REVIEW OF ENVIRONMENTAL ASSESSMENT PROCESSES

Fall 2017

Purpose

- To provide an overview of what we've heard in reaction to the Expert Panel's report
- To summarise proposed approaches as presented in the federal discussion paper, focusing on Indigenous interests
- To seek views on the proposed approach
- To outline the next steps in the process

Participation in the Review Process

- With respect to the environmental assessment processes review, Modern Treaty groups were notified at key points in the review, including on the availability of funding to participate, the release of the panel report and the discussion paper and related comment periods.

- All submissions sent by Modern Treaty holders during the four ongoing reviews were considered.

- Opportunities to meet with Canadian Environmental Assessment Agency officials were provided to discuss the environmental assessment processes review, potential treaty implications and concerns related to the current legislation or proposed modifications.

- Various meetings were held with Modern Treaty groups

Topics for Discussion

- Which projects are assessed
- Parameters of assessments
- Governance of assessments
- Jurisdictional cooperation
- Role of Indigenous Peoples in decision-making
- Participation in assessments
- Capacity and relationship building
- Transparency
- Science and evidence
- Indigenous knowledge
- Compliance, monitoring and follow-up
- Cumulative effects

Which Projects are Assessed

What we heard

- Assessments should focus on projects that are likely to have the greatest potential impacts, in a way that respects federal and provincial jurisdiction
- Concept of a project list is beneficial in terms of providing clarity and certainty
- Existing project list does not capture all of the projects that should be assessed
- Enhance rigour and transparency for projects on federal lands

Proposed approach

- A new requirement for an early planning and engagement phase, led by proponents with clear direction from government, to support better-designed project proposals and more effective assessments, **and to seek consensus on the project assessment process**
- Maintaining authority to designate a non-listed project that **could have adverse impacts** on areas of federal jurisdiction where warranted, based on clear criteria and a more transparent process
- **Reviewing the Project List** Regulations and establishing criteria and a transparent process to periodically review and update the Project List to ensure those types of major projects that have the greatest potential impacts in areas of federal jurisdiction are assessed

Parameters of Assessments

What we heard

- Broaden scope of impacts considered (e.g. environmental, social, economic, health, and cultural impacts)
- General support for sustainability assessment, though concerns with how best to apply such an approach
- Impacts on Indigenous peoples remain a priority

Proposed approach

- **Broadening the scope of assessment** to include environmental, economic, social and health impacts to support holistic and integrated decision making
- Consistent use of **gender-based analysis + (GBA+)** in assessments to better understand impacts on communities (e.g., the influx of people in a temporary work camp)
- Strengthening existing provisions that explicitly require assessment of **impacts on Indigenous peoples**
- Considering both **positive and negative impacts** of a project in the assessment process

Governance of Assessments

What we heard

- Differing opinions on the Expert Panel's recommendations for a single, independent authority and decision making model
- Broad support for a single authority, with some views that expertise would be lost if the Canadian Nuclear Safety Commission (CNSC) and the National Energy Board (NEB) were no longer responsible authorities
- Some support for arms-length independent decision-making, while others felt elected officials are best placed to make decisions

Proposed approach

- **Establishing a single government agency** responsible for impact assessments and **coordinating Crown consultations** from those assessments
- For major energy transmission, nuclear, and offshore oil and gas projects, the agency and life- cycle regulators would **jointly conduct impact assessments as part of a single, integrated review process**
- **Advisory committees** for Indigenous peoples, stakeholders and experts to provide advice to the Minister on issues related to impact assessments

Jurisdictional Cooperation

What we heard

- Importance of working to achieve “one project, one assessment”
- Incent cooperation with provincial and Indigenous processes
- Differing opinions on substitution
- Need to consider role of lifecycle regulators
- Important that federal, provincial and Indigenous environmental assessment decision-making remains consistent with a jurisdiction's area of responsibility
- Compatibility of future impact assessment legislation with modern treaties is important

