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LEGISLATIVE SUMMARY



Bill S-5:

An Act to amend the Canada National Parks Act (Nááts'ihch'oh National Park Reserve of Canada)

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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Legislative Summary of Bill S-5
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL S-5: AN ACT TO AMEND THE CANADA NATIONAL PARKS ACT (NÁÁTS'IHCH'OH NATIONAL PARK RESERVE OF CANADA)

1 BACKGROUND

Bill S-5, An Act to amend the Canada National Parks Act (Nááts'ihch'oh National Park Reserve of Canada) (short title: Nááts'ihch'oh National Park Reserve Act) was introduced by the Leader of the Government in the Senate on 14 May 2014.

The bill amends the *Canada National Parks Act*¹ to establish Nááts'ihch'oh (pronounced “Naats-each-choh”) National Park Reserve of Canada in the Northwest Territories. The park reserve, which measures 4,895 km², is located in the northern one sixth of the South Nahanni River watershed in the Northwest Territories, adjacent to and to the northwest of the existing Nahanni National Park Reserve.

Nááts'ihch'oh National Park Reserve is situated entirely in the Tulita District of the Sahtu Settlement Area.² It is being established as a park reserve rather than as a park in accordance with the stipulation in the *Canada National Parks Act* that “[p]ark reserves are established ... where an area or a portion of an area proposed for a park is subject to a claim in respect of aboriginal rights that has been accepted for negotiation by the Government of Canada.”³ It is not until “outstanding Aboriginal claims have been settled and all necessary agreements are reached that provide for the park’s establishment [that] the park reserve is given national park status.”⁴

The South Nahanni River watershed is an important cultural, spiritual and natural area for the First Nations and Métis peoples of the Sahtu Settlement Area, Dehcho Region and eastern Yukon. It is home to several important species, including grizzly bears, woodland caribou, Dall’s sheep and Canada’s northernmost populations of mountain goat and hoary marmot. The Sahtu Dene and Métis peoples of the region have long recommended that the area that will form this park reserve be conserved.⁵

1.1 THE PATH TO CREATING NÁÁTS'IHCH'OH NATIONAL PARK RESERVE OF CANADA

Nááts'ihch'oh National Park Reserve will complete the protection offered by the national parks system to the greater Nahanni ecosystem. Nahanni National Park Reserve, which is situated in the Dehcho Region, was created in 1972, in large part to prevent the construction of a hydroelectric project at Virginia Falls. Initially, the Nahanni park reserve covered about one seventh of the greater Nahanni ecosystem. At the time, research indicated that, in this area with many competing land uses and with most of the water in the park reserve coming from outside its boundaries, a larger park would better protect the ecological integrity of the ecosystem.⁶ In 2009, Nahanni National Park Reserve’s size was increased six-fold within the Dehcho Region.⁷

To expand protection of the greater Nahanni ecosystem into the adjacent Sahtu Settlement Area, in 2007, Parks Canada approached the Sahtu Dene and Métis peoples of the Tulita District. The negotiation process and requirements for creating a new park or park reserve within the Sahtu Settlement Area are defined in

chapter 16 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement* (1993).⁸ The purpose of such parks is:

