



Comité consultatif pour l'environnement de la Baie James
James Bay Advisory Committee on the Environment
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Bill 46 – An Act to amend the *Natural Heritage Conservation Act* and other provisions

JBACE brief presented to the
Committee on Transportation and the Environment of the *Assemblée nationale*

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Summary of recommendations

1. The guiding principles of Section 22 of the James Bay Northern Quebec Agreement (JBNQA) offer relevant orientations that the Ministry of the Environment and the Fight against Climate Change of the Environment (MELCC) may consider during the planning of northern protected areas and for the implementation of the revised *Natural Heritage Conservation Act* (NHCA) and of its associated regulation.
2. Cree involvement in the planning and development of protected areas is important and must be foreseen upstream from the environmental and social impact assessment and review procedure. The Cree must continue to be involved in the decision-making process for the creation of protected areas in general and, in particular, for the creation of the newly-proposed *Northern Conservation Areas* and *Protected Areas with Sustainable Use*. Cree perspectives on what constitutes 'sustainable use,' for example, must be accounted for.
3. All protected area projects in the Territory must take into account Cree wildlife harvesting rights and guarantees during their development and cannot prevent the exercise of the Cree's hunting, fishing and trapping rights, within the limits of the provisions of Section 24. The Bill, the regulation for the implementation the Act, and the documentation that will be produced subsequently by the MELCC must take this context into account, where applicable. For example, the definition of "sustainable use" could make it possible to reflect this contextual reality during the creation of a Protected Areas with Sustainable Use in the Territory. The mandate of the Hunting Fishing Trapping Coordinating Committee provided for in the JBNQA with respect to protected areas must also be respected.
4. The revised NHCA should clearly identify which International Union for Conservation of Nature (IUCN) categories correspond to which type of protected area. Similarly, the activities that may constitute 'sustainable uses' and additional details regarding the process for identifying priority areas for designation as *Northern Conservation Areas* should be clearly hashed out in the revised Act. In the event that these issues will be addressed in the regulation that will follow the current revision exercise, we reiterate our interest in participating in the development of the said regulation.
5. The Bill includes provisions regarding the delegation of powers regarding protected area management to Aboriginal communities. The Gouvernement du Québec should pursue the implementation of this mechanism in order to provide new opportunities to involve Aboriginal communities in conservation initiatives. The details regarding the delegation mechanism will ensue in the anticipated regulation that will be drafted following the present exercise and the James Bay Advisory Committee on the Environment (JBACE) may be consulted on this draft regulation. Moreover, discussions may be entertained with the Cree for the implementation of this mechanism in the Territory.
6. In order to facilitate public access to information, we suggest that a centralised register should be created. In the event that this is not the approach used, hyperlinks should be created between the different registers. Information regarding the protected areas in the Territory should be made available in French and in English.
7. Any decision regarding the replacement of land or other type of compensation must be made with proper Cree involvement.
8. Current Cree protected area initiatives must be maintained and facilitated by Bill 46.
9. A guidance document that consolidates all the initiatives related to conservation that concern the Territory should be produced in order to clarify the Gouvernement du Québec's orientations and vision for the Territory. This document would also enable the identification of the interlinkages between the various initiatives. Although this may be outside of the scope of the review of the Bill, we feel that such a document would be a very helpful tool for all stakeholders, for proponents of development projects and local actors alike.

Introduction

Established by Section 22 of the James Bay and Northern Quebec Agreement (JBNQA), the James Bay Advisory Committee on the Environment (JBACE) oversees the environmental and social protection regime on the James Bay Territory.¹ The JBACE analyzes relevant issues to provide advice and recommendations to responsible governments, and facilitates dialogue between stakeholders. This helps ensure the protection of the rights of the Cree people and the environment on which they depend, and their involvement in the decision-making process.

While Bill 46² (hereafter the 'Bill') does not propose changes to the JBNQA environmental and social protection regime and associated project assessment and review procedure, it will influence future planning and handling of protected areas and development activities throughout Québec – including the James Bay Territory subject to the Section 22 regime. For this reason, we wish to offer our insights on the Bill.

