Q'UL-LHANUMUTSUN AQUATIC RESOURCES SOCIETY

7973 Chemainus Rd · Chemainus BC, V0R1K5
Phone: (250) 246-4736 Fax: (250) 246-2330

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Canadian Environmental Assessment Act: A brief describing issues with 2012 changes and providing recommendations for amelioration

Submitted by the Q'ul-lhanumutsun Aquatic Resources Society

Submitted to the House of Commons Standing Committee on Environment and Sustainable Development

Q'ul-lhanumutsun Aquatics Society: 7973 Chemainus Road, Chemainus, BC. V0R 1K5 Phone: 250-246-4736. Fax: 250-246-2330

Acknowledgements

This review was conducted by Corfield & Associates with input from Q'ul-lhanumutsun Aquatics Society.

Nature and environmental resources are an integral part of the lives and culture of the First Nations members of the Q'ul-lhanumutsun Aquatic Resources Society. First Nations members understand that the role of humans within the environment is to protect and sustain nature's attributes today and for future generations. Although the Canadian federal government assumes a lead role in managing resources within the territories of members of the Q'ul-lhanumutsun Aquatic Resources Society, we have never surrendered our rights to our aboriginal title to our traditional territories or the resources within those territories. Changes to the *Canadian Environmental Assessment Act (CEAA)* in 2012 lay the groundwork for infringement on our rights and yet there were not any consultations with us, or any First Nations, about the changes. Therefore, the Q'ul-lhanumutsun Aquatics Society members have prepared this brief regarding the *Canadian Environmental Assessment Act* in order the enable the federal government to hear views from Stzuminus, Halalt, Penelakut and Lake Cowichan First Nations. In this brief, we use the "suggested themes" and questions to guide our description of how changes to the *CEAA* reduced protection of our traditional lands and waters and put them under further pressure and risk. In this brief we also provide recommendations on how to restore strength to the *Act.* Due to budgetary limitations, this brief was not prepared with full consultation with members of the Q'ul-lhanumutsun Aquatic Resources Society. Instead, the notes and recommendations in this document provide insight into what has been raised by membership

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Who we are and why we care

The Q'ul-lhanumutsun Aquatic Resources Society is made up of members from the Stzuminus, Halalt, Penelakut and Lake Cowichan First Nations. Our traditional territories are on the south-eastern part of Vancouver Island, British Columbia.

None of the Nation members of the Q'ul-lhanumutsun Aquatic Resources Society have divested Aboriginal Rights, which includes rights to manage land, water and ocean resources in their traditional territories. However, the federal government continues to permit works, development and activities in our territories that may impact our resources, even though they have reduced capacity to do so. In order to reduce "administrative burden", the previous federal government renewed important *Acts,* such as the *Fisheries Act, Canadian Environmental Assessment Act, and the National Energy Act.* This renewal removed protection, especially habitat protection.

1. Environmental Assessment in Context

Q1 - To what extent do current federal environmental assessment processes enable development in Canada that considers the environment, social matters and the economy?

The federal environmental assessment processes have limitations in ensuring that development considers the environment, social matters and the economy. In relation to aboriginal groups, these include:

Environment

- The *CEAA 2012*, like the *Navigation Protection Act 2012*, limits the number and scope for impact considerations to a designated list. In the case of the *CEAA 2012,* this is the *Regulations Designating Physical Activities (RDPA)* or those designated by the Minister of Environment on a discretionary basis.
    - The scope is reduced to narrow definitions of "effects" on fish and fish habitat, aquatic species at risk, migratory birds, federal lands and aboriginal peoples.
    - The scope is also narrowed to those changes that are "directly linked or necessarily incidental". This removes the need to consider effects to a wider scope of the environment, including land, water, air, organic and inorganic matter, living organisms and interacting natural systems.
    - Of those on the RDPA, some will not be afforded a federal environmental assessment. Instead those projects will be assessed by the Canadian Nuclear Safety Commission (CNSC) or the National Energy Board (NEB), neither of which have the scrutiny of the federal environmental assessment process.
    - All other RDPA projects **may or may not** undergo a federal environmental assessment, depending on the assessment by the Canadian Environmental Assessment Agency. The decision not to undergo an environmental assessment may be based on a cursory assessment of a lack of adverse environmental effects of on the basis that it may be covered by a provincial process (which can often be marred by conflict of interest). This

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decision making process can be considered vague, incomplete, biased and lacking in transparency.