Proposed approach

- Cooperation agreements with jurisdictions, including **Indigenous**, to advance and support “one project – one assessment”
- Developing new provisions **to enable substitution with Indigenous governments**
- Ensuring that the process better **recognizes Indigenous jurisdiction, laws and practices**
- Increasing flexibility to allow the Government of Canada to defer to or harmonize with environmental assessment processes created pursuant to **Indigenous governments**

Role of Indigenous Peoples in Decision Making

What we heard

- Go beyond the duty to consult and fully implement the UN Declaration, including respecting Indigenous jurisdiction and the right to free, prior and informed consent
- Indigenous groups want to have a say in decision-making affecting their traditional territories, and to have their own jurisdiction, laws and customs respected
- Enable Indigenous involvement throughout the assessment process (e.g. representation in reviews) and seek to obtain consent
- Modern treaties may include requirements above and beyond the requirements of federal impact assessment legislation, including Indigenous consent.

Proposed approach

- Being responsive to **Indigenous rights, jurisdiction and decision making** with space created to **enable increased Indigenous involvement, including Indigenous-led assessments**
- **Early and regular engagement and participation** based on **recognition of Indigenous rights and interests from the outset**, with the objective of seeking to achieve **free, prior and informed consent through processes** based on mutual respect and dialogue
- **Direct engagement between Crown representatives and Indigenous peoples** to discuss and understand potential project impacts to facilitate early planning and issue identification

Participation in Assessments

What we heard

- Participation in assessments must be open, begin early and occur throughout all phases and across types of assessments and supported with capacity funding
- Early planning phase to enable early engagement, relationship-building, and information sharing, but caution not making it too prescriptive; also seen as a means to help subsequent issues with review: timeline, scope and participation.
- Different tools needed for participation – formal and informal – including involvement in monitoring and follow-up programs
- Indigenous participation should be “in accordance with their own laws and customs” and respect obligations and commitments under Modern Treaties

Proposed approach

- Allow for the **sharing of administrative authority and management responsibility** with Indigenous peoples in a manner similar to other jurisdictions (e.g., independent environmental monitors)
- Formalizing the **co-development of frameworks for collaboration** with Indigenous peoples on environmental assessment and regulatory processes
- Convening specific **working tables** with Indigenous peoples during assessments
- **Greater participation of Indigenous peoples** on assessment boards and review panels and in regulatory processes
- **Advisory committees** for Indigenous peoples, stakeholders and experts to provide advice to the Minister on issues related to impact assessments

Capacity and Relationship Building

What we heard

- Increased funding for project participation and new ongoing funding for capacity building needed
- Capacity for Indigenous participation is paramount
- Improve federal training and expertise, so federal officials have knowledge and cultural awareness required for effective working relationships
- Training and tools to ensure IA agency and regulators have adequate knowledge of Modern Treaties and the related obligations

Proposed approach

- Improving **participant funding programs** for Indigenous peoples and the broader public to streamline application and expand eligible activities
- Working with Indigenous peoples **to build capacity and enable their participation in assessments**
- Making science accessible to all Canadians not just the experts – by providing **plain language summaries** of the facts that support assessments
- **A single government agency** with increased capacity to coordinate Crown consultation and accommodation for federally designated projects

Transparency

What we heard

- Information, science, and data should be publicly available and easily accessible
- Greater transparency on how public input was used
- Reasons for decisions should be made public

Proposed approach

- Moving towards an open science and data platform to access and integrate the available science, evidence and Indigenous knowledge that supports environmental assessment and regulatory processes
- Protect the confidentiality of Indigenous knowledge where appropriate (e.g., sacred site locations)

Science and Evidence

What we heard

- Assessments should use and integrate the best scientific information and methods, as well as Indigenous knowledge and community knowledge
- Make information available and open to the public
- Science and evidence must be credible, valid, and transparent, whatever the source

Proposed approach

- Incorporating **Indigenous knowledge** alongside other sources of evidence
- Making science accessible to all Canadians not just the experts – by providing **plain language summaries** of the facts that support assessments

