



NLEN Submission to the Environmental Assessment Review Panel

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To: Expert Panel to Review Environmental Assessment Processes

From: Newfoundland and Labrador Environment Network

The Newfoundland and Labrador Environment Network (NLEN) is a non-profit, non-governmental organisation that serves as an umbrella group for some 40 non-profit organisations working across the province to support environmental protection, conservation, and sustainable use of our natural resources. Our member organizations have had direct experience with the federal environmental assessment process as it applies to environmental impacts of resource development and other projects in our province.

We welcome the opportunity to contribute to the review of the Canadian Environmental Assessment Act of 2012. In doing so, we share the opinions of many across Canada who believe that urgent matters relating to environmental quality, climate change, Aboriginal rights, and the sustainable use and development of natural resources require that we take a different approach to environmental assessment legislation. It is not a matter of fine-tuning the existing legislation or of going back to the CEA Act of 1992. A new approach is needed that makes sustainability paramount and does not subordinate the environment to economic expediency. In this brief submission, we identify shortcomings in the current EA process and outline elements that should be made part of the new one.

Three examples of the application of the former legislation (CEAA 1992 and/or CEAA 2012) in Newfoundland and Labrador are used to demonstrate weaknesses in the current federal EA process. These include the construction of a nickel processing plant at Long Harbour, the Lower Churchill hydroelectric project, and proposed offshore oil exploration in the Gulf of St. Lawrence.

Commercial Nickel Processing Plant, Long Harbour, Placentia Bay¹

This project involved the development of ca 100 ha of land adjacent to a former industrial site at Long Harbour, but including a relatively undisturbed watershed containing a headwaters lake, Sandy Pond. The plan envisioned using Sandy Pond as a subaqueous residue storage facility, resulting in the destruction of a natural freshwater ecosystem. Because this would involve the destruction of fish and fish habitat, it required authorization in the first instance of Fisheries and Oceans Canada (DFO), but with responsibility shared with the Department of Environment, as provided for in the Fisheries Act. Conversion



Sandy Pond, Long Harbour 2008

of the natural water body to a tailings impoundment area required amendment of the Metal Mining Effluent Regulations (MMER) and approval by Governor in Council to list Sandy Pond as a TIA as per paragraph 36(5) of the Fisheries Act.

A pilot hydrometallurgical processing plant had already been constructed and operated at a brown-field site at Argentia, some 20 km to the south. For reasons that were largely economic, it was decided not to construct the full-scale plant there, but rather to take advantage of the relatively isolated natural basin that was Sandy Pond. The EA process that unfolded in 2006 was a Fisheries and Oceans – CEEA Screening, i.e. the lowest level of assessment. Limited public information sessions were held in which objections were raised regarding the proposed destruction of Sandy Pond and the conversion of lakes to TIAs in general. Local conservation groups and scientists registered their concern that there could be biodiversity loss associated with the destruction of a population of large native brook trout, despite an undertaking to provide “habitat compensation”². All to no avail, and the development has gone ahead.

For Sandy Pond, the EA process failed, insofar as the aquatic ecosystem itself was concerned, because it did not answer questions about the potentially unique genetic makeup of the fish populations that were there. Nor did it leave room to address fundamental questions of the sustainability of ecological support systems, when the regulatory process allows the destruction of valued natural ecosystems.

Lower Churchill Hydroelectric Generation Project, Labrador³

This project involves the construction of hydroelectric power generation facilities on the Churchill River at Muskrat Falls and Gull Island. The project was subjected to a full panel assessment and approved in March 2012. Work began soon thereafter on construction of a dam and other infrastructure at Muskrat Falls, and continues, with an uncertain completion date. This is a large and complex undertaking, with many parts. For purposes of this submission, the focus is on the likely effects on water quality and aquatic life if significant amounts of organic matter remain in the reservoir basin after flooding.