- The *CEAA 2012* provides strict timelines and mechanisms of substitution. While this may be useful in some cases, it does not always afford proper assessment in cases where thorough studies need to be done to understand the localized impacts that a project may have on the environment.
    - Timelines do not respect aboriginal timelines (e.g. the time it takes to build trust sufficient to transfer traditional knowledge can be lengthy), often leaving the community feeling exploited and demoralized and their values dismissed.
- The *CEAA 2012* included procedural changes, including:
    - It provides opportunities for two kinds of environmental assessments: a standard environmental assessment or an assessment by review panel. The previous *CEAA* had several forms.
    - Less mandated oversight of the assessments by other federal departments. We do not feel that CEA Agency workers are experts in all topics and are appropriately prepared to consider impacts in specific areas, such as fisheries, wildlife, culture and health.

Social

- The *CEAA 2012* limits public participation to those that are "directly affected" by the project. While we understand the intent, the definition of "directly affected" is too narrow. We are directly affected by developments outside of our traditional territories if they impact our ability to access our resources, impacts our relationships with neighbors, or if residual impacts (e.g. airborne pollution, chemical pollution in waterways, etc.) affect our resources and lands.
- Aboriginal Traditional Knowledge is not effectively considered when analyzing impacts to the environment. Omissions of traditional knowledge and cultural perspectives can result in Aboriginal interests being impacted.
- Scope and process requirements for on-reserve assessments is uncertain, thereby creating community uncertainty where First Nations are expected to move through undefined processes.
- The methodology by which significant residual effects are determined is flawed. It is based on quantitative assessment of potential impacts and the subjective application of mitigation measures. Because Traditional Knowledge is often not quantified, or quantifiable, and First Nations do not define the mitigation measures and community, cultural and social knowledge is not correctly applied or valued.
- The consultative process should not result in forcing decisions on First Nations. First Nations should make an independent decision on whether a project should go ahead and work with the federal and provincial government to negotiate a final decision.

Economy

- The impacts to traditional economies are usually not considered, or if considered, only considered in the context of any significant residual effects, which, when considering the lack of traditional knowledge in the analysis, significance conclusions may miss important economic impacts.

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Q2 - What outcomes do you want federal environmental assessment processes to achieve in the future?

- A rewritten analysis methodology. Traditional Knowledge and western science should be integrated, if and where possible. If this is not possible, then parallel analysis should be done. The Aboriginal Effects section should stand alone, separate from the scientific effects analysis, drawing on it as needed. The scientific conclusions regarding the significance of residual effects should not constrain the discussion of impacts to aboriginal interests. The discussion of impacts to Aboriginal interests should not be curtailed to only those which would be impacted by significant residual effects.
- First Nations should make an independent decision on whether a project should go ahead or not, and work with the federal government and the provincial government to negotiate a final decision.
- Federal and Provincial governments should be bound by First Nations decisions over Aboriginal Title Lands.
- The federal Environmental Assessment process should reference Aboriginal planning documents, such as Land Use Planning, Marine Use Plans, Watershed Stewardship Priorities, Strategic Environmental Assessment, or other planning documents created by First Nations community participation.
- Water quality should be maintained or improved where already degraded.
- Limits to cumulative climate change impacts should be imposed.
- Determination of the significance of effects has a detailed methodology which should be written with First Nations and documented.
- "Expert" opinion does not consist solely of Registered Professionals in various disciplines but should include "experts" from Aboriginal Communities.
- First Nations perspectives, methodology, decisions and experts should be respected as much as the scientific bodies of knowledge in the disciplines where determination of significance and the assignment of mitigation measures is a matter of expert opinion, (e.g., biology, oceanography, climate science, climatology and meteorology, anthropology, fisheries, etc.).