In accordance with our mandate, we wish to express a number of comments and recommendations on the following issues related to the Bill:

- A. Context of the JBNQA;
- B. Application of International Union for Conservation of Nature (IUCN) categories and clarification of what constitutes 'sustainable use;'
- C. Delegation of powers;
- D. Registers;
- E. Remark regarding the Indigenous Protected and Conserved Area (IPCA) model;
- F. Compensation mechanism;
- G. Current protected area initiatives;
- H. Coordination with other initiatives in progress.

Finally, through the auspices of this brief, we also wish to express to you our interest in being kept informed and to provide comments as needed concerning the regulation for the implementation of the *Natural Heritage Conservation Act* (NHCA) once it is available.

¹ 'Territory' will be used hereafter in reference to the '*territory subject to Section 22 of the JBNQA.*'

² The Bill is formally entitled "*Bill 46 – An Act to amend the Natural Heritage Conservation Act and other provisions.*"

A. Context of the JBNQA

Guiding principles of Section 22 of the JBNQA

The environmental and social protection regime applicable to the Territory, is subject to a unique set of nine guiding principles. Among other things, these principles reference the protection of Cree society, as well as the full exercise of their traditional harvesting rights and guarantees provided for in the hunting, fishing and trapping regime as outlined in Section 24 of the JBNQA. Please refer to [Appendix I](#) for the list of these principles.

The JBACE insists that these guiding principles offer relevant orientations that the Ministry of the Environment and the Fight against Climate Change of the Environment may consider during the planning of northern protected areas and for the implementation of the revised NHCA and of its associated regulation.

The Section 22 assessment and review procedure and public engagement provisions

We note that the Bill confirms that public consultations and information sessions will be used prior to authorizing and designating new protected areas (including the newly-proposed *Northern Conservation Areas*), and when modifying their boundaries. We strongly support these provisions.

We reiterate that, all “*proposals for parks, wilderness areas, ecological reserves or other similar land classifications*” are automatically subject to the environmental and social impact assessment and review procedure set out in Section 22 of the JBNQA.³ We note that section 32 of the Bill stipulates that the Minister is not required to follow-up on a request for public consultation when other means to consult are available – namely, the environmental and social impact assessment and review procedure provided for in Title II of the *Environment Quality Act*.⁴ We thus recognize that the Bill takes into consideration the provisions of Section 22 of the JBNQA, as well as the role of the environmental and social impact review committees which may, notably, carry out public consultations.

Upstream participation of the Cree in the decision-making process regarding protected area projects

The environmental and social protection regime outlined in Section 22 of the JBNQA provides for:⁵

- a) *“A procedure whereby environmental and social laws and regulations and land use regulations may from time to time be adopted if necessary to minimize the negative impact of development in or affecting the Territory upon the Native people and the wildlife resources of the Territory;*
- b) *An environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the native people and the wildlife resources of the Territory;*
- c) *A special status and involvement of the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever 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.*
- d) *The protection of the rights and guarantees of the Cree people established by and in accordance with Section 24;*
- e) *The protection of the Cree people, their economies and the wildlife resources upon which they depend;*
- f) *The right to develop in the Territory.”*

³ Per item 5c) of Schedule 1 of Section 22 of the JBNQA.

⁴ Title II of the *Environment Quality Act* incorporates the provisions of the procedure set out in Section 22 of the JBNQA.

⁵ See paragraph. 22.2.2 of the JBNQA.

Given that the creation of protected areas is necessarily subject to the environmental and social impact assessment and review procedure, special involvement of the Cree will be ensured. However, Cree involvement in the planning and development of protected areas is important and must be foreseen upstream from the environmental and social impact assessment and review procedure. We thus point out that the Cree must continue to be part of the decision-making process for the creation of protected areas in general and, in particular, for the creation of the newly-proposed *Northern Conservation Areas* and *Protected Areas with Sustainable Use*. This includes the location of protected areas, the appropriate status (e.g. with sustainable use; biodiversity reserves), the activities that will be permitted and prohibited in such areas (if any) and the entities that will manage them. Cree perspectives on what constitutes ‘sustainable use,’ for example, must be accounted for.

