



MINUTES OF THE 206th MEETING OF THE JAMES BAY ADVISORY COMMITTEE ON THE ENVIRONMENT

ADOPTED ON SEPTEMBER 26TH 2018

- DATE:** March 13th 2018
- PLACE:** JBACE Secretariat in Montreal (1080 Beaver Hall – Office 1420)
- PRESENT:** Manon Cyr, Québec (via videoconference)
Annie Déziel, Canada
Caroline Girard, Canada
Chantal Otter Tétreault, Cree Nation Government (CNG)
Kelly LeBlanc, CNG
Jean Picard, Canada
Melissa Saganash, CNG, Chairperson
Jean-Yves Savaria, Canada
Mélanie Veilleux-Nolin, Québec (via videoconference from [Point n° 6](#) onwards)
- Graeme Morin, Environmental Analyst
- ABSENT:** Andy Baribeau, CNG
Pascale Labbé, Québec
François Provost, Québec
- OBSERVER / GUEST:** Josée Brunelle, Analyst for the Hunting, Fishing and Trapping Coordinating Committee (HFTCC)
Miles Smart, Secretary-Treasurer, HFTCC
- PRESENTERS:** Mélanie Chabot & Marie-Emmanuelle Rail - Chargées de projet, Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC) for [Point n° 6](#)

1. ADOPTION OF THE AGENDA AND MINUTES OF THE 205TH MEETING (NOV. 27TH IN QUÉBEC CITY)

After an introduction by the Chairperson and with the addition of two items to the 'Varia' section as proposed by the Analyst, the amended agenda was adopted on motion by Chantal Otter Tétreault, seconded by Annie Déziel.

The adoption of the minutes of the 205th meeting is deferred to the next meeting.

2. PRESENTATION ON BILL C-68 AN ACT TO AMEND THE FISHERIES ACT AND OTHER ACTS IN CONSEQUENCE (BY JEAN-YVES SAVARIA)

Mr. Savaria underscored that the presentation would focus on the elements that are of greatest concern for the JBACE. He then confirmed that the Bill has advanced rapidly through the parliamentary process – a process over which the Department of Fisheries and Oceans (DFO) has no control. The Bill is now in its second reading in the House and will be sent to the Parliamentary Standing Committee on Fisheries and Oceans for review shortly. He then outlined the proposed changes to the Act as proposed in the Bill (not exhaustive).

Focus of the Act

The Bill seeks to restore lost protections following the revision of the *Fisheries Act* (hereafter, 'Act') in 2012, to provide a clear roadmap for proponents regarding its application, to ensure sustainability of resources coupled with sound fisheries management, and to ensure robust protection and conservation of fish and fish habitats. The prohibition against causing serious harm to fish and references to commercial, recreational, and Aboriginal fisheries are repealed. Prohibitions against causing death and the harmful alteration, disruption or destruction (HADD) of fish and fish habitat are re-introduced. The definition of 'fish habitat' is revised again to ensure that it includes all fish habitat in Canada.

Decisions and agreements on the application of the Act

When making decisions, the Minister may use a precautionary and/or ecosystemic approach when applying the revised Act. He may also consider the sustainability of fisheries, scientific information, traditional and community knowledge, cooperation with other bodies, socioeconomic and cultural factors, the independence of licence holders, and gender-based analysis (including analysis on other societal groups).

New provisions confirm that the Minister must consider any adverse effects that decisions may have on Aboriginal rights, and ensure that the Act would not abrogate or otherwise affect the rights of Aboriginal peoples as affirmed in the *Constitution Act*. Moreover, when making specific decisions regarding fish and fish habitat, the Minister must also consider: the contribution to the productivity of fisheries made by the fish or fish habitat that is likely to be affected by a project, management objectives, measures and standards to avoid, mitigate or offset HADD, cumulative effects, fish habitat banks,¹ and traditional knowledge. Provisions on how to protect traditional knowledge that the Minister receives or uses, and on how to disclose it, are included.

Other changes would serve to expand the Minister's ability to enter into agreements for the application of the Act with Aboriginal bodies and bodies established under land claim agreements (e.g. co-management boards). Others allow more flexibility to make use of equivalency provisions with legislation applied by non-provincial entities (e.g. laws established by an Aboriginal government).

¹ As approved by the DFO and generally applicable for recurrent applicants for authorizations.