Q3 - How can federal environmental assessments support investor certainty, community and environmental wellbeing, the use of best available technology, certainty with respect to the protection of Aboriginal and treaty rights and timely decision making?

- Certainty with respect to the protection of Aboriginal and Treaty Rights can be supported first through the recognition of Aboriginal Rights. The Federal government can work with First Nations to ensure that, once recognized, Aboriginal rights are clearly communicated to Proponents.
- Timelines for decision making can be developed on a case by case basis with the First Nation(s) in whose territory the development is being contemplated during the Project Description phase or prior.
- When assessing new technology, ensure that First Nations contribute their management skills and knowledge to the assessment, incorporating their past and traditional guidance for solutions.

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- Community and environmental wellbeing are defined at the community level first and then within the larger Canadian community context for such things as air quality, water quality, water quantity, climate change, energy, and transportation priorities.
- Investor certainty should rely on a documented, transparent assessment process where the conclusions are independently made by responsible governments.

Q4 - How should federal environmental assessment processes address the Government of Canada's international and national environmental and social commitments, such as sustainable economic growth and addressing climate change?

To meet commitments, the process can include criteria that aligns with the intentions of the United Nations Declaration on the Rights of Indigenous People. Meeting the intention of the declaration, including the principle of Free, Prior and Informed Consent, requires that the processes articulated in the *CEAA* enable Aboriginal peoples to define their own participation timelines, budgets, and knowledge, and are able to make their own conclusions about a project.

2.0 Overarching Indigenous Considerations

Q1 - How can federal environmental assessment processes better reflect and incorporate the multiple ways in which Indigenous Peoples may interact with federal environmental assessment, including as potentially affected rights holders, proponents of development, self-governing regulators, and partners?

The federal environmental assessment process can reflect and incorporate Indigenous Peoples by recognizing the suite of Aboriginal rights and Title. The process should recognize the role of First Nations as decision makers over their territories and resources. The federal government agencies involved in the EAs need to increase their efforts to work with First Nations. There also needs to be directed funds for capacity building to work within existing federal frameworks and to incorporate traditional governance into business ventures and partnerships, technical and scientific knowledge endeavors, and rights-based jurisdiction. The ability of First Nations to be an equal partner, to be able to guide and share in decision making requires building trust and concurrently developing skills and capacity in technical skillsets, policy development and traditional knowledge and governance.

The environmental assessment process must incorporate Aboriginal participation through implementation of the following:

- Collaborative timeline development.
- Capacity development in science/western worldview and environmental assessment analytical tools, (e.g., biology, hydrology, etc.) in order to effectively communicate.
- Collaboration and trust building, traditional knowledge is shared in a trusting environment/relationship.
- Decision making regimes that respect the Aboriginal rights to self-determination and free, prior and informed consent.
- Collaborative input into the analytical methodology for impact assessment; to include the traditional knowledge point of view.
- Developing an impact analysis methodology that considers the ability to maintain culture over time.
- Process engagement funding.

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- Ascertain community pros and cons from development in a holistic manner.

Q2 - How is the need to address potential impacts to potential and established Aboriginal and treaty rights best incorporated into the federal environmental assessment process?

Aboriginal Title rights need to be recognized by the federal government within their traditional territories. The current process puts the onus on the First Nation to prove that they have existing rights to animals, water, land, air, and plants within their territories. This is backwards since inherent rights and jurisdiction includes those things. The identification of appropriate mitigation measures and decisions about whether impacts to aboriginal rights are justified is recognized as the right of the First Nation(s). If there are project impacts to which the First Nation are resolved to accept, benefits from the project should be distributed in the manner most appropriate to the First Nation. The assumption that First Nations need to prove their rights must change; First Nations assert Title and Rights over their traditional territories and the federal government must recognize Title interests. First Nations have the authority to assert Aboriginal rights, assess the potential impacts to those rights, assign appropriate mitigation measures and define benefits accruing from the project.