Cree wildlife harvesting rights under Section 24⁶

Wildlife harvesting activities are an essential component of Cree culture, tradition, and subsistence. Section 24 of the JBNQA outlines Cree wildlife harvesting rights and guarantees. [Appendix II](#) presents a table of rights and guarantees that are linked to the environmental and social protection regime.

Thus, any protected area project in the Territory must take into account these rights and guarantees during its development and cannot prevent the exercise of the Cree's hunting, fishing and trapping rights, within the limits of the provisions of Section 24.

The Bill, the regulation for the implementation the Act, and the documentation that will be produced subsequently by the Ministry of the Environment and the Fight against Climate Change (MELCC) must take this context into account, where applicable. For example, the definition of "sustainable use" could make it possible to reflect this contextual reality during the creation of a *Protected Areas with Sustainable Use* in the Territory.

Moreover, the JBACE notes that the Bill eliminates, at section 27 of the existing Act, a reference to the obligation to consult the Hunting, Fishing and Trapping Coordinating Committee (HFTCC).

We therefore wish to make it clear that, in conformity with paragraph 24.4.26 of the JBNQA, proposals for the establishment of protected areas under the Act must be submitted to such Committee for advice.

B. Application of IUCN categories to the new types of protected areas, Northern Conservation Areas, and clarification of what constitutes ‘sustainable use’

We appreciate that the Bill adds more flexibility for the creation of protected areas by reducing administrative requirements (namely, via the removal of temporary statuses), by allowing for greater implication and ‘delegation’ of management responsibilities to local actors; namely, Aboriginal communities.

Moreover, the provisions for the creation of two new types of protected areas (*Marine Reserves* and *Protected Areas with Sustainable Use*), and for enabling the creation of *Northern Conservation Areas* to meet the objectives of the Plan Nord, are interesting. We are not opposed to these provisions.

However, apart from a brief mention in section 2 of the Bill that stipulates that the term ‘protected area’ means a protected area as defined by the IUCN in the *Guidelines for applying protected area management categories*, we note that the Bill does not set out which IUCN categories will correspond to the newly-proposed types of protected areas and to *Northern Conservation Areas*.

⁶ ‘Harvesting’ includes hunting, fishing and trapping activities (see paragraph 24.1.13 of the JBNQA). For the purposes of the current brief, we focus on ‘Cree rights and guarantees’ but recognize that Section 24 applies to all Native beneficiaries to the JBNQA, and defined as such per the provisions of Schedule IV of Section 24 of the JBNQA (modified pursuant to Complementary Agreement N° 1).

We also note that that the Bill offers no information on what constitutes ‘sustainable uses’ that may be permitted in *Protected Areas with Sustainable Use*, and that few details regarding the designation process for *Northern Conservation Areas* are included in the text.

We are of the opinion that these issues are very important and that the revised NHCA should clearly identify which IUCN categories correspond to which type of protected area.

Similarly, the activities that may constitute ‘sustainable uses’ and additional details regarding the process for identifying priority areas for designation as *Northern Conservation Areas* should be clearly hashed out in the revised Act.

In the event that these issues will be addressed in the anticipated regulation that will follow the current revision exercise, we reiterate our interest in participating in the development of the said regulation.

C. *Delegation of powers to Aboriginal communities*

We support the provisions regarding the delegation of powers regarding protected area management to Aboriginal communities. We strongly encourage the Gouvernement du Québec to pursue the implementation of this mechanism in order to provide new opportunities to involve Aboriginal communities in conservation initiatives.

We understand that the details regarding the delegation mechanism will ensue in the anticipated regulation that will be drafted following the present exercise. The JBACE may be consulted on this draft regulation. Moreover, discussions may be entertained with the Cree for the implementation of this mechanism in the Territory.

D. *Registers*

The Bill will ensure that a maximum of information regarding the various types of protected areas that may be designated will be made public via a number public registers. We strongly support this intention.