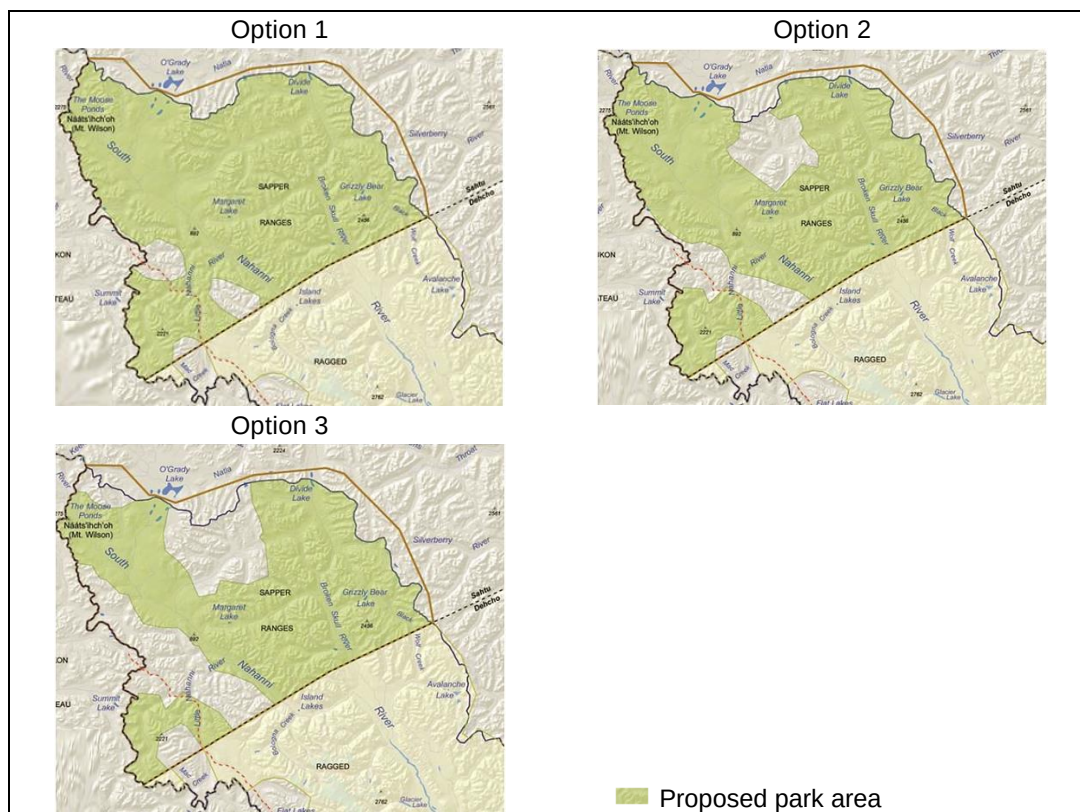
to preserve and protect for future generations representative natural areas of national significance, including the wildlife resources of such areas, and to encourage public understanding, appreciation and enjoyment of such areas, while providing for the rights of the participants under this agreement to use such areas for the harvesting of wildlife and plants.⁹

In addition to affirming various traditional rights and uses, the agreement states, “Exploration for and development of minerals shall not be permitted within a national park, except as may be required for construction purposes within the park.”¹⁰

As part of the process of creating a park reserve under the agreement, an impact benefit plan was required to lay out “the relationship between the Sahtu Dene and Metis and Parks Canada for managing a national park reserve.”¹¹ A memorandum of understanding for negotiating the impact benefit plan was signed in April 2008.

While a number of competing uses for the land, including outfitting and sport hunting, were proposed for the park reserve, the most contentious issue was mining and mineral exploration. Mineral potential is considered in the establishment of national parks in the Northwest Territories and Nunavut using the Mineral and Energy Resource Assessment process.¹² Three options for the boundaries of the park reserve were suggested through this process (see Figure 1).¹³

Figure 1 – The Three Boundary Options for the Creation of Nááts'ihch'oh National Park Reserve



Source: Adapted from Parks Canada, [Proposed Establishment of Nááts'ihch'oh National Park Reserve: Final Consultation Report](#), Prepared for Parks Canada by Terriplan Consultants, 30 August 2010.

Each option had various consequences for watershed and species protection and development of new mining potential (see Table 1).

Table 1 – Some Consequences of Boundary Options Proposed for Nááts'ihch'oh National Park Reserve

	Area (km ²)	Watershed (% protected)	Grizzly Bear Habitat (% protected)	Upper Nahanni Woodland Caribou Habitat (% protected)	Mining Potential Outside of Park (% of potential)
Option 1	6,450	94	95	81	20
Option 2	5,770	84	85	72	43
Option 3	4,840	70	70	44	70

Source: Adapted by the authors from Parks Canada, [Proposed Establishment of Nááts'ihch'oh National Park Reserve: Final Consultation Report](#), Prepared for Parks Canada by Terriplan Consultants, 30 August 2010.

