



Comité consultatif pour l'environnement de la Baie James
James Bay Advisory Committee on the Environment
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BRIEF ON THE PROPOSED AMENDMENTS TO
QUÉBEC'S *NATURAL HERITAGE*
CONSERVATION ACT AND
PARKS ACT

Submitted by the
James Bay Advisory Committee
on the Environment

October 20, 2006

Brief on the Proposed Amendments to Québec's *Natural Heritage Conservation Act* and *Parks Act*

INTRODUCTION

This document presents the James Bay Advisory Committee on the Environment's comments and recommendations regarding the amendments to the *Natural Heritage Conservation Act* (hereafter the NHCA) and the *Parks Act* (hereafter the PA) proposed by the Ministère du Développement durable, de l'Environnement et des Parcs (MDDEP). The comments follow those made by the JBACE on May 24 in relation to the proposed amendments to the conservation plans for biodiversity and aquatic reserves.

The purpose of our comments is to ensure that the amendments made to the two statutes are consistent with the provisions of Section 22 of the James Bay and Northern Québec Agreement (JBNQA) and that they respect Aboriginal rights, including those enshrined in Section 24 of the JBNQA.

Our comments mostly deal with the proposed amendments to the PA and NHCA. However, we felt it was important to also comment on aspects not necessarily covered by these two statutes but to which we wish to draw the MDDEP's attention.

Lastly, we are very happy to have been consulted upstream of the amendment process. As you know, one of the functions of the JBACE is to advise the government regarding policy, legislative and regulatory proposals with a potential impact on the environmental and social protection regime established for the James Bay Territory. It is therefore very important that we be able to comment on legislative texts as early as possible in the process so that the JBACE may better fulfil its mandate.

1. Minister's increased powers to authorize activities in protected areas

According to the MDDEP, the NHCA and PA amendments grant increased powers to the Minister for purposes of efficiency and effectiveness. However, these amendments may violate the consultation obligations provided for in the JBNQA.

The proposed amendments empower the Minister to authorize activities with potential environmental and social impacts, such as mining, gas or petroleum exploration in proposed reserves (NHCA, s. 46), the introduction of non-native species, and the occupation of protected areas and proposed national parks for vacation or outfitting purposes (NHCA, s. 47 and PA, s. 5.4).¹

As mentioned in our letter of May 24, we are particularly concerned about the Minister's power to grant leases for vacation purposes, which seems inconsistent with the measures adopted by the MRNF to prohibit new vacation development in proposed protected areas in the James Bay Territory.

Furthermore, in our opinion, such powers cannot be exercised in the James Bay Territory without first consulting the local and regional organizations, especially those established pursuant to the JBNQA.

Consequently, for the James Bay Territory, we feel that the Minister must be required to consult the conservation councils for the protected areas concerned before authorizing activities otherwise prohibited by the NHCA (s. 46 and 47) or PA (s. 5.4).

We also deem that the James Bay Advisory Council on the Environment (JBACE) should be involved in the amending process. As advisor to the responsible governments concerning environmental and social protection in the James Bay Territory, and given its extensive experience, it seems only logical that the Minister consult the JBACE when contemplating authorizing an activity under sections 46 and 47 of the NHCA or section 5.4 of the PA that would otherwise be prohibited. Given that the JBACE's mandate covers the whole James Bay Territory, the Committee is in a position to take a coherent approach to management of protected areas in the Territory.

RECOMMENDATION:

That for the James Bay Territory, the conservation councils concerned and the JBACE be consulted on the powers conferred on the Minister by sections 46 and 47 of the NHCA and section 5.4 of the PA.

¹ All references are to the sections of the *Possible Amendments to the Natural Heritage Conservation Act* and *Possible Amendments to the Parks Act* (preliminary versions submitted to the JBACE by the Direction du patrimoine écologique et du développement durable on February 16, 2006).

2. Composition and mandate of James Bay conservation councils

Neither the NHCA nor the PA provides for the composition of conservation councils. However, in our opinion, the conservation councils are important elements of involving local communities, particularly Aboriginal communities, in the management of protected areas and parks.

In order to respect the social and legal environments in the James Bay Territory, we consider that the conservation councils must have majority representation from the Crees. Moreover, sub-paragraph 22.2.2 c) of the JBNQA provides for:

A special status and involvement for the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms where such is necessary to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the Agreement.