Regulations

A new risk-based regulatory regime is introduced. Permits will be required for designated projects that pose high risks of HADD. This will complement the current practice of issuing letters of advice and authorizations. Authorizations will be needed for projects posing appreciable risk for HADD, and Codes of Practice will apply for routine projects that pose low risks for HADD. By employing the Codes of Practice, and the measures prescribed therein to avoid HADD, proponents can also avoid having to request an authorization. Because proponents are fully responsible for getting an authorization if their activities will cause HADD, Mr. Savaria confirms that proponents may still need to undertake a form of in-house 'self-assessment' in order to ensure that they do not require an authorization.

Although the specifics need to be hashed out, proposed changes will enable the Minister to identify ecologically significant areas in which the carrying on of works is prohibited unless authorized. Other changes will support the creation of marine refuges by allowing for their creation under the auspices of the Act,² and would afford more regulatory authority to combat aquatic invasive species.

Access to information

A public registry will be created, to host all publicly-accessible information on projects covered by the Act. The potential for establishing links between the said registry and that of the Canadian Environmental Assessment Agency, for the same project, has yet to be defined.

Fishing management

Several changes to the Act will enhance judicial authority and enforcement powers, target fishing gear compliance, and allow for the cancellation or suspension of fishing licences for unpaid fines. The fishing of cetaceans for the purposes of taking them into captivity would be prohibited (even if injured or in distress), unless authorized by the Minister, and the Minister may also establish regulations limiting the import of all fish (including cetaceans).

Mr. Savaria concluded by stating that the file is moving swiftly through the Parliamentary Process. He confirmed that we can send our comments to the Standing Committee on Fisheries and Oceans and to the DFO. The Analyst is thus instructed to analyze the Bill quickly and to communicate with the HFTCC prior to drafting an analysis note for the Subcommittee tasked with the file. A request to be included in the anticipated parliamentary hearing will also be prepared.

² As opposed to the current practice of including restrictions to certain areas as conditions applicable to licensees.

3. PRESENTATION ON BILL C-69 AN ACT TO ENACT THE IMPACT ASSESSMENT ACT AND THE CANADIAN ENERGY REGULATOR ACT, TO AMEND THE NAVIGATION PROTECTION ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS (BY ANNIE DÉZIEL)

Ms. Déziel stated that the Bill will introduce a wholly-new *Impact Assessment Act* (IAA), repealing the *Canadian Environmental Assessment Act – 2012*, and confirmed that her presentation would cover only that aspect of the Bill. She then proceeded to outline the major facets of the proposed IAA (not exhaustive).

Application and focus of the IAA

The IAA will apply for projects subject to a revised Designated Project List.³ It is built on the principles of sustainability. Impact Assessments (IAs) thereunder will focus on a wider scope of impacts than before. The ‘sustainability’ aspect will include considerations of financial, sociocultural, environmental, and health aspects. Gender analysis will occur. The IAs will also have to account for and protect traditional knowledge and Aboriginal rights.

Coordination and early engagement

The Canadian Environmental Assessment Agency (hereafter, ‘Agency’) will be the sole responsible federal authority for the conduct of IAs of designated projects. The National Energy Board and the Canadian Nuclear Safety Commission will retain their regulatory responsibilities and will remain key participants in IAs for projects under their regulatory purview; but, the Agency will be the lead coordinating authority. It is intended that this should allow for greater consistency. The Major Project Management Office should still operate, although the details of its future coordination responsibilities still need to be clarified.

New timelines will apply and a new early engagement phase, prior to developing a project notice, is provided. Consultation will be required during this phase, allowing for the early identification of the regulatory landscape applicable for projects, and of public and Aboriginal concerns before the Agency determines if an IA is required. In so doing, the ‘directives’ or ‘terms of reference’ for the IAs of designated projects are intended to be more tailored to each project as a function of the early engagement phase.

There is no longer any mention of ‘equivalence’ in the IAA. To avoid undue duplication when several assessment and review procedures apply to the same project, and to further empower and involve Aboriginal communities, the IAA will allow more possibilities to setup agreements with Aboriginal entities to enable them to undertake or take responsibility for all or part of an IA (e.g. assessment of a project’s impacts on Aboriginal rights, or monitoring activities). To allow for this, a regulation will be required under the IAA, and an agreement will need to be signed between the Agency or the Minister and the Aboriginal entity in question. The government is also looking into means of supporting the capacity of Aboriginal entities to take such responsibilities.