In early 2010, public consultations on establishing the park reserve were held, with particular attention being paid to the three boundary options. In the consultation, 70% of participants supported protection of the entire South Nahanni River watershed; however, this was not one of the options put forward. Only 65 of the 1,603 participants expressed a preference for one of the options. Of these participants, 60 supported option 1, three supported option 2, and two supported option 3.¹⁴

After consideration of the public comments and with the conclusion of the impact benefit plan in March 2012, on 22 August 2012, the government announced the establishment of the park reserve. The boundaries chosen were those of option 3, with the government stating that the “economic benefits along with the balance achieved between preserving wildlife habitat while continuing to allow for natural resource development in the north fulfill tenets of Canada’s Northern Strategy.”¹⁵

Bill S-5 represents the final step in establishing the park reserve.

2 DESCRIPTION AND ANALYSIS

2.1 ESTABLISHMENT OF NÁÁTS'IHCH'OH NATIONAL PARK RESERVE OF CANADA

The park reserve is created by clause 6, which adds the name and a description of the park reserve to Schedule 2 of the *Canada National Parks Act*.

2.2 NEW PROVISIONS THAT APPLY UNIQUELY TO NÁÁTS'IHCH'OH NATIONAL PARK RESERVE OF CANADA

In general, the provisions of the *Canada National Parks Act* apply to a park reserve as if it were a park.¹⁶ However, the Act contains four sections under which special rules apply to specific existing park reserves.¹⁷ The bill amends the Act to add a fifth such section – section 41.4 – applicable uniquely to Nááts'ihch'oh National Park Reserve. Clause 3 amends section 39 of the Act in order to clarify that the application of the Act to a park reserve as if it were a park is subject to this new

section. New section 41.4, comprising nine subsections, is added to the Act by clause 5 and described in the following sections.

2.2.1 MINING ACCESS ROADS

The bill, anticipating two mining access roads in the park reserve, gives the minister responsible for the Parks Canada Agency (currently the Minister of the Environment) new powers needed to authorize activities for the purposes of these roads. Specifically, new sections 41.4(1) to 41.4(5) empower the minister to enter into leases or licences of occupation and to grant easements, land use permits and water licences in relation to the public lands in Nááts'ihch'oh National Park Reserve for the two mining access roads.

The bill provides that the legal requirements and powers related to land use permits and water licences set out in certain provisions of the *Mackenzie Valley Resource Management Act*¹⁸ apply – adapted as necessary – to any land use permits and water licences issued under the authority of the new provisions. In respect of public lands in the park reserve, existing permits and authorizations for the use of land, and licences for the use of water, continue in effect according to their terms and conditions and are deemed to have been issued under the relevant new provision of the Act.

Clause 2 amends section 24(2) of the Act to make it an offence to contravene any condition of – or any order or direction given under – one of the land use permits or water licences described above. An existing provision of the Act applies to determine the penalty on conviction for such an offence. Depending on whether the Crown proceeds summarily or by indictment and whether the offender is an individual or a corporation, the maximum fine on conviction for a first offence ranges from \$25,000 to \$500,000.

2.2.2 CONTINUATION OF EXISTING LEASES, EASEMENTS AND LICENCES OF OCCUPATION

Some persons hold leases, easements or licences of occupation to carry on activities in the park reserve lands that pre-date the protections being extended to the lands. New sections 41.4(6) and 41.4(7) of the Act provide for the continuation of existing leases, easements and licences of occupation relating to public lands in the park reserve. Such instruments may have been issued under various other pieces of legislation.

Leases, easements and licences of occupation relating to public lands in the park reserve continue in accordance with their terms and conditions, which prevail over the Act where there is any inconsistency between them. Leases and licences of occupation may be renewed in accordance with their terms and conditions. If a lease or licence of occupation does not provide for its renewal, it may be renewed in accordance with the Act.

