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I. Context and introduction

The revised *Fisheries Act* (RSC 1985 F-14)

On November 25th 2013, amended provisions regarding recreational, commercial and Aboriginal fisheries came into force in the *Fisheries Act* (hereafter, the ‘Act’). These amended provisions focus on protecting the productivity of recreational, commercial and Aboriginal fisheries, as well as the habitats that support them:

⇒ No person shall carry on any work, undertaking or activity (hereinafter, ‘projects’) that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.

‘Projects’ thus includes all types of works and activities – including dismantling operations – in recreational, commercial and Aboriginal fisheries, as well as in habitats that support them. Some examples include the removal of riparian vegetation for and the construction of new access roads, as well as the installation and removal of water-crossings or of piers and wharves. All such projects may affect fish and present impediments to Aboriginal fishing, for example. Indeed, multiple works and activities may well occur in the context of a single project – all should be included in the project’s self-assessment

⇒ Proponents conduct self-assessments of their projects to determine if they will affect fish that are part of or support a fishery. If proponents have sufficient grounds that no serious harm will occur, they may proceed with their project without a review or authorization by the Department of Fisheries and Oceans Canada (DFO).¹

⇒ Project proponents that cannot avoid or mitigate serious harm to fish that are part of or support a fishery must send the DFO a request for review with information on the impacts on the fish and their habitat. After reviewing the information, the DFO may authorize the serious harm and require that all appropriate measures it deems necessary be taken to prevent or mitigate this harm.

Exempted water bodies and project-related works and activities

Certain types of water bodies and certain project-related works and activities are not necessarily subject to review by the DFO. Proponents should familiarize themselves with these exemptions prior to commencing the self-assessments for their projects by reviewing the exemptions, and related conditions, listed on the DFO’s ‘[Projects Near Water](#)’ webpage.

¹ Proponents must, of course, meet all additional federal, provincial and municipal requirements and obligations.

The environmental and social protection regime of Section 22 of the James Bay Northern Québec Agreement

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 per Section 22, as well as a specific hunting, fishing and trapping regime per Section 24. The environmental and social protection regime is designed to ensure that the Cree may continue to fully exercise their wildlife harvesting rights in light of development projects as well as legal or regulatory changes.²

The James Bay Advisory Committee on the Environment (JBACE) has the mandate to review and oversee the environmental and social protection regime. 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 territory subject to Section 22 of the JBNQA (see the map in [Appendix I](#)). In so doing, the JBACE pays particular attention to the guiding principles of Section 22. For instance, four of the nine guiding principles are summarized as follows:³

- The protection of the hunting, fishing and trapping rights of Native people in the Territory, with respect to developmental activity affecting the Territory;
- The environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the Territory;
- The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory;
- The involvement of the Cree people in the application of the environmental and social protection regime.

Similarly, the JBACE also pays keen attention to the wildlife harvesting rights of the Cree set out in Section 24 of the JBNQA.⁴ The James Bay Territory is organized according to a traditional system of hunting territories, or traplines, upon which the Cree enjoy fishing rights. For example:⁵

- The Cree have the right to harvest wildlife at all times of the year without prior administrative authorization, anywhere in the Territory.
- Certain areas and certain species are reserved for the exclusive use of the Cree (e.g. Whitefish, Sturgeon, Suckers, Burbot, Mooneye, and Goldeye).

² Refer to paragraphs 22.3.24 to 22.3.29 of the JBNQA. Online (JBACE site): www.cceb-jbace.ca/images/JBNQA_-_22.pdf.

³ Refer to paragraph 22.2.4 of the JBNQA for the complete list of guiding principles.

⁴ For the purposes of the current document, which is specific for the James Bay Territory under Section 22 of the JBNQA, we focus on Cree wildlife harvesting rights. We recognize, however, that Section 24 of the JBNQA applies to all Native beneficiaries to the JBNQA, including the Inuit and the Naskapi, who reside outside of the area of application of Section 22.