Q3 - What is the best way to reflect the principles of United Nations Declaration on the Rights of Indigenous Peoples, including the principles of Free, Prior and Informed Consent and the right to participate in decision-making in matters that would affect Indigenous rights, in federal environmental assessment processes?

The United Nations Declaration on the Rights of Indigenous Peoples includes the principles of Free, Prior and Informed Consent and the right to participate in decision-making in matters that would affect Indigenous rights. A recognition of Aboriginal Rights must be explicit in the environmental assessment act. The jurisdictional confusion between the Province of BC and the federal government in non-treaty environments should be clarified. The Province of BC does not recognize the traditional territories of many First Nations as potential Title interests. Therefore, it maintains that it has jurisdiction over the land, water and animals, as per section 92 of the Constitution Act, and makes the First Nations first prove their rights, which is onerous to do, before recognizing those rights. This is contrary to the principles of the UNDRIP. In order for the federal environmental assessment process to adequately reflect the principles of the UNDRIP, the federal environmental assessment process would have to apply where aboriginal interests, including rights, are asserted by a First Nation(s). The federal government would then have to infringe upon the jurisdiction of the Province in order to ensure the doctrine of Free, Prior and Informed Consent and protect the interests of First Nations and be generally consistent with the UNDRIP.

Q4 - What role should Indigenous traditional knowledge play in federal environmental assessments and what are some international best practices?

Indigenous traditional knowledge should play a role that is complementary to western knowledge and it should be able to influence the outcomes of the effects analysis. Where Traditional Knowledge expertise exists in a topic(s), this knowledge should be afforded the same level of influence over the effects determination as that exerted by the current experts, i.e., those professionals in western science. Where possible analysis using both types of data should occur concurrently when determining project effects on a variable. However, traditional knowledge is not always limitable to single variable analysis and should therefore be used in a holistic context.

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Often times the scientific method does not work well to understand a system of biological interactions. In these instances, traditional knowledge may be more useful. In any event, traditional knowledge is important and must be afforded as much legitimacy as conventional science.

One best practice is the example of the United States Environmental Protection Agency's (EPA) work on water quality standards regulation on Reservations. Since Reservations are federal land, the EPA regulates water quality on Reservations. However, Tribes can determine their own water quality standards. Water quality standards are based on water body designated uses, such as drinking, spiritual, fisheries etc. Tribes can determine their own designated uses for water bodies (including spiritual uses) and either adopt the water quality criteria developed by that EPA that is associated with a designated use (e.g., drinking) or they can develop their own water quality standards. These water quality standards must have a scientific rationale, but they can be guided by Traditional Knowledge and be more stringent that they water quality criteria recommended by the EPA.

Q5 - How can the practices and procedures associated with federal environmental assessments, as well as the process itself, support the Government of Canada's goal of renewing the nation-to-nation relationship with Indigenous Peoples and moving towards reconciliation?

Inclusion of traditional knowledge based analysis of impacts will be important. This analysis needs to occur concurrently with scientific analysis, not, as is currently the case, after the scientific effects analysis conclusions are reached. To reach scientific conclusions, only those things which are predicted to have significant residual effects after mitigation measures are applied are considered in the analysis of impacts to Aboriginal interests. The current methodology truncates the discussion of many potential impacts that may be validated through an analysis using traditional knowledge. Traditional knowledge must be deployed concurrently with western science during the process and its experts' opinions given as much weight as scientific experts. Also traditional knowledge can be applied to the identification of effect mitigation practices. A traditional knowledge base often includes a spiritual component and this must be considered in order for the indigenous perspective to be discernibly included. Traditional knowledge is not limited to the physical sciences.

