



Comité consultatif pour l'environnement de la Baie James
James Bay Advisory Committee on the Environment
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IMPLEMENTATION OF THE FISHERIES ACT (RSC 1985 F-14)

**JBACE RECOMMENDATION
PRESENTED TO
FISHERIES AND OCEANS CANADA**

August 2014

Information exchange program in support of proponent self-assessments conducted per the *Fisheries Act* (RSC 1985 F-14) in the James Bay Territory

Context:

With the signing of the James Bay and Northern Quebec Agreement (JBNQA) in 1975, the signatory parties established a unique environmental and social protection regime, outlined in Section 22, as well as a specific hunting, fishing and trapping regime per Section 24. The environmental and social protection regime of Section 22 is explicitly designed to ensure that the Cree may fully exercise the harvesting rights and guarantees provided for in accordance with the hunting, fishing and trapping regime of Section 24.

The James Bay Advisory Committee on the Environment (JBACE) has the mandate to review and oversee the administration and management of the environmental and social protection regime established by and in accordance with Section 22 of the JBNQA. The JBACE exercises its mandate as the preferential and official forum for responsible governments concerning the adoption of policies, laws, regulations or land use measures having an incidence on the environment and social setting of the James Bay Territory.

The JBACE has reflected on the amendments to the *Fisheries Act* with an emphasis on how Cree concerns, and Cree hunting and fishing rights per Section 24 JBNQA can be adequately considered during proponent in-house self-assessments that may occur for projects in the Territory, or that may require an evaluation and/or an authorization, under that Act.

This document outlines the JBACE's recommendation for the establishment of an information-exchange program in the context of the said self-assessments.

Principles and concepts underscoring the JBACE's recommendation¹

1. Proponents are responsible for the thoroughness, quality, and accuracy of their self-assessments – even if their final determinations are that no serious harm to fish will arise from the project or that no DFO authorization is required.^{FPP}
2. Proponents are responsible for documenting and providing information to the DFO that outlines how they came to their respective determinations (i.e. proof). Proponents must also demonstrate the adequacy of any and all measures that they intend to undertake to avoid, mitigate, and offset any impacts that their projects may indeed have.^{2 FPP}

¹ FPP = denotes principles drawn from the DFO's [Fisheries Protection Policy Statement – October 2013](#).

JBACE = denotes principles held by the JBACE.

² Proponents are not obligated to forward the results of their self-assessments to the DFO if no impacts are perceived or if they deem that authorization is not required.

3. Any and all work in and around the water bodies in the Territory may have an impact on Aboriginal fisheries given the rights and guarantees outlined in Section 24 of the JBNQA.^{JBACE}
4. Information on the actual location of Aboriginal fisheries, on water bodies or habitats that support these fisheries, detailed info on fishing seasons, etc. is not readily-available to proponents in the literature or under the auspices of a Territory-specific databank or registry.^{JBACE}
5. The timely exchange of this pertinent information relating to the territory and its resources is crucial for all parties in order to ensure:
 - a) that the rights outlined in Section 24 JBNQA are respected...
 - b) that the potential impacts of these works are adequately documented by proponents...and,
 - c) that the potential impacts of these works are adequately accounted for, avoided, mitigated or offset......in the said proponent-driven in-house self-assessments.^{JBACE}
6. Proponents must be informed that works in the JBT's water bodies may produce impacts on Aboriginal fisheries at the very outset of the self-assessment procedure, and before they begin evaluating the potential impacts via self-assessments.^{JBACE}
7. Once aware that their proposed projects may produce impacts on Aboriginal fisheries, proponents intending to undertake projects in the JBT must then have a means of accessing the necessary information to conduct the said self-assessments. This will entail information-exchange with the 'knowledge-holders' (in this case, Cree land users, Local Environment Administrators – LEAs, Band Councils, Tallymen, or other local or regional organizations such as the Cree Nation Government – CNG, the Cree Trappers' Association – CTA, the Hunting, Fishing and Trapping Coordinating Committee – HFTCC, etc.).^{JBACE}
8. Proponents will then be equipped with the necessary information to confirm if their works may produce impacts, and to assess the nature and extent of these impacts, in order to proceed with the self-assessment procedure.
9. Proponents should keep a record of information obtained and may include them in their applications for DFO authorizations, if required, in order to outline the efforts that were undertaken to obtain all available information. It is also expected that these information exchanges may assist proponents in formulating measures to avoid, mitigate, or offset any of these impacts. Moreover, proponents should document their information-exchanges as these represent the bases for their determinations regarding the potential impacts of their projects, their decisions concerning the need – or not – for DFO authorization and, most likely, for their proposed measures to avoid, mitigate, or offset foreseeable impacts. Simply put, the documentation of these exchanges should represent a component of the 'proof' that proponents must provide to the DFO (see [principle n° 2](#)).^{JBACE}