⁵ Refer to Section 24 of the JBNQA for the definitive treatment of Cree wildlife harvesting rights.

A note on Cree hunting territories, commonly referred to as ‘traplines’

As mentioned, the James Bay Territory is organized according to a traditional system of Cree traplines. These traplines cover the entire Territory.

However, when the JBNQA was signed in 1975, information on certain Cree traplines near the boundaries of the area of application of Section 22 of the JBNQA was lacking. In these instances, the area of application of Section 22 of the JBNQA was made to coincide instead with township boundaries. As such, certain Cree traplines in the northern, southern and eastern boundaries of the James Bay Territory extend beyond the area of application of Section 22.

- ⇒ As a result, proponents must thus expect that all projects in the James Bay Territory will occur on Cree traplines. These projects may well have an impact on Cree fishing activities given that the Cree harvest the Territory’s wildlife resources. Similarly, proponents should also be mindful that certain species of fish are reserved for the Cree, and that the Cree hold these species in high regard. Proponents should thus make efforts to determine if their projects will affect the Crees’ ongoing harvesting of these species.
- ⇒ The JBACE has developed this best practice guide, specific to the James Bay Territory, to encourage and support proponents to undertake voluntary information exchanges with the Cree. The voluntary proponent-driven information exchange program outlined in this document is recommended by the JBACE as an operational approach to assist project proponents determine if their projects may affect Cree fishing activities and/or the habitats that support these activities during their self-assessments. While this guide is intended to assist proponents active in the James Bay Territory to comply with the *Fisheries Act*, it will also assist proponents to account for the principles of Section 22, and Cree rights per Section 24, of the JBNQA.
- ⇒ Proponents whose projects are to occur on Cree traplines that extend beyond the area of application of Section 22 are encouraged to undertake similar exchanges of information, as described in the present document, for the purposes of their respective self-assessments.

II. Purpose, scope, and rationale of the voluntary information exchange program (and of this best practice guide)

Purpose and scope

The recommended *Voluntary Proponent-driven Information Exchange Program for the Self-Assessment of Projects* described in this supporting was designed by the JBACE to account for the guiding principles of Section 22 and the wildlife harvesting rights of the Cree set out in Section 24 of the JBNQA.