Participation and consultation

The IAA emphasizes public participation during IAs, affording opportunities to all Canadians as opposed to only ‘interested persons,’ per the current legislation. New requirements for

³ This will require the revision of the *Regulations designating physical activities*.

Aboriginal consultation are provided, including the obligated submission of a consultation plan by proponents to the Agency along with their impact statements. Participant funding will remain and the registry will be updated. Plain language project summaries are also envisaged, but the IAA does not specify if proponents or the Agency will produce these.

An Aboriginal Advisory Committee and a Technical Committee will be created. Per the JBACE members, the Advisory Committee should be representative of Aboriginal communities across Canada (e.g. if only the national organizations are target for inclusion in the Advisory Committee, it may not be representative of all Aboriginal communities in a given province or territory). The formation of regional sub-committees may resolve this concern. Despite this, the Advisory Committee is proposed as an added consultative tool to improve the quality of IAs; it is not intended to replace other means of Aboriginal inclusion and consultation during IAs.

Regional assessments

Provisions for regional assessments, coordinated by the Agency with room for the involvement of outside players, are retained in the IAA. Although the Bill does not elaborate at length on how they will be conducted, the Agency is aware of the interest that they occur.

Decisions

Decisions will have to be based on a wider scope of considerations under the IAA. The Minister's obligation to consider Aboriginal rights when making a decision under the IAA will now be entrenched in the legislation (it is discretionary under the current legislation). Traditional knowledge, sustainability, and public interest must also underpin decisions made under the proposed Act. Justifications and reasons for decisions must be made public.

Ms. Déziel concluded by confirming that the parliamentary process is similar to that applicable for the revision of the *Fisheries Act*. Comments on the Bill are sought by April 15th 2018. The Analyst is thus instructed to analyze the Bill as well as the consultation document regarding the approach to the revision of the 'Project List.' It is agreed that the JBACE should seek to be included in the parliamentary hearings and that this file is a priority requiring immediate attention by the attendant Subcommittee in order to orient work according to the concerns of the JBACE.

4. REGULATIONS FOR THE IMPLEMENTATION OF THE REVISED ENVIRONMENT QUALITY ACT

The Analyst confirmed that the MDDELCC recently published a series of twenty-four draft regulations for the implementation of the *Environment Quality Act* (EQA). They are subject to a 60-day consultation (ends on April 16th 2018). He then offered an overview thereof, drawing on insights gleaned from an information session held on March 5th 2018 by the MDDELCC in Montreal. The majority of the regulations include changes simply to allow for coherence with the new article numbering scheme of the revised EQA. As such, only four of them require analyses – in particular, the regulation prescribing a new authorization regime. The expected draft regulation on Strategic Environmental Assessment (SEA) has not been published.

The Analyst is thus instructed to proceed with the preparation of comments on the draft regulations that are of greatest concern for the JBACE.

On recommendation from a member, and given that the JBACE is involved in several federal and provincial legal and regulatory amendment initiatives, it is agreed that the Committee should closely focus its attentions on those initiatives and elements thereof that are of greatest concern (e.g. Subcommittee on the *Fisheries Act* should focus on aspects relating to self-assessments in the context of Bill C-69 as opposed to other aspects thereof).

5. GROUP INSURANCE POLICY FOR EMPLOYEES (JOINT POLICY WITH THE HFTCC)

The Administrative Committee provided an update on the file. Several counter-quotes are being sought – in line with the change of financial institutions – to ensure that the pricing is competitive. A joint discussion with the HFTCC was held, but more discussion is required.

The Administrative Committee will champion the file and will, per the suggestion of a member, hash out the percentages that may eventually be paid by the employer and the employees.

6. PRESENTATION ON THE MDDELCC'S ENVIRONMENTAL ASSESSMENT AND REVIEW REGISTRY (BY MÉLANIE CHABOT AND MARIE-EMMANUEL RAIL, AND ACCOMPANIED BY MÉLANIE VEILLEUX-NOLIN – VIA VIDEOCONFERENCE)

Following a roundtable, Mélanie Chabot confirmed that the said provincial registry will be online on March 23rd 2018. The revision of the EQA served as an added impetus for the creation of the registry despite its being an intention of the ministry for several years. It will be the platform on which documents relating to environmental assessments (EAs) throughout the province will be made available, serving to improve the public's access to information on EAs and the transparency thereof. Great care was taken to ensure that it is easy and straight-forward to navigate and to maintain up to date.