This request is more easily justified by the composition of the James Bay population and is consistent with international trends regarding the involvement of indigenous peoples.²

According to section 41.2 of the NHCA, the Native communities concerned will be consulted during the preparation of conservation plans. One way to consult them is to give them a dominant role in conservation councils. Even if neither the NHCA nor the PA establishes the composition of conservation councils, we strongly suggest that the MDDEP adopt a clearer policy regarding the composition of conservation councils in the James Bay Territory. We also ask that the role and mandate of conservation councils take into account the legal environment specifically created by the JBNQA.

RECOMMENDATION:

That the composition and mandate of the conservation councils for protected areas established in the James Bay region reflect the region's social and legal environments.

3. Consultation of the Crees

Section 41.2 of the NHCA provides for consultation of Native people:

The conservation plans shall be prepared, and their content revised, in collaboration with the government departments and bodies concerned. The Minister shall also take such measures as are considered necessary to consult all other persons, groups or organizations the Minister considers appropriate to

² IUCN. 2004. *Speaking a Common Language. The Uses and Performance of the IUCN System of Management Categories for Protected Areas.*

<http://www.iucn.org/themes/WCPA/pubs/pdfs/speakingacommonlanguage.pdf>

consult, including the Native communities.

Section 41.2 does not highlight the need to consult the Native communities separately from the general public, which goes against sub-paragraph 22.2.2 c) of the JBNQA as well as the *Interim Guide for Consulting the Aboriginal Communities*.³ Both of these documents state the need to hold separate consultations with the Native communities. Furthermore, the Interim Guide states that participation must be secured upstream of the consultation processes. Thus, it would be important for the NHCA and PA to incorporate the Québec government directions regarding consultation of the Aboriginal communities and provide for separate consultations with Aboriginal people upstream of the consultation processes.

Where James Bay is concerned, consultation must not be limited to local Aboriginal bodies, but must also extend to regional Aboriginal bodies as well, such as the Grand Council of the Crees.

RECOMMENDATION:

That the consultation of Native communities provided for in the PA and NHCA comply with sub-paragraph 22.2.2 c) of the JBNQA and the principles of the *Interim Guide for Consulting the Aboriginal Communities* (of Québec). In addition, in the James Bay Territory, these consultations must include the local and regional Aboriginal bodies set up there.

4. Consultations pursuant to Section 22 of the JBNQA

The JBACE is pleased that the Québec *Parks Act* is being amended to prevent duplication of the consultation processes. However, we insist that the precedence of the JBNQA be respected, including as regards the organization of consultations, as only this process guarantees meaningful participation of the Cree communities.

We would also stress the importance of consulting the JBACE on all legislative and regulatory amendments that might affect the James Bay's biophysical and social environment. In particular, we wish to emphasize the importance of consulting the JBACE before assigning temporary protection status to areas located within the territory of application of the environmental and social protection regime established by Section 22 of the JBNQA. This recommendation must be read in conjunction with the following recommendation, for this obligation can be honoured by involving the JBACE in the development of a strategy for establishing protected areas in James Bay.

³ Québec Government. 2006. *Interim Guide for Consulting the Aboriginal Communities*. http://www.saa.gouv.qc.ca/publications_documentation/publications/guide-interimaire_en.pdf

RECOMMENDATION:

That, in implementing the PA and NHCA, the MDDEP respect the precedence of the consultation processes established by Section 22 of the JBNQA.

That the MDDEP consult the JBACE before assigning protection status to any territory covered by Section 22 of the JBNQA.

5. Protected areas establishment strategy for James Bay

The James Bay Territory is affected by numerous hydroelectric development, forestry and mining projects, all of which have major environmental and human impacts. Establishment of a protected areas network is therefore crucial to protecting Cree territory and hunting, fishing and trapping activities.

We must stress the importance of adopting a strategy for establishing protected areas in the James Bay Territory. Furthermore, we consider that the MDDEP should work collaboratively with the JBACE to devise and implement such a strategy.

RECOMMENDATION:

That the Minister adopt, as soon as possible, a strategy for establishing protected areas in James Bay that has been developed in partnership with regional and local stakeholders, including the JBACE.