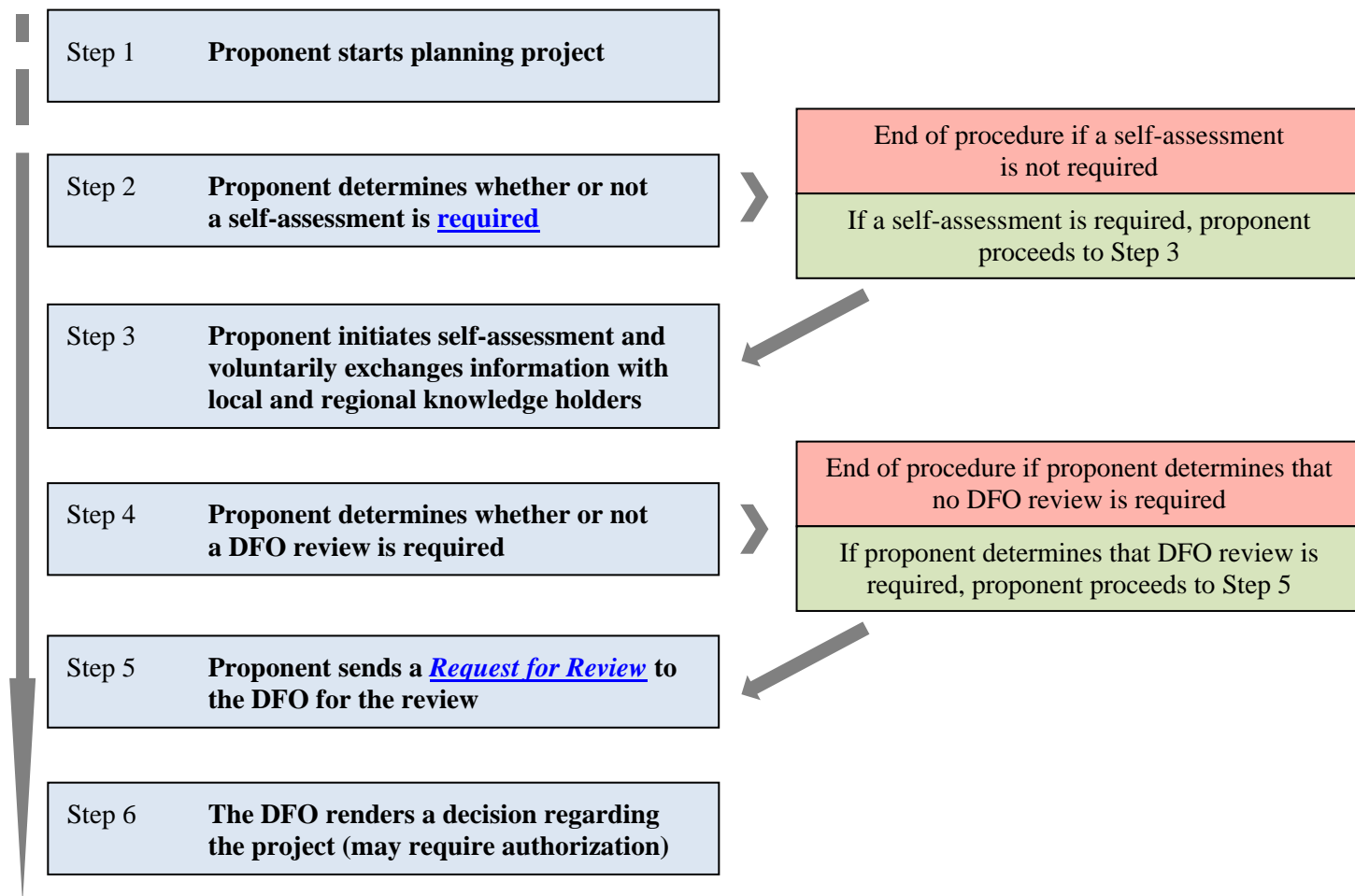
- ⇒ The *Voluntary Information Exchange Program* was developed by the JBACE as a tool to provide proponents with a means of conducting voluntary consultation. This guide outlines a unique *Voluntary Information Exchange Program* that should support project self-assessments when proponents are unsure if their projects will affect Aboriginal fisheries in the James Bay Territory.
- ⇒ The JBACE holds that an open dialogue between project proponents and the inhabitants and land users of the James Bay Territory will improve the availability of data on fish habitats, will enhance projects by providing a vehicle to adapt them to local environments and concerns, and will also foster a trusting relationship over time.

Rationale

1. Before project proponents begin planning in-field project activities, they should recognize that projects in and around the water bodies in the James Bay Territory may have an impact on Aboriginal fisheries – in this case, Cree fisheries – given that Cree family traplines cover the entire James Bay Territory, and that the Cree exercise their wildlife harvesting rights throughout the Territory.
2. Information on the fish resources and on the habitats that fish directly or indirectly depend on is not readily-available to proponents in the literature or in a Territory-specific databank or registry.
3. Proponents are responsible for the thoroughness, quality, and accuracy of their self-assessments. If, after conducting their self-assessments, proponents determine that reviews are required in accordance with the *Fisheries Act*, they must provide sufficient information regarding their project and the habitat in which it is found so that the DFO may render a decision. In such cases, proponents must also demonstrate the adequacy of measures that they intend to undertake to avoid, mitigate, and offset any anticipated impacts of their projects.
4. The timely exchange of information relating to the Territory's fish resources, and on the habitats that these fish resources directly or indirectly depend on, is crucial for all parties during self-assessments in order to ensure:
 - a) That the guiding principles of Section 22 and the Cree wildlife harvesting rights outlined in Section 24 JBNQA are respected; and,
 - b) That the potential impacts of the projects are adequately documented and accounted for by proponents.

