearest watershed where it is possible, to restore, create or enhance fish habitat, including by monitoring and maintaining it, except that up to 5 per cent of the fees may be

used for administering that Fund. The Minister must make public, after each fiscal year, a report setting out, for each watershed, the fees paid and used and the fish habitat lost against the fish habitat restored."

What it does. Requires fees paid in place of offsetting to be recorded separately and spent to restore, create or enhance fish habitat in the watershed where the harm occurred or, where the Minister publishes the reasons why that is not possible, in the nearest watershed where it is, with no more than five per cent for administration, and a yearly public report by watershed of habitat lost against habitat restored.

Why. A fee paid in place of offsetting only replaces lost habitat if it is spent where the harm happened. A yearly public report shows whether it is. Nothing in this amendment is in a project's path.

28 | Clause 183 | Fisheries Act, new s. 35.01(3) to (5)

Motion. That Bill C-39, in Clause 183, be amended by adding after line 27 on page 124 the following: "(3) Taking feasibility into account does not permit conditions that provide less protection than is necessary to avoid, mitigate and offset the death of fish or the harmful alteration, disruption or destruction of fish habitat and, for an authorization under paragraph 35(2)(b), to achieve no net loss of fish habitat. (4) Conditions must give effect to the mitigation hierarchy, with a view to a net gain in fish habitat. The death of fish and the harmful alteration, disruption or destruction of fish habitat are to be avoided, then minimized, then restored on site, and offset only as a last resort and only where they can be offset. For that purpose, (a) a measure may be relied on only to the extent that the earlier measures are not feasible; (b) a cheaper offset, fee or habitat credit is not a reason to treat avoidance or minimization as not feasible, or to prefer habitat credits over a more effective offset on site or in the same watershed. (5) If effects remain that can be neither avoided nor offset, the Minister must make public the reasons for issuing the authorization."

What it does. Adds three subsections to new section 35.01 of the Fisheries Act. Taking feasibility into account in setting conditions on an authorization does not permit conditions below the protection needed for fish and fish habitat and, for habitat authorizations, no net loss of fish habitat. Conditions must avoid, minimize and restore before offsetting, a cheaper offset, fee or credit is not a reason to skip a step, and reasons are published where effects remain that can be neither avoided nor offset. Placed as its own provision, it leaves subsection 35.01(1) as the Bill, or any amendment the Committee adopts to it, provides.

Why. Feasibility remains a consideration, and the floor builds on what the Fisheries Act already requires the Minister to consider, avoiding, mitigating and offsetting harm, and makes no net loss, which is federal policy today, the standard for habitat authorizations. There is no refusal gate: where effects remain that can be neither avoided nor offset, the reasons for issuing are published.

29 | Clause 186 | Fisheries Act, new ss. 42.021 and 42.03

Motion. That Bill C-39, in Clause 186, be amended (a) by replacing line 12 on page 125 with the following: "new holder of the credits, and the person who transferred the credits remains jointly and severally liable for those obligations with the new holder, including for replacing the fish habitat if the conservation project fails to provide the benefits quantified by the credits or the credits are revoked." (b) by replacing lines 17 and 18 on page 125 with the following: "authorized or permitted to be carried on in that service area, but only if (a) the

service area is hydrologically connected to the affected fish habitat and, unless the Minister makes public the reasons why that is not possible, is within a single watershed; (b) the fish habitat in the fish habitat bank is of the same type as, performs the same or a better function than, and supports the same fish as the fish habitat affected, and has been confirmed by the Minister to be functioning; (c) the number of credits used exceeds the number needed to offset the effects; and (d) the harmful effects are not in a sensitive area, as defined in section 2 of the Impact Assessment Act."

What it does. Keeps the person who transferred habitat credits jointly and severally liable for the obligations attached to them, and allows credits to be used only where the service area is hydrologically connected to the affected habitat and within a single watershed wherever possible, with the Minister publishing the reasons where it is not; the habitat is of the same type, function and fish and confirmed to be functioning; more credits are used than the effects require; and the effects are not in a sensitive area.

Why. Habitat is not interchangeable across water systems: a credit only replaces lost habitat if it does the same job for the same fish in a connected system. A credit confirmed to be working before it is used is much less likely to unravel an authorization later.

30 | Clause 189 | Fisheries Act, new s. 43.31(3) and (4)

Motion. That Bill C-39, in Clause 189, be amended by adding after line 20 on page 127 the following: "(3) Regulations made under paragraph (1)(b) or (h) must not permit the payment of a fee (a) unless the person referred to in that paragraph is not able, for reasons other than cost, to offset, on site or within the same watershed, the harmful effects that remain after all measures to avoid and minimize them have been taken, and the Minister has made public the reasons for accepting the fee; (b) that is less than the full cost of an equivalent offset multiplied by a ratio greater than one to one, so that the fish habitat restored is greater in area than, and at least equivalent in function to, the fish habitat lost; or (c) for harmful effects that cannot be offset, for effects on a wildlife species listed in Schedule 1 to the Species at Risk Act or its habitat, for fish habitat in a sensitive area, as defined in section 2 of the Impact Assessment Act, or where the full cost of an equivalent offset cannot be determined. (4) Regulations made under paragraph (1)(b) or (h) that allow a fee to be paid to an entity other than the Receiver General must require the entity to use the fee only as section 16.1 requires fees credited to the Environmental Damages Fund to be used, and to provide the Minister with the information needed to report on its use under that section."

What it does. Bars regulations from permitting a fee in place of offsetting unless the proponent cannot, for reasons other than cost, offset on site or in the same watershed the effects that remain after avoiding and minimizing them, and the Minister publishes the reasons; at less than the full cost of an equivalent offset multiplied so that the habitat restored is greater in area and at least equivalent in function; or for effects that cannot be offset, on listed species, in a sensitive area, or where the cost of an equivalent offset cannot be determined. Where regulations allow a fee to be paid to an entity other than the Receiver General, the same rules on how the fee is spent and reported apply.

Why. A fee set below the cost of offsetting makes paying cheaper than restoring, which reverses the order the mitigation hierarchy requires. Setting the fee above the cost of an equivalent offset, so that more habitat is

restored than lost, keeps the fee a last resort. With #27, which directs the fee to habitat in the same watershed, it is designed to deliver more habitat than is lost. The reasons for accepting a fee are published. Barring a fee where harm cannot be offset bars only the fee, not the authorization. A fee paid to another entity should restore habitat on the same terms as one paid into the Fund.