6. Delegation of management

The NHCA provides for the delegation of management of a protected area to a natural or legal person (s. 12). The PA provides only for the delegation of the power to carry out work or management activities (s. 6 and 8.1.1). However, since the Minister has already delegated management of Pingualuit National Park to the Kativik Regional Government, it would be important for the new *Parks Act* to contain a similar section to section 12 of the NHCA, which explicitly recognizes the possibility of delegating management of a national park to an Aboriginal body.

RECOMMENDATION:

That the delegation of management to an Aboriginal body provided for in section 12 of the NHCA be introduced into the PA.

7. Term of temporary protection status

The NHCA provides for temporary protection status for an initial period of 4 years, which can be renewed but not exceed 6 years (NHCA, s. 30). The PA provides for temporary protection status for an initial period of 8 years, which can be extended to no more than 10 years (PA, s. 4.2). Not only is 6 years already a long time for temporary protection status, but it also exceeds the mandate of the government that decreed it.

Thus, a term of 8 years with possible extension to 10 years seems too long, especially considering that the Minister has the power to authorize the occupation of proposed parks for vacation or outfitting purposes (PA, s. 5.4). In our opinion, it would be more logical to apply the same term (4 years, renewable up to 6 years) to all protected areas, whether national parks or biodiversity reserves.

RECOMMENDATION:

That the terms of temporary protection status and renewal and extension periods (PA, s. 4.2) be the same as those provided for in the NHCA, namely 4 years, renewable up to 6 years.

8. Concept of man-made landscape

The amended NHCA includes a section on man-made landscapes that shows a special effort by the MDDEP to implement this new concept (at least in North America). The JBACE endorses this concept, but would like to stress that the expression "man-made landscape" should also apply to Aboriginal territories, not just farming areas in southern Québec. Aboriginal people's contribution to landscape protection is too often under-estimated and it should be remembered that so-called pristine areas in the North have been shaped by Aboriginal peoples' traditional pursuits.

The concept of an inhabited park is already being developed under the Albanel-Temiscamie-Otish national park project. The concept should include recognition of Aboriginal landscapes (portage, burial, maintenance of specific areas to make them more conducive to gathering, hunting and trapping).

In this regard, it would be desirable that the MDDEP work with the bodies established by the JBNQA to devise a program for recognizing Aboriginal landscapes.

RECOMMENDATION:

That the MDDEP, in consultation with the bodies established pursuant to the

JBNQA, consider assigning “man-made landscape” status to Aboriginal landscapes.

9. Minister responsible for the Parks Act

Section 16 of the Parks Act entrusts application of the Act to the Minister of Natural Resources and Wildlife (previously Minister of Natural Resources, Wildlife and Parks), whereas this responsibility should fall to the Minister of Sustainable Development, Environment and Parks.

SUMMARY OF JBACE RECOMMENDATIONS

Below is a summary of the JBACE’s recommendations to the MDDEP:

- 1. That for the James Bay Territory, the conservation councils concerned and the JBACE be consulted on the powers conferred on the Minister by sections 46 and 47 of the NHCA and section 5.4 of the PA.**
- 2. That the composition and mandate of the conservation councils for protected areas established in the James Bay region reflect the region’s social and legal environments.**
- 3. That the consultation of Native communities provided for in the PA and NHCA comply with sub-paragraph 22.2.2 c) of the JBNQA and the principles of the *Interim Guide for Consulting the Aboriginal Communities* (of Québec). In addition, in the James Bay Territory, these consultations must include the local and regional Aboriginal bodies set up there.**
- 4. That, in implementing the PA and NHCA, the MDDEP respect the precedence of the consultation processes established by Section 22 of the JBNQA.**

That the MDDEP consult the JBACE before assigning protection status to any territory covered by Section 22 of the JBNQA.

- 5. That the Minister adopt, as soon as possible, a strategy for establishing protected areas in James Bay that has been developed in partnership with the JBACE.**
- 6. That the delegation of management to an Aboriginal body provided for in section 12 of the NHCA be introduced into the PA.**
- 7. That the terms of temporary protection status and renewal and extension periods (PA, s. 4.2) be the same as those provided for in the NHCA, namely 4 years, renewable up to 6 years.**

- 8. That the MDDEP, in consultation with the bodies established pursuant to the JBNQA, consider assigning "man-made landscape" status to Aboriginal landscapes.**