Similarly, and for the same reasons, the JBACE is of the opinion that proponents undertaking works that automatically require a DFO evaluation or authorization would benefit from engaging in similar information-exchanges in the context of their projects and should be encouraged to do so.^{JBACE}

10. Information obtained by proponents from ‘knowledge-holders’ (Cree land users, LEAs, Band Councils, Tallymen, or other local or regional organizations such as the CNG, the CTA, the HFTCC, etc.), may be of a confidential nature. Proponents must collaborate with the ‘knowledge-holders’ to ensure that such sensitive information or material is treated in a manner that ensures the respect of all of the above-listed principles without publicly-disseminating the material and without affecting the quality of the self-assessment. This may entail seeking the consent of the ‘knowledge-holders,’ agreements between the collaborating parties, and communication with the DFO regarding the material that must remain confidential.^{JBACE}

JBACE recommendation

Please note that the JBACE tables the following recommendation as a textual addition to Figure 2 on page 14 of the DFO's *Fisheries Protection Policy Statement – October 2013*, which outlines the self-assessment procedure (see [attached figure](#)). The recommendation is tabled as an addition to the text immediately following the diagram, either as an explanatory note or text box, with a linking identification mark within Step 1 in the diagram. In so doing, the JBACE's [principle n° 3](#) is communicated to proponents prior to commencement of the self-assessment procedure.

Note to proponents active in the James Bay Territory

Any works in and around the water bodies in the James Bay Territory may have an impact on Aboriginal fisheries or land uses, given the rights and guarantees outlined in the James Bay Northern Québec Agreement (JBNQA).

Moreover, information on the actual location of Aboriginal fisheries, on water bodies or habitats that support these fisheries, detailed info on fishing seasons, etc. is not readily-available to proponents in the literature or under the auspices of a James Bay Territory-specific databank or information registry. This detailed information is held by land users and local and regional organizations and may be of a sensitive or confidential nature.

Consequently, proponents active in the James Bay Territory must notify and exchange with those that hold such detailed information in order to adequately conduct self-assessments for their works. This may entail obtaining consent to document the said information, agreements between the collaborating parties, and communication with the DFO regarding any information that must remain confidential over the course of the self-assessment procedure.

To do so, proponents must proceed through the *Self-Assessment Information-Exchange Program* specific to the James Bay Territory. In order to assist proponents through this program, and for guidance and supporting reference information regarding the JBNQA, see the following link.

[N.B.: Link to lead to the DFO's [Projects Near Water](#) webpage]

Supporting elements for the implementation of the JBACE's recommendation

In order to assist proponents active in the Territory, the JBACE has established a subcommittee to formulate a supporting guidance / reference information document regarding Section 22 and 24 JBNQA. This document will also include potential organizations that may act as information-exchange contact points, and a consideration of the means to address and treat confidential or sensitive information. Although intended as a supporting document to the self-assessment procedure, this document would also be useful for projects that automatically require a DFO evaluation or authorization under the Act.

The JBACE expects that this document will be added as a reference link on the DFO's [Projects Near Water](#) webpage.³ Hyperlinks between the DFO's webpage, the JBACE website, and the HFTCC website can also then be made if need be.

Finally, the JBACE also intends to invite the DFO to present these new developments, as well as pertinent information relating to the amended *Fisheries Act*, to the Cree communities so that they may be adequately prepared for the information-exchanges that may arise under the recommended program. These presentations could occur during the various general assemblies organized by the communities throughout the year. Ideally, the presentations should be conducted by the DFO once the JBACE's recommendation has been adopted and integrated in the *Fisheries Protection Policy Statement – October 2013* and on the DFO's website.