Indigenous Knowledge

What we heard

- Modern Treaties provide for equal consideration of Indigenous Knowledge and science
- Support the integration of Indigenous knowledge systems in all assessment phases
- Protect Indigenous knowledge from its unauthorized use, disclosure or release
- Elders and knowledge holders should be involved in the development of a plan for how to integrate Indigenous knowledge for each assessment
- Shift from optional to mandatory requirements to consider Indigenous knowledge
- Provide funding and resources to support Indigenous groups and Government to better enable Indigenous knowledge to be integrated into reviews

Proposed approach

- Science, evidence and Indigenous knowledge should inform project planning, assessment and decision-making, and be open, accessible and transparent
- Incorporating **Indigenous knowledge** alongside other sources of evidence:
  - Co-develop tools, guidance, and capacity with Indigenous peoples to better support and systematically consider Indigenous knowledge
  - Protect the confidentiality of Indigenous knowledge where appropriate (e.g., sacred site locations)

Compliance, Monitoring & Follow-up

What we heard

- Proponents need to be held accountable with adequate oversight and standards for follow-up and monitoring
- Indigenous Groups and local communities want to be involved in follow-up and monitoring activities
- Current mechanisms for compliance and enforcement are not adequate
- Increased public access to compliance, monitoring, and follow-up information

Proposed approach

- **Inclusive monitoring and compliance activities**, so that life-cycle regulators and permitting departments work closely with Indigenous peoples, communities, and landowners
- Creating opportunities for Indigenous partnerships and co-development in monitoring – building on systems in Canada's North and on co-development work initiated for some projects

Cumulative Effects

What we heard

- Cumulative effects need to be better assessed and managed under a new regime
- Many Modern Treaty groups see development pressures in their territories, and hope to see these areas be subject of a regional assessment and be part of this assessment
- Broad support for increased use of strategic and regional assessments to better understand and address cumulative effects
- Thresholds and targets identified in regional assessments or other broad initiatives should inform project-level assessments

Proposed approach

- Collaboration on **regional scale studies** [with Indigenous peoples]
- Working with provinces, territories and Indigenous peoples to guide planning and management of cumulative effects
- **Regional assessments** to guide planning and management of cumulative effects (e.g., biodiversity and species at risk), **identify the potential impacts on the rights and interests of Indigenous peoples**, and inform project assessments

Next Steps

- Discussion paper, and responses to the discussion paper from the comment period, are available at *Canada.ca/environmentalreviews* for your review.
- We are taking a coordinated approach to the different environmental and regulatory reviews currently underway to ensure the engagement process is aligned and integrated.
- Timelines for legislative change subject to the parliamentary process.
- Planning ongoing dialogue on regulation, policy, and programs.

Ongoing Dialogue

- Seeking input on ongoing dialogue on regulation, policy, and programs:
  - Mechanisms for engagement (e.g. improved information sharing; regional and/or community based; remote and/or face to face)
  - Policy topics for discussion (e.g. Indigenous Knowledge; Methodologies for assessing impacts to rights; capacity requirements)

ANNEX

REVIEW OF ENVIRONMENTAL ASSESSMENT PROCESSES

Consultation with Indigenous peoples has been at the core of this review since day 1

$5,606,440 in participant funding has been made available to Indigenous groups to support their participation in the review to date

ENGAGEMENT WITH THE EXPERT PANEL
September to December 2016

- **129** Indigenous presentations
- **169** written submissions from Indigenous groups
- **197** Indigenous respondents to the online questionnaire
- **206** participants at the Indigenous open dialogue and technical sessions

CONSULTATION & ENGAGEMENT POST-EXPERT PANEL REPORT
April 2017 to Present

Government engagement on Expert Panel report:

- **39** Indigenous written submissions received

Discussion paper comment period:

- **26** Indigenous online comments
- **88** Indigenous submissions received

In-person government engagement activities (includes both comment periods on Expert Panel report and discussion paper):

- **15+** meetings with the Minister
- **50+** meetings with Agency or MINO staff

CANADA.CA/ENVIRONMENTALREVIEWS