Best practice guide for project proponents active in the James Bay Territory:
Voluntary Proponent-driven Information Exchange Program for the Self-Assessment of Projects subject to the *Fisheries Act*

Diagram of the voluntary proponent-driven information exchange program for the self-assessment of projects subject to the *Fisheries Act* in the James Bay Territory (as recommended by the JBACE)



N.B.: If proponents are unsure of the decisions they are to take following their self-assessments, they may contact the DFO’s regional office in Québec for additional guidance:

Fisheries Protection Program – Department of Fisheries and Oceans Canada
850, route de la Mer, PO Box 1000
Mont-Joli, Québec
Canada G5H 3Z4
Tel.: 1-877-722-4828
Fax: 418-775-0658
Email: habitat-qc@dfo-mpo.gc.ca

III. Guidance for proponents – Undertaking the voluntary information exchange program for self-assessments in the James Bay Territory

Whom to contact at the outset of project self-assessments in the James Bay Territory

In order to access information regarding the fish resources and their supporting habitats in the James Bay Territory, proponents should exchange with local and regional knowledge holders. These knowledge holders may include local and regional administrations, outfitting and tourism organizations, and – most importantly – Cree Tallymen and Cree land users. By communicating with local and/or regional knowledge holders through the auspices of the voluntary information exchange program, 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.

However, proponents should first contact the Cree Nation Government. This government can then direct proponents to the various organizations and resource persons who may assist them in obtaining the necessary information relating to the fish resources, and to the habitats that these fish resources directly or indirectly depend on, in their respective project areas.

Contact point for proponents:

Cree Nation Government

Department of Environment and Remedial Works

277, Duke Street – Suite 100

Montreal (Quebec) H3C 2M2

Tel.: (514) 861-5837

Fax: (514) 861-0670

Website: www.gcc.ca

For example purposes, the Cree Nation Government may then direct proponents to the following land and regional knowledge holders:

- The Cree Trappers' Association;
- The Cree Outfitting and Tourism Association;
- A Local Environment Administrator;
- A specific Cree Tallyman;
- A specific Cree land user or community member.

Other sources of information

As mentioned throughout this document, the JBACE suggests that proponents seek to exchange information with several local and regional knowledge holders as identified by the Cree Nation Government. It is suggested that proponents should not rely on the insights of only one individual knowledge holder. Several sources may provide complementary insights and may also provide proponents with a clearer understanding of the conditions in and around their project sites.

The JBACE also recognizes that proponents may need to seek information from other sources (e.g. provincial ministries, municipal bodies). The JBACE strongly encourages them to do so.

How to exchange information during project self-assessments in the James Bay Territory

Before any in-field works commence, proponents should initially communicate the known details of their projects to the Cree Nation Government. Proponents should also outline what details are unknown regarding fish and fish habitats to them and those that may require in-field visits or studies.

The JBACE is mindful that all project details may not be fully known to proponents in advance.

A balance must be sought between early and upstream exchanges of information between proponents and the knowledge holders and foreseeable and sufficiently-detailed project work plans and activities. As a minimum, proponents should be prepared to provide the Cree Nation Government with project plans that ensure that their locations may be situated on the landscape. To the extent possible, they should outline the intended work schedules for their projects and describe any project-related developments that may be required (e.g. camps, equipment laydown areas). The information exchange should help proponents identify and evaluate potential risks or threats to fish and fish habitat, measures to avoid or to mitigate harm, and strategies to limit conflicts with Aboriginal or recreational fisheries.

Proponents are encouraged to make use of visual and geographic aids and plain-language summaries. And, to further facilitate an open exchange of information, proponents should be prepared to produce the above-mentioned project information in the language requested (e.g. French, English, or Cree).