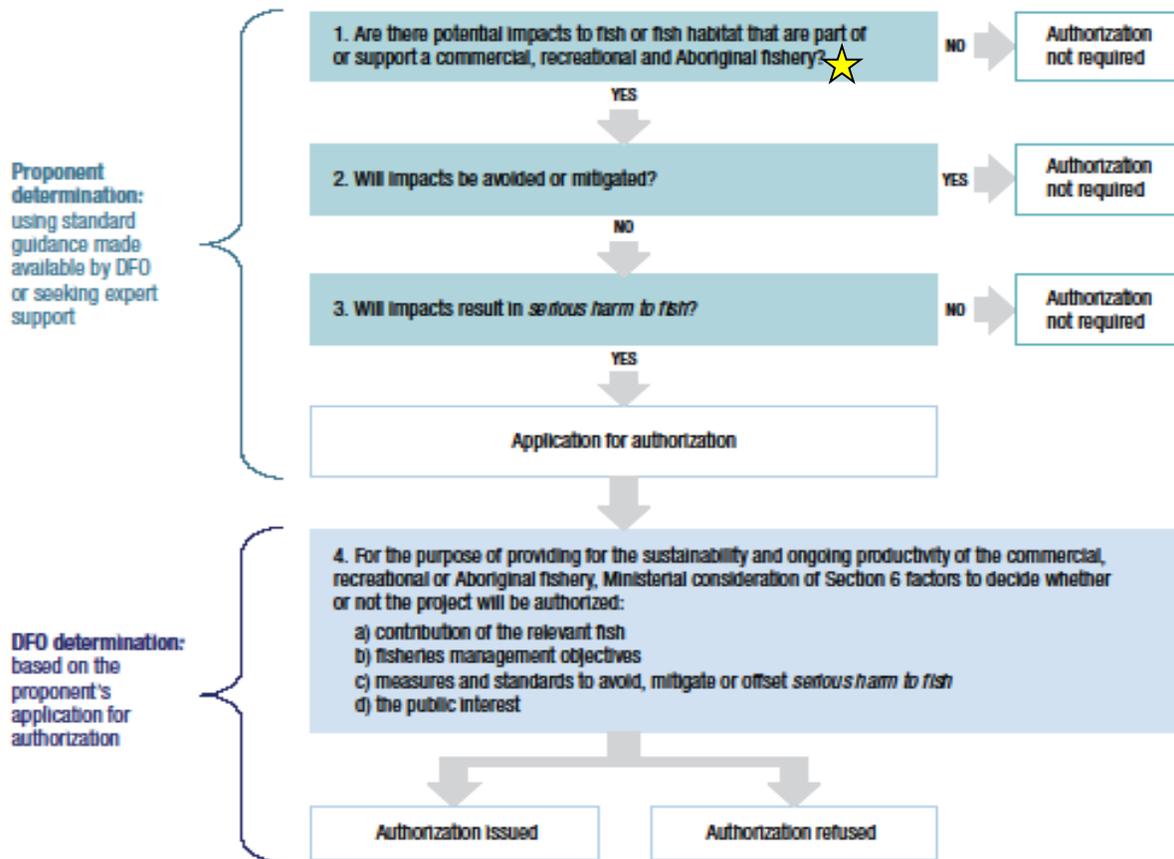
Attached items: **1 figure**

³ Although this document will be developed to assist proponents in navigating the information-exchange program, it would be helpful for other interested persons.

Figure 2 on page 14 of the Fisheries Protection Policy Statement – October 2013

Fisheries Protection Policy Statement October 2013

Figure 2. Summary of the development proposal review and decision-making process.



Using standard guidance made available by DFO, or by seeking expert advice as required, proponents are responsible for determining whether their projects are likely to require authorization and, if so, to apply for authorizations. DFO is responsible for reviewing applications for authorizations and determining whether or not to authorize the project, based on the consideration of Section 6 factors. The answers to the questions in steps 1 to 4 should be informed by the advice in the Fisheries Protection Policy Statement. More specifically, step 1 is informed by 8.1 of this document "Scope of the application of the prohibition"; steps 2 and 3 are informed by 8.2 "Serious harm to fish" and 8.3 "Provisions for flow and fish passage", and the material in Box 1 and step 4 is informed by the 8.4 "Factors to be considered".

★ Text for the recommendation.