In order to facilitate public access to information, we suggest, however, that a centralised register be created. In the event that this is not the approach used, we recommend that hyperlinks be created between the different registers. Beyond this, we suggest that information regarding the protected areas in the Territory should be available in French and in English.

E. *Remark regarding the IPCA model*

We simply wish to acknowledge the growing importance of the role that the IPCA model can play in biodiversity conservation and the protection of culture heritage. We suggest that the Gouvernement du Québec use this novel model for inspiration in the context of conservation initiatives.

F. *Compensation mechanism*

Sections 41 and 42 of the Act, as amended by the Bill, would relate to a compensation mechanism applicable when the Government decreases the total surface area of protected areas in Québec. They provide that such mechanism could include the designation, as a protected area, of another area having biophysical characteristics that are at least equivalent to those of the area concerned.

The JBACE wishes to point out that the replacement of certain areas, such as areas of cultural values, may be impossible to achieve. Any decision regarding the replacement of land or other type of compensation under proposed sections 41 and 42 of the Act must be made with proper Cree involvement.

G. Current protected area initiatives

With regard to the removal of temporary statuses, it will be important for Québec to ensure, with the Crees, that appropriate mechanisms are in place in order to protect the areas that are in the process of being established as protected areas under the Act.

We also note that it is important to ensure that the current Cree protected area initiatives (e.g. the proposed aquatic and biodiversity reserves in the Territory) are maintained and unaffected by the Bill including the conservation plans developed with the Crees. In that respect, it should be ensured that the transitional provisions of the Bill allow for this and that the future regulation that will be adopted in line with the Bill is consistent with such Cree protected area initiatives.

H. Coordination with other initiatives in progress

The present revision of the NHCA and a number of initiatives that will also orient conservation activities are concurrently underway:

- Plan Nord – planning initiatives to meet several conservation targets and objectives.
- Development of a Québec Policy on Wildlife Sanctuaries – the document made available for consultation in 2019 cited the need to ensure ‘harmonization of multiple land / resource uses,’ ‘ecosystem conservation,’ ‘maintaining and improving wildlife high-quality habitats,’ ‘maintaining the health of wildlife populations,’ and ‘synergy with the network of protected areas.’
- Development of land use planning tools for the Territory (e.g. the revision of the public land use plan, the drafting of the regional plan for integrated land and resource development, and of the regional development plan for public land).
- Development of integrated forest development plans.
- Wildlife protection planning (e.g. plan to safeguard Woodland Caribou).
- The recent signing of the Canada-Québec Collaborative Agreement to Establish a Network of Marine Protected Areas in Québec.

A guidance document that consolidates all the initiatives related to conservation that concern the Territory should be produced in order to clarify the Gouvernement du Québec’s orientations and vision for the Territory. This document would also enable the identification of the interlinkages between the various initiatives.

Although this may be outside of the scope of the review of the Bill, we feel that such a document would be a very helpful tool for all stakeholders, for proponents of development projects and local actors alike.

Conclusion

The JBACE supports the Gouvernement du Québec's intention to facilitate and streamline the creation of protected areas, to afford greater involvement of Aboriginal communities in their management and to provide registers for public access to information.

We note that several issues regarding the Bill require greater attention in order to ensure coherence with the context of the JBNQA, align with IUCN guidelines, and to optimize tools (e.g. the registers). We trust that our comments and suggestions address these matters in a constructive manner.

In the Territory,

- all decisions under the legislation, as amended, will have to be taken with the Crees, whether it be with respect to the location or nature of a proposed protected area, the activities that may or may not be authorized in a proposed protected area, or the entity that will manage it, among other things;
- any proposal for the establishment of a protected area or other conservation measures will also be subject to the regime under the JBNQA and to any other Cree-Québec agreement related to land use;
- Québec must ensure that the Bill and the upcoming regulation do not negatively affect current Cree protected area initiatives.

We insist that the Gouvernement du Québec seize the current opportunity to protect the most important, sensitive, and culturally-significant areas as soon as possible, and that these areas benefit from measures that ensure their conservation in the long term. Doing so will serve to ensure the health of communities and lasting opportunities for economic development.