2.2.3 CREATION OF A PARK

As a precondition to establishing a park, the Act requires that the federal government have clear title and an unencumbered right of ownership in the lands to be included in the park.¹⁹ New sections 41.4(8) and 41.4(9) of the Act, added by clause 5 of the bill, specify that leases, easements, licences of occupation, land use permits and authorizations, and water licences relating to public lands in the park reserve are deemed not to encumber or affect title to the lands. In other words, these instruments do not stand in the way of the lands in the park reserve becoming a park. If the lands do become a park, the instruments continue in effect according to their terms and conditions.

After Nááts'ihch'oh National Park Reserve becomes a park, the provisions that apply uniquely to this park reserve, which are summarized in section 2.2 of this Legislative Summary, continue to apply to the park lands.

2.3 AMENDMENT RELATED TO MINING ACCESS ROADS IN NAHANNI NATIONAL PARK RESERVE OF CANADA

Clause 4 of the bill makes an unrelated and technical amendment to section 41.1(4) of the Act regarding Nahanni National Park Reserve. Specifically, it adds to this section references to two sections of the *Mackenzie Valley Resource Management Act*. The effect of the amendment is that these additional provisions of the *Mackenzie Valley Resource Management Act* apply – with any necessary adaptations – to water licences relating to the 2009 expansion area²⁰ for mining access roads. The additional provisions provide for the renewal, amendment, cancellation and assignment of licences. They were added to the *Mackenzie Valley Resource Management Act* in 2014 by the *Northwest Territories Devolution Act*.²¹

NOTES

1. [Canada National Parks Act](#), S.C. 2000, c. 32.
2. Parks Canada, [Proposed Establishment of Nááts'ihch'oh National Park Reserve: Final Consultation Report](#), Prepared for Parks Canada by Terriplan Consultants, 30 August 2010.
3. *Canada National Parks Act*, s. 4(2).
4. Parks Canada, [Proposed Establishment of Nááts'ihch'oh National Park Reserve: Another Key Step in the Protection of the Greater Nahanni Ecosystem](#), p. 3. See also *Canada National Parks Act*, s. 6(2).
5. Parks Canada (2010).
6. Parks Canada, ["Greater Nahanni Ecosystem"](#), *Nahanni National Park Reserve of Canada*.
7. Ibid.
8. Indian Affairs and Northern Development, [Sahtu Dene and Metis Comprehensive Land Claim Agreement](#), Vol. 1, Ottawa, 1993.
9. Ibid., para. 16.1.1, p. 72.

10. Ibid., para. 16.1.5, p. 72.
11. Parks Canada, *Proposed Establishment of Nááts'ihch'oh National Park Reserve*, p. 2.
12. Natural Resources Canada, "[Mineral and Energy Resource Assessment of Proposed National Parks in Northern Canada](#)," *Mineral and Energy Resource Assessment (MERA)*.
13. Parks Canada (2010).
14. Ibid.
15. Parks Canada, "[Nááts'ihch'oh National Park Reserve](#)," Backgrounder. Canada's Northern Strategy has four priority areas: exercising Canada's Arctic sovereignty; protecting Canada's environmental heritage; promoting social and economic development; and improving and devolving Northern governance. See Government of Canada, [Canada's Northern Strategy](#).
16. *Canada National Parks Act*, s. 39. However, note s. 40 of the Act, which states: "The application of this Act to a park reserve is subject to the carrying on of traditional renewable resource harvesting activities by aboriginal persons."
17. Sections 41 to 41.3 of the *Canada National Parks Act* set out unique rules for each of the following national park reserves: Gwaii Haanas, Nahanni and Sable Island.
18. [Mackenzie Valley Resource Management Act](#), S.C. 1998, c. 25.
19. *Canada National Parks Act*, ss. 5(1) and 6(2).
20. The expansion area is the area of the park reserve added in 2009, the technical description of which is included in Parts II and III of the description of Nahanni National Park Reserve of Canada in Schedule 2 of the *Canada National Parks Act*.
21. [Northwest Territories Devolution Act](#), S.C. 2014, c. 2, s. 145.