The Cree Nation Government will review the project information provided by proponents. Depending on the adequacy and clarity of the information, this government may suggest that additional information be produced. The Cree Nation Government will then direct the proponents to the relevant knowledge holders in order to exchange the necessary information relating to the projects and water bodies or habitats in question.

⇒ [Appendix II](#) provides examples of questions to be posed and of what kinds of information should be exchanged between proponents and the knowledge holders.

Key issues that proponents should consider when initiating information exchanges

1. Flexibility on the format of the exchange

No two projects, no two water bodies, and no two fisheries are identical. In the spirit of relationship-building, proponents should thus be prepared to collaborate with the knowledge holders to determine the best means of facilitating the exchange of information. This may occur through correspondence, in-person meetings, site visits, or interviews. Proponents should also allow for enough time to plan their information exchanges with the knowledge holders.

⇒ [Appendix II](#) offers examples of the various means or formats of information exchange.

2. Record keeping

The JBACE suggests that the exchanges of information during self-assessments in the James Bay Territory should be documented by proponents. This information may be provided to the DFO if a proponent is of the opinion that a DFO review is required under the *Fisheries Act*. Indeed, well-documented exchanges may be desirable for all parties:

- ⇒ The records may serve as the bases for the determinations made by proponents regarding the potential impacts of their projects, and for their determinations concerning the need (or not) for DFO reviews.
- ⇒ If proponents determine that their projects require DFO reviews, the records may include some of the information required by the DFO for the reviews (see Sections A to D of the DFO's [Request for Review form](#)).
- ⇒ If proponents determine that their projects do not require DFO reviews, the records may serve as supporting information. In such cases, proponents are not obligated to transmit the records to the DFO. However, these proponents may opt to retain the records as references given that they assume full responsibility for such determinations (i.e. that projects do not warrant DFO reviews).

Moreover, the JBACE encourages proponents to validate their records with the knowledge holders that assisted them in their self-assessments as a matter of respect and of best practice (especially when proponents determine that no DFO reviews are required). The JBACE believes that such practices can improve projects by helping proponents to adapt them to local environments and concerns, and can help foster a trusting relationship over time between proponents and land users in the James Bay Territory.

3. Confidentiality

Project proponents and knowledge holders should focus their information exchanges on the fish resources, and the habitats that these resources directly or indirectly depend on, in and around the intended project sites.⁶ The JBACE encourages both parties to focus primarily on these elements and to avoid the treatment of information that may be particularly sensitive and confidential (e.g. prized fishing locations).

However, in the event that such sensitive and confidential information must be exchanged, proponents should determine, in collaboration with the knowledge holders, how best to ensure that this information remains as such. Again, proponents should be prepared to allow for sufficient time in the planning of their projects to properly consider this issue along with the knowledge holders. When necessary, proponents may need to commit to such arrangements through confidentiality agreements.

The records of the information exchanges should not prejudice the knowledge holders' confidentiality, or the quality of the self-assessment.

However, proponents should also note that the DFO has means to protect the confidentiality of information it receives, but that such confidentiality must comply with the provisions of the *Access to Information Act* (RSC 1985 c. A-1). It is strongly suggested that proponents contact the DFO before any such confidential information is sent to the DFO, in order to determine how it can be kept confidential.

⇒ [Appendix II](#) provides some additional insights on the issue of confidentiality.

⁶ Proponents should be mindful that these elements are indeed required by the DFO for project reviews. Again, see the DFO's [Request for Review form](#).