In situations where there is disagreement about what components of the environment (including spiritual environment) are potentially impacted, Aboriginal perspectives must be included. For instance, if an Aboriginal groups understands that an impact may potentially occur, but the proponent and/or the government disagree, the elements identified by the First Nations should be included in the assessment.

First Nations have often expressed concern over the potential cumulative impacts of projects in their Traditional Territories. First Nations have also voiced that the lack of comprehensive cumulative impact analysis component of the environmental assessment is a problem. In order to reconcile the relationship with Aboriginal Peoples the federal government should include a robust cumulative impact analysis in the environmental assessment process.

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3. Planning Environmental Assessment

Q1 - Under what circumstances should federal environmental assessment be required?
Under circumstances in which impacts to Aboriginal interests (land, water, air, animals, fish, etc.) are being contemplated, both for on and off reserve interests.

Q2 - For project environmental assessments, do you think the current scope and factors considered are adequate?
In considering aboriginal interests, the scope of project environmental assessments falls short. In a non-treaty environment where perspectives on Aboriginal rights diverge between the Province and the First Nation(s), the federal government should act to ensure that impacts to aboriginal interests both on and off-reserve are considered, especially if the federal government is sincere in its wish to implement the UNDRIP Principles.

Q3 - Are there other things (effects, factors, etc.) that should be scoped into an environmental assessment?
Impact to Aboriginal interests, including asserted rights and spiritual and cultural interests. Also, EAs should consider cumulative impacts.

Q4 - Under which circumstances should environmental assessment be undertaken at the regional, strategic or project-level?
In most circumstances, regional and strategic environmental assessment are preferred methods of environmental assessment. This enables a more holistic view of the potential cumulative impacts and better enables adaptive planning to ensure that cultural continuity is possible.

Q5 - Who should contribute to the decision of whether a federal environmental assessment is required?
In the context of aboriginal interests, the Aboriginal groups and First Nations whose interests are potentially impacted.

4. Conduct of Environmental Assessment

Q1 - Who should be responsible for conducting federal environmental assessments? Why?
The federal government should hire an independent consulting firm to conduct the environmental impact statement. The federal government should work to remove the perception of bias and lack of integrity in the current process. The proponent should not be directly hiring and paying the consultant who conducts the impact analysis and makes recommendations on the significance of effects, mitigation measures and residual effects.

Q2 - What should be the role(s) of the proponent, Indigenous Peoples, the public, environmental organizations, experts, the government and others in the planning of, collection, analysis and review of environmental assessment-related science including community and Indigenous traditional knowledge?
Proponent: The proponent should plan the project in discussions with governments and First Nations. They should also pay the federal government for environmental assessment work. The

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Phone: (250) 246-4736 Fax: (250) 246-2330

proponent should ensure that the project provides related benefits to affected First Nations (e.g. revenue sharing, equity, etc.) and should communicate effectively with First Nations.
Indigenous peoples: Indigenous peoples should ensure that any planning guidance they have is shared (if appropriate) and they should participate in project planning with the proponent when possible. They should then provide input into the impact statement terms of reference, participate in developing collection methodology especially where traditional knowledge may be relevant, participate in the development of analysis methodology, or define a parallel analysis protocol based on traditional knowledge. They should also, when possible, provide data to the environmental assessment process. A governance decision making process should be established which enables environmental assessment decisions to be made by their governments. Indigenous peoples should then work with other governments to develop a collaboration protocol for negotiating environmental assessment decisions and hire consultants to review environmental assessments done by governments (as is proposed in this document).
Environmental Organizations: EOs should be empowered, along with other interest groups, to review the impact statements and environmental assessment work of the independent consultants hired to conduct environmental assessment work.
Experts: both traditional knowledge and indigenous experts should contribute to the development of analysis methodology, aid in the collection and provision of data, offer opinions and make recommendations on impact conclusions.
Government: The government should oversee the environmental assessment process, hire independent consultants, support community and Aboriginal groups to review environmental assessment work (including impact statements), recognize Aboriginal inherent jurisdiction in environmental assessment legislation, support the development of programmatic First Nations decision making and technical capacities, collaborate with First Nations governments on decision making, and enforce compliance of environmental assessment conditions and monitoring. The government should ensure that best technologies are considered in the planning, implementation and monitoring of Projects.