Appendix I – Guiding principles of the environmental and social protection regime per Section 22 of the JBNQA

The environmental and social protection regime applicable to the territory covered by Section 22 of the JBNQA, is subject to a unique set of nine guiding principles:⁷

“The responsible governments and the agencies created in virtue of this Section shall within the limits of their respective jurisdictions or functions as the case may be give due consideration to the following guiding principles:

- a) “The protection of the hunting, fishing and trapping rights of Native people in the Territory, and their other rights on Category I lands, with respect to developmental activity affecting the Territory;*
- b) The environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the Territory;*
- c) The protection of Native people, societies, communities, economies, with respect to developmental activity affecting the Territory;*
- d) The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory;*
- e) The rights and guarantees of the Native people within Category II established by and in accordance with Section 24 until such land is developed;*
- f) The involvement of the Cree people in the application of this regime;*
- g) The rights and interests of non-Native people, whatever they may be;*
- h) The right to develop by persons acting lawfully in the Territory;*
- i) The minimizing of the negative environmental and social impacts of development on Native people and on Native communities by reasonable means with special reference to those measures proposed or recommended by the impact assessment and review procedure.”*

⁷ Per paragraph 22.2.4 of the JBNQA.

Appendix II – A selection of Cree harvesting rights and guarantees⁸ per Section 24⁹

Cree Rights & Guarantees	Section 24 Paragraph(s)
The sole and exclusive right to harvest (hunt, fish and trap any species of wild fauna).	24.3.1, 24.3.3, 24.3.19
Right to harvest at all times of the year without prior administrative authorization, and in all of the Territory, with a minimum of control or regulations applied to them.	24.3, 24.3.10, 24.3.18, 24.4.30
Crees’ harvesting activities are subject to the Principle of Conservation (they may not harvest species requiring complete protection to ensure their continued existence or that of a population).	24.2.1; 24.3.2
Crees’ harvesting activities are subject to limitations to ensure public safety (no harvesting within non-Native settlements; possible restrictions on harvesting methods and equipment).	24.3.5, 24.4.7, 24.3.9, 24.3.12, 24.3.14
Right to personal and community use and to the exchange and sale of harvests between Cree communities and between members of a Cree community or communities.	24.3.11a, 24.3.11c
Right to possess and transport the products of harvesting activity.	24.3.15
Right to commerce and trade in all harvest-related by-products.	24.3.16
The exclusive right to trap in the Territory, including the right to trap for commercial purposes.	24.3.19
Exclusive right to establish and operate, within Cat. I & II lands, commercial fisheries related to the species reserved to the Crees	24.3.26
Priority of Cree harvesting – whereby, in the event of scarcity or rarity of harvestable species, priority must be afforded to Cree harvesters in light of non-Native interests (e.g. sport hunting and fishing).	24.6.2 & 24.6.3
Certain species of mammals, fish and birds are reserved for the exclusive use of the Crees.	24.7.1, Schedule 2 of Section 24
The Crees have the exclusive right to hunt and fish within Category I & II lands within the Cree area of interest.	24.8.2
Control is exercised over the number of non-Natives permitted to hunt and fish in Category III lands and over the places therein and times where they may hunt and fish with a view to giving effect to the principle of conservation and the rights and guarantees in favour of the Cree s established by and in accordance with the harvesting regime.	24.8.6
Outfitting, being considered as a principal means of controlling non-Native hunting and fishing activity above the 50 th parallel, and the Crees have a right of first refusal to operate as outfitters in Category III lands for a period of 30 years.	24.8.7, 24.9.3

⁸ For the purposes of the current brief, the JBACE mentions ‘Cree Rights & Guarantees’ but recognizes that Section 24 applies to all eligible Native beneficiaries to the JBNQA, and defined as such per the provisions of Schedule IV of Section 24 of the JBNQA (modified pursuant to Complementary Agreement N^o 1).

⁹ These harvesting rights and guarantees are directly linked to environmental and social protection regime outlined in the JBNQA per Section 22.