Appendix I Map of Cree Traplines by Community



Cree traplines by community

	Chisasibi		Nemaska		Waswanipi
	Eastmain		Ouje-Bougoumou		Wemindji
	Mistissini		Waskaganish		Whapmagoostui

Limits

- Southern limit of JBNQA Territory
- The Washaw Sibi Eeyou Association is temporarily based in Amos
- Border

Sources

Base map, BDGA 5m
 Traplines, Cree Nation Government

0 45 90 km

Scale : 1 : 4 500 000
 Map projection : Conique de Lambert, NAD83
 Produced by : Groupe conseil Nutshimit-Nippour, June 2016

Comité consultatif pour l'environnement de la Baie James
 James Bay Advisory Committee on the Environment
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Appendix II Suggested questions and formats for the exchange of information, and additional insights regarding confidentiality

Examples of relevant questions that proponents may pose knowledge holders

Project proponents are wholly responsible for the identification and evaluation of the potential risks and impacts of their projects. As such, proponents should focus their questions for the knowledge holders on the fish resources in and around their intended project areas, and on the habitats upon which these resources depend directly and indirectly. Proponents should also note who assisted them, in the event that the information must be validated or revisited at a later date.

If multiple water bodies or habitats may be affected by a project, similar questions should be posed for each of them. The following example questions may be used by proponents to focus on fish resources and Aboriginal fisheries, in this case, Cree fisheries:

- What fish species and habitats are there in the project area? [*Proponents should provide a map*]

- Do you know if the project area is connected to other water bodies, and whether fish can swim between them? [*Proponents should provide a map*]

What species are found in the project area?

Are the species reserved for the exclusive use of the Cree? [*Proponents should refer to Schedule 2 of Section 24 of the JBNQA for the list of reserved species*]

**Best practice guide for project proponents active in the James Bay Territory:
Voluntary Proponent-driven Information Exchange Program for the Self-Assessment of Projects subject to the *Fisheries Act***

Can you provide information on fish populations and on the presence of sensitive species, or on species that have a special status, in the project area (e.g. abundance, distribution, age classes)?

Can you provide information on the type of habitat and other species that support these fish resources in the project area (e.g. riparian and aquatic vegetation, benthic invertebrates)?

Can you provide information on species that prey upon or are prey to fishery species in the project area?

- In the project area, does the habitat in question directly or indirectly support an Aboriginal fishery?
[Proponents should provide a map]

Where, when, how, how important is the habitat for the fishery?

What type of habitat is it (e.g. spawning ground, nursery habitat)?

Best practice guide for project proponents active in the James Bay Territory:
Voluntary Proponent-driven Information Exchange Program for the Self-Assessment of Projects subject to the *Fisheries Act*

Are there specific times when sensitive areas (e.g. spawning ground, nursery habitat) should not be disturbed?

- Are you aware of any local characteristics or of any physical or environmental factors in the project area that have a major influence on fish and fish habitat (e.g. existing structures and obstacles, local water and vegetation conditions, ice conditions)?

Are there other projects or man-made infrastructures that are affecting the project area? If yes, how is the area affected? If no, are the fish resources and fish habitats in the area under distress from any other local factors?

- Do you have any other insights relating to the project area and the water body in question?

- What information do you feel should remain confidential?

- In order to properly document the information-exchange and to maintain communication with those who helped in the self-assessment, would you be open to exchange with us at a later date in order to validate the information that you provided? Can we keep your contact information for this purpose?

Best practice guide for project proponents active in the James Bay Territory:
Voluntary Proponent-driven Information Exchange Program for the Self-Assessment of Projects subject to the *Fisheries Act*

Examples of various means or formats of information exchange

To build relationships, proponents should collaborate with the knowledge holders and fix the means of facilitating exchanges. This may take time. It is suggested that proponents cooperate with the knowledge holders, once the proponents have been directed to them by the Cree Nation Government, to determine how much time is sufficient to resolve this issue.

Some knowledge holders may be willing to exchange information by written correspondence. Others may prefer in-person meetings. Three general formats for the exchange of information are provided in the table below. Proponents should remain flexible and are encouraged to use several of these formats.

However, in-person discussions are a proven means of building relationships. And, written correspondence, on its own, is **not** suggested.