Q3 - How can environmental assessment processes be improved to ensure a timely, yet thorough process has been conducted?

The EA processes should strive to educate communities and Aboriginal peoples about the environmental assessment process in a proactive manner. Regional planning should be prioritized immediately so that acceptable development decisions are already made prior to project contemplation. The federal government should step up its role in community engagement, rather than the proponent-hired consulting firms or the proponent directly. This will build greater trust and confidence in the process. Timelines should be developed with First Nations prior to environmental impact statement Terms of Reference being developed, on a case by case basis.

5. Decision and Follow-Up

Q1 - What types of information should inform environmental assessment decisions?

1. The scientific information that is already part of the process.
2. Traditional knowledge that can be quantified.
3. Traditional knowledge that can’t be quantified.
4. Community perspectives.

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5. Regional planning documents.

Q2 - What would a fair, transparent and trustworthy decision-making process look like?
Aboriginal governments have an equal role as decision makers. This role is written into the *CEAA*. The federal government should commit to working with First Nations' groups to develop a unique process for Aboriginal groups in overlapping territories to work together with the federal government in decision making. If the federal government honours its commitment to UNDRIP and the principle of the recognition of Aboriginal groups' inherent jurisdiction over their Traditional Territories, the way will be paved for collaboration; rather than is sometimes the case in BC, where Aboriginal groups are vying for the "exclusive occupation" test that precedes engagement with the Province when discussing Aboriginal rights.
The environmental impact statements should be conducted by independent consultants and their work and assumptions should be reviewed by other consultants on behalf of Communities and Aboriginal groups.

Q3 - Who should participate in the implementation of follow-up and monitoring programs and how should that participation be encouraged or mandated?
The proponent should be responsible for implementing the mitigation measures, conducting monitoring and any appropriate follow up. Consultants on the behalf of community interests and Aboriginal groups, and paid for by the government, should be checking on the implementation of mitigation and monitoring programs.

Q4 - Are enforceable conditions the right tool to ensure that the Government of Canada is meeting its environmental assessment objectives and, if so, who should have a role in compliance and enforcement?
Yes, enforceable conditions are important. The federal government should be responsible for enforcing compliance. Independent consultants on behalf of the government and/or on behalf of Community/Aboriginal groups can be used for monitoring compliance.

Q5 - Given that environmental assessment decisions are made in the planning phase of proposed actions, how should these decisions manage scientific uncertainty?
They should adhere to the Precautionary Principle.

6. Public Involvement

Q1 - What do you think meaningful, effective and inclusive participation in the environmental assessment process looks like?
Public participation is important but can be driven by biases which are not grounded in science or traditional knowledge. The public anticipates impacts which may and may not be true. The analysis of environmental impacts and significant residual effects is complex and not easily understood, particularly in its entirety. The main hurdle of public participation is in educating the public about the process and how conclusions are made. The current environmental assessment process is hampered by the perception of conflict of interest (see next section) and therefore building public trust in the process will be key to public engagement. Strategic environmental

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assessments and regional land use planning can be part of how the public effectively communicates to the environmental assessment process. The land use planning guidance needs to be respected in the environmental assessment and a criteria developed around assessing impacts to the planning directives.

Q2 - To what extent are current opportunities for public participation in federal environmental assessment processes adequate?

The inadequacies of the public participation process outweigh any current adequacies.

Q3 - To what extent do you feel your views are considered in environmental assessments?