With the new EQA, documents will be uploaded to the registry as soon as they are available – opposed to the previous procedure where documents were only uploaded to the Bureau d'audiences publiques en environnement's registry once the public information period commenced for EAs subject to the southern procedure. Now, the public can track the material from the beginning through to the end of the EAs – for northern and southern projects. She then presented the registry and answered several questions, outlining what documents will be available directly on the registry or hosted on other websites but linked to the registry (not exhaustive):

- For the northern projects, the legal basis for making EA-related documents public on the registry is not the same as for the South for which a provision is made to that effect in the revised EQA. Instead, an administrative procedure will be used for the northern projects, whereby the MDDELCC will obtain permission from proponents to put materials on the web. This administrative procedure is already used for the uploading of such documents on the COMEV, COMEX and Kativik Environmental Quality Commission websites. It is expected that this procedure will be sufficient for the time being.
- Persons can search for projects in several ways (keywords, sector, via a map) and can sign in for email alerts as new projects are added to the registry or as new documents are added to each project's entry. Project entries can also be sorted by date, by sector, or proponent.

- Each project entry will include the preliminary information provided by proponents, directives, impact statements and their supporting studies, certificates of authorization issued by the provincial Administrator (along with modifications to these authorizations), and materials related to monitoring.
- A list of ongoing consultations is provided. If consultations occur for the drafting of the directives or during the review of northern projects, the registry will provide links to the relevant Section 22 bodies' website where the documents relating to these consultations will be hosted. Links to these bodies' review reports will also be provided in the registry.
- In contrast to projects in the South, the expert advices produced during the MDDELCC's analysis of the proponent's documents will not be uploaded to the registry for northern projects. This is so because these documents are assembled by the MDDELCC and sent to the provincial members of COMEV or COMEX as working documents. Only the reports produced by these bodies will be published for northern projects, not the expert advices. Again, these reports will be made available on the COMEV and COMEX websites and links will be made between them and the corresponding project entries in the registry.
- Exemption notices issued by the Administrator for projects that go through COMEV evaluations but do not proceed through to a Section 22 review will not be available on the registry, but will be accessible on the COMEV site.
- The ministerial authorizations for projects will not be included in the EA registry. The MDDELCC is developing another platform for this purpose. The possibility of including links between the same projects on both platforms is under consideration.
- The registry will only be in French. But because the COMEV and COMEX websites provide material in English, in French and in Cree, a wealth of project-related information will nevertheless be available.

Ms. Chabot concluded by stating that the improvement of the registry will be an iterative process – all comments and suggestions are welcomed. The MDDELCC is thus very open to table suggestions thereon, particularly in the context of improving user-friendliness and facilitating the user's understanding of where to find project-related information (i.e. which platform hosts which document).

7. FOLLOW-UP ON WORK FILES N° 1

a. Strategic Plan 2018-2023

The Analyst outlines the progress made by the Subcommittee to date. Among other things, the Subcommittee is evaluating previous strategic plans and action plans to determine residual elements that should be retained, determining the terminology to be used and identifying JBACE actions and tasks that constitute 'normal' business, in order to devise a preliminary draft document. In order to ensure that the work proceeds well, the Subcommittee will validate the orientations and strategic considerations that it identifies with the members before proceeding onto a first draft. An in-person meeting in Québec City in April will be held for this purpose.

Given the longstanding vacancy in JBACE membership and that several Subcommittees are now short-handed, the members instruct the Analyst to prepare a letter urging the party in question to fill the vacancy as soon as possible and to establish a means of ensuring full membership in the event of an extended absence.

- b. Review of tactical integrated forest management plans (PAFITs) 2018-2023 (reply to the MFFP for the renewed versions, and progress made by the Tables locales de gestion intégrée des ressources et du territoire - TLGIRTS⁴)

The Analyst reiterated that the JBACE intends to review the PAFITs that it will receive in the fall-winter of 2018-2019. The letter drafted to this effect for the MFFP will be commented by the members in the coming days.

Two members question the need to obtain an update on the progress made by the TGIRTS at this stage given the above. It is agreed that the letter drafted for this issue be set aside for the time being, and that the Subcommittee should first reflect thereon and on the next steps on the file. The members also agree that the Subcommittee on Forestry and the Subcommittee on Woodland Caribou ([point n° 7c](#)) should hold a joint work session given the links between the two files.