Formats for the exchange of information with knowledge holders	Potential advantages	Potential disadvantages
In-person and on-site discussions and interviews	<ul style="list-style-type: none"> - Very personal approach and conducive for relationship-building; - Exchanges may occur quickly. 	<ul style="list-style-type: none"> - Requires resource and logistical support; - Exchanges may have to be recorded manually.
Verbal correspondence from a distance (e.g. telephone interviews, teleconferences, and videoconferences)	<ul style="list-style-type: none"> - Requires less resource support; - Exchanges may occur quickly; - Exchanges may be immediately recorded. 	<ul style="list-style-type: none"> - Less personal approach and less conducive for relationship-building; - Requires some logistical support; - Knowledge holders may be reluctant to participate (some may refrain altogether); - Oral communications from a distance may require clarifications and may pose problems when maps and documents must be interpreted.
Written correspondence (e.g. surveys and questionnaires via the mail, via a website or by E-Mail)	<ul style="list-style-type: none"> - Requires the least resource and logistical support; - Exchanges may be immediately recorded. 	<ul style="list-style-type: none"> - Impersonal approach and not conducive for relationship-building; - Knowledge holders may be reluctant to participate (some may refrain altogether); - Knowledge holders may not fully understand the nature of the project, or of the information requested of them by the proponent, when solicited in writing; - Written surveys and questionnaires may limit an open dialogue; - Exchanges may occur slowly or not at all.

Additional insights on the issue of confidentiality

The exchange of information between proponents and the knowledge holders should focus on the fish resources, and the habitats that these resources directly and indirectly depend on, in and around the intended project sites. The JBACE encourages both parties to focus primarily on these elements. In some cases, this may help avoid having to treat particularly sensitive and confidential issues (e.g. prized fishing locations). Having said this, in other instances, the exchange of confidential information between proponents and the knowledge holders may be required.

For general information regarding confidentiality issues relating to the Cree people, proponents may communicate with the Cree Nation Government at the outset.

However, only upon reviewing the questions provided to them by the proponents can the knowledge holders identify what information should remain sensitive or confidential.

And so, while establishing the formats for the information exchanges with the knowledge holders, proponents should also determine how best to ensure that this information remains confidential. Proponents should schedule for this task in collaboration with the knowledge holders, in order to allow for sufficient time to resolve this issue.

Once the confidential information has been identified, proponents and the knowledge holders may opt to formalize an agreement to that effect. Such agreements are encouraged insofar as they provide legal safeguards against the public disclosure of the confidential information.

Agreements regarding the treatment of confidential information are not new. Several Aboriginal organizations have established research protocols that consider the issue, and a number of agreements – also referred to as ‘protocols’ – have been signed for projects occurring in the James Bay Territory with the collaboration of the Cree people.

Although not specific to project self-assessments that are to occur in the James Bay Territory under the *Fisheries Act*, the following research protocols offer guidance on how to deal with the exchange of confidential information with Aboriginal peoples:

- ⇒ In 2014, the Assembly of First Nations Quebec-Labrador published the [*First Nations in Quebec and Labrador’s Research Protocol 2014*](#).
- ⇒ In 2007, the Inuit Tapiirit Kanatami and the Nunavut Research Institute published [*Negotiating Research Relationships with Inuit Communities: A Guide for Researchers*](#).

Best practice guide for project proponents active in the James Bay Territory:
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Finally, as an example of a signed confidentiality agreement for a project in the James Bay Territory, proponents may refer to the following:

- ⇒ In June 2005, the Cree Nation Government,⁷ the Cree Trappers' Association and the Government of Canada signed the *Protocol on Migratory Bird Harvesting Data Collection and Sharing* for a research project that relied on the participation of the Cree.

Among other things, the protocol sets out how the parties involved would approach Cree community members, including Elders, and how confidential and sensitive local and traditional knowledge would be treated and safeguarded.

⁷ At the time, this government was entitled the 'Cree Regional Authority.' Proponents may contact the Cree Nation Government for general information regarding the signing of this protocol.