During various works, including an Aboriginal Impact Statement for the BC Environmental Assessment process (BC Hydro) and an impact statement for a Liquefied Natural Gas Terminal environmental assessment (delegated to BC EA) aboriginal views were not captured effectively. In the BC Hydro EA, conclusions about the impacts to aboriginal interests were not considered because aboriginal title interests were viewed as weak. However, BC Hydro could not provide a documented methodology for how title interests were assessed, except to say that BC Hydro staff would provide the decision on whether aboriginal interests existed or were impacted.

There are problems with the environmental impact statement methodology. The practice of first analyzing environmental impacts from a scientific perspective then analyzing impacts to aboriginal interests through the lenses of residual significant effects, after mitigation measures, truncates discussion about potential interests to aboriginal interests in the following way: if data are not provided by aboriginal groups in a way that can be included in the scientific analysis; discussion on aboriginal interests is deferred until after residual effects significance determination, which usually ends up being insignificant after mitigation measures; if there are no significant residual effects on a variable no further analysis takes place, even if First Nations are not satisfied that their interests will be un-impacted. First Nations need to be engaged in defining the topics that will be analysed in the Impact Statement Terms of Reference and in the development of the methodology to analyse the topics of interest.

In some instances, projects which had impacts to marine and ocean resources, according to First Nations, did not include marine and ocean resources in the assessment process. Potential effects to the marine environment must be as thorough as land based analysis. Potential cumulative impacts to critical marine resources must be more effectively assessed.

Q4 - What information do you need during an environmental assessment to allow you to effectively participate? What capacity support should be provided and at what stage in the process would that support enable meaningful engagement?

Effective participation is premised on an understanding of the impact analysis process. The public and Aboriginal peoples need to understand how to share data in a way that can influence the outcome of a scientific analysis. Quantitative data is important to provide. Prior to data collection and analysis however, various perspectives inform the Valued Components (i.e., what will be analysed), so the public and Aboriginal peoples need to have input in the development of those components. Analytical methodology should be informed by Traditional Knowledge.

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Funding should be provided to enable First Nations to participate in the manner that they feel is necessary. The decision on how First Nations would like to participate begins at the project contemplation stage. The discussion of funding also begins at this point. This will enable First Nations to plan how best to participate on a case by case basis. It will be important that First Nations have the capacity to both determine the most effective means of participation and the funding to properly participate and inform the assessment.

Capacity support could also be provided to community groups and Aboriginal groups to hire consultants to provide a review of the data and analysis. This would help the robustness of the process and improve the rigour of the environmental assessment by catching errors and omissions.

7. Coordination

Q1 - To what extent can the Government of Canada coordinate with other jurisdictions (e.g. provincial and/or Indigenous governments) while maintaining process integrity in the conduct of federal environmental assessments?

Coordination over the technical elements of an environmental assessment should be possible. The problem with the potential lack of integrity lies in the conflict of interests that are perceived by First Nations and the public. The delegation of the environmental assessment process to a Province who has a communicated their bias, as in the case of BC's valuing and planning for the export of Liquefied Natural Gas, prior to an environmental assessment, is problematic. Further to the problem of integrity is that the proponents hire and pay the consultants to conduct the Environmental Impact Statement. There is a perceived integrity problem here to because the consultant firms have a great interest in meeting the interests of the proponent. Consulting firms which conduct the impact statements should be independent from the Proponent and hired by the government (though paid for by the Proponent).

Q2 - To what extent is the current approach to substitution and equivalency effective?

Substitution and equivalency are not effective approaches to ensuring that Aboriginal interests are adequately considered. In the Province of BC, there are many First Nations that have not signed treaties and that have asserted Title rights over Traditional Territories. The Province of BC has not recognized Aboriginal Title rights on these lands and moves through the environmental assessment process with an assumption that First Nations have no rights unless they are proven by the First Nations. The federal government then delegates that the Provincial process assess the significance of impacts to Aboriginal interests. The Province of BC often works with the notion of exclusive territories in relation to Aboriginal rights. This is problematic because there are many shared territory instances and the Province determines the level of consultation for each First Nation. The federal government cannot adequately be responsible for the interests of First Nations if it delegates to a province that does not recognize Aboriginal rights over much of Aboriginal Traditional Territories.