- c. JBACE opinion regarding Woodland Caribou (work to be conducted by the Subcommittee, and translation of the expert's report)

The Analyst voiced his concerns regarding the JBACE's mandate and its continued intervention in the file. He mentioned that other bodies may be best-placed to champion the file given their mandates regarding the management of wildlife resources. Evidently, room still exists for the JBACE to intervene on Woodland Caribou when viewed in from the angle of its mandates regarding relating to the forest management planning and the environmental and social protection regime.

The members note that priorities will need to be established and that the Subcommittees on Forestry and Woodland Caribou should discuss this jointly. As stated in [Point n° 7b](#), a joint work session will thus be held. The Subcommittee will also discuss the issue of the translation of the expert's report and of next steps stemming from the report.

8. FOLLOW-UP ON WORK FILES N° 2

- a. MERN⁵ Aboriginal community consultation policy for the mining sector

The Analyst confirmed that the JBACE's comments on the policy were sent to the MERN on February 20th 2018. The MERN confirmed receipt thereof and will work to address the JBACE's comments.

⁴ Local Integrated Land and Resource Management Panels (LILRMPs).

⁵ Ministère de l'Énergie et des Ressources naturelles

b. JBACE guidance document on public participation for proponents

The Analyst will work to prepare the document as soon as possible, preferably before the end of the month, in time for the next JBACE meeting. He reminded the members to provide their suggestions regarding the distribution list for the eventual dissemination of the document.

c. Study on cumulative effects (best practices for regional assessments)

The file is on hold and will need to be restarted given the interest therein and given that the file has been identified as a strategic area of intervention for the JBACE. The members concur that the first step will be to reanimate the JBACE's Subcommittee.

d. Follow-up on Ouranos' climate change report

The members agree with the Chairperson that the Subcommittee will need to move forward with discussions regarding the dissemination of results and the drafting of plan-language and interactive deliverables that are tailored to community members in the Territory. Work on this file will also align with the JBACE's envisaged strategic orientations regarding climate change and the dissemination of environmental information.

9. DISCUSSION ON THE STEPS MADE REGARDING HUMAN RESOURCES

The Chairperson and a member summarize the progress made to fill the vacant position at the Secretariat. Targeted interviews will be entertained by the Administrative Committee, with the assistance of the consultant retained to assist therein, in the coming days. The Administrative Committee will recommend the employment of a selected candidate(s) to the JBACE members thereafter. This exercise will be complemented by the Administrative Committee's work on drafting tools to assist administrative functions; namely, a salary scale.

10. VARIA

a. Request for update on the progress made regarding the revision of Schedules 1 and 2 of Section 22 of the JBNQA (response from the CNG/GCC still pending)

The JBACE's letter requesting an update on the matter has been received by all of the parties. The matter is closed.

b. Invitation from ECCC⁶ to obtain a presentation on the Canada-Québec agreement on the equivalency of wastewater treatment systems

The Analyst summarized the invitation received by the Secretariat via email on February 26th 2018, with reference to his information-note dated March 1st. Given that the nature of the said agreement modifies administrative protocols but does not alter the degree of environmental oversight for wastewater facilities, it is deemed that a presentation is not required. The members agree that such a presentation may be of interest to the Cree Nation Government and the Eeyou Istchee James Bay Regional Government. The Analyst is

⁶ Environment and Climate Change Canada

instructed to draft a letter confirming this course of action for the ECCC representative with whom he corresponded.

- c. 26th Annual Congress of the Association québécoise pour l'évaluation d'impacts (AQEI)

The Analyst reminded the members of the upcoming congress on May 3rd-4th 2018 in Québec City. He will forward the AQEI's announcement and related information to the members after the meeting and will determine if his presence is warranted given his workload.

- d. Invitation to participate on the Steering Committee for the drafting of a regional climate portrait to support impact analysis and adaptation to climate change in the Eeyou Istchee James Bay Territory – initiative of the MTMDET⁷

The Chairperson, a member, and the Analyst summarize the invitation received by the Secretariat on February 21st 2018. The members agree that the Analyst should participate in the project and provide the members with updates and information thereon as it progresses. The members may always re-evaluate the status of his participation as warranted. The Analyst is instructed to confirm his participation to the project manager.

11. NEXT MEETING

The members confirm that the next meeting should occur in Oujé-Bougoumou, between the 11th and 15th of June. The Analyst is to confirm the exact date via email following the meeting.

Graeme Morin – JBACE Analyst

⁷ Ministère des Transports, de la Mobilité durable et de l'Électrification des transports.