Q3 - Do you think duplication between the federal environmental assessment process and the environmental assessment process of other jurisdictions exists? If yes, what are ways in which duplication could most effectively be reduced while maintaining process integrity?

Q'UL-LHANUMUTSUN AQUATIC RESOURCES SOCIETY

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The federal government should not delegate the assessment of impacts to Aboriginal interests to the Province where Aboriginal interests in the land, water and oceans are actively denied.

Q4 - How can Indigenous Peoples' inherent jurisdiction best be reflected and respected in the federal environmental assessment process?

The inherent jurisdiction of Indigenous Peoples' should be articulated as a principle in *CEAA*. First Nations governments need to be recognized as a level of government with inherent right to decision making within their Traditional Territories. The right to make decisions in the environmental assessment process needs to be clearly described in the Act so that proponents and governments understand this authority. The federal government needs to find a way to work with First Nations in a way which creates meaningful dialogue around decisions. Potentially, in the interim, until the federal government recognises Aboriginal inherent jurisdiction, this could be accomplished through a dual Title assertion clause.

Summary and Recommendations

The federal government has the powers to rectify problems associated with the 2012 changes to the *Canadian Environmental Assessment Act.* The Q'ul-lhanumutsun Aquatics Society recommends the following:

- The *CEAA* should recognize the suite of Aboriginal Rights and Title, including their roles as decision makers over their territories and resources.
- Funds should be available for capacity building to work with project proponents and with the federal government on environmental impact assessments.
- The assumption that First Nations need to prove their rights must change; First Nations assert Title and Rights over their traditional territories and the federal government must recognize Title interests.
- Re-instate the scope that the CEAA considers by removing the RDPA.
- Cumulative Impacts should be assessed and area thresholds should be developed.
- Indigenous traditional knowledge should play a role that is complementary to western knowledge and it should be able to influence the outcomes of the effects analysis.
- First Nations perspectives, methodology, decisions and experts need to be respected as much as that of western science (e.g., biology, oceanography, climate science, climatology and meteorology, anthropology, fisheries, etc.).
- Timelines for approval should consider the requirements of local First Nations. These can be developed on a case by case basis with the First Nation(s) in whose territory the development is being contemplated during the Project Description phase or prior.
- Oversight of the EA should be done by the appropriate government agency.
- Traditional Knowledge and western science should be integrated, if and where possible. If this is not possible, then parallel analysis should be done.
- The Aboriginal Effects section should stand alone, separate from the scientific effects analysis, drawing on it as needed.
- First Nations should be able to have final say over projects that impact their Aboriginal Title Lands and the Federal and Provincial governments should be bound by those decisions.

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- The federal Environmental Assessment process should reference Aboriginal planning documents, such as Land Use Planning, Marine Use Plans, Watershed Stewardship Priorities, Strategic Environmental Assessment, or other planning documents created by First Nations community participation.
- The Federal government can work with First Nations to ensure that, once recognized, Aboriginal rights are clearly communicated to Proponents.
- To meet UNDRIP and other federal commitments, the environmental assessment process should enable Aboriginal peoples to define their own participation timelines, budgets, knowledge and conclusions about a project.
- The federal government should prioritize regional planning in areas that will experience numerous development proposals in the near future (e.g. oil and gas ports, areas where pipelines cross, shipping lanes, etc.).
- The environmental impact statements should be conducted by independent consultants and their work and assumptions should be reviewed by other consultants on behalf of Communities and Aboriginal groups.

The members of the Q'ul-lhanumutsun Aquatics Society request careful considerations of the proposed recommendations and of those put forward by other First Nations organizations.