Past experience, including with the completion of the Upper Churchill project at Churchill Falls in 1972, has shown that methylmercury – a toxin - is produced in the decay process and bioaccumulates in aquatic organisms. “Many participants recommended that more timber be cleared from the reservoir areas, in order to reduce methylmercury and greenhouse gas emissions or not to waste the resource. They suggested that technologies such as manual harvesting with chainsaws and cable-logging could harvest larger volumes.... The Panel recommended applying the ‘full clearing’ option to the Muskrat Falls reservoir because it would be technically and economically feasible and would not negatively affect the construction schedule.”⁴

Inuit and the Nunatsiavut Government were especially concerned that methylmercury contamination would seriously affect their traditional country food resources. The proponent, Nalcor, did not do a full scientific study of the anticipated disposition of mercury in the downstream environment; however, the Panel recognized the possibility of downstream effects and concluded that the project would likely have “significant adverse effects” on the traditional economy of the Inuit.

Notwithstanding the strong recommendation of the Panel that the reservoir be cleared, Nalcor, initially proceeded, with the intention of only partially clearing the reservoir area. The Nunatsiavut Government, working with university researchers, carried out field studies and analysis relating to modeling the fate of mercury in the Lake Melville environment, and in 2016 released a strongly critical scientific report⁵. It now seems likely that Nalcor will work toward complete clearing of the organic matter from the reservoir at Muskrat Falls.

Corridor Resources Inc. Exploration Well on the Old Harry Prospect

Corridor Resources Inc. is proposing to drill one exploration well on a subsea geological structure called Old Harry in the Gulf of St. Lawrence offshore of western Newfoundland. The proposal was registered in February 2011, a requirement for the Canada-Newfoundland and Labrador Offshore Petroleum Board (CNLOPB) to subject the project to screening under CEAA. A 4-year exploration licence (EL 1105) was first issued by CNLOPB in 2008, and repeatedly extended, most recently in January 2016. It reaches a non-extendable limit in January 2017, and the CNLOPB has announced its intention to issue a new licence, apparently in violation of the Board's own implementation act. These developments have sparked renewed protests from many groups and individuals who are opposed to any hydrocarbon exploration in or adjacent to the Gulf of St. Lawrence⁶.

Meanwhile, the latest update on the environmental assessment of this project is shown as “in progress”⁷. Few of the relevant EA documents are directly available on the registry website, although one that is provides insight as to how a project with such potential for environmental impacts directly or indirectly, in the case of discoveries leading to further activities, would be subjected only to a screening, rather than a full review or Regional or Strategic Assessment. In a letter dated 15 August 2011 from the then Minister, Peter Kent, to the Chair of the CNLOPB it is stated that “concern’s raised in the public comments received by the Board would, in the Board’s opinion, warrant a referral of the project to a mediator or a review panel.”⁸ Mr. Kent responds by referring to the inappropriateness of a project review in considering “these types of issues that go well beyond the project being reviewed”. He suggests a “two-pronged approach” involving an updating of a 2007 strategic environmental assessment of the Western Newfoundland Offshore Area along with completion of the project assessment via screening “consistent with the regulatory amendment made in 2005 that removed offshore exploratory drilling projects from the *Comprehensive Study List Regulations*, allowing these projects to be assessed by way of screenings”.

Viewed from the perspective of the present review of federal EA process, the Corridor Resources proposal, with the ongoing nature of its assessment and the prospect of unencumbered renewal of its license, seems archaic. One would hope that under a revised CEAA, the waters and communities of the Gulf of St. Lawrence will be respected and given the protection they deserve.

Conclusion

The three cases described in the foregoing demonstrate a number of inadequacies in the federal environmental assessment process, as embodied in CEAA 2012 as well as CEAA 1992. They can be summarized as follows:

- Failure to consider the larger environmental picture (narrowness of scoping)
- A bias toward economic arguments (i.e. cost) over environmental values
- Failure to consider long-term environmental and socio-economic sustainability
- Lack an independent scientific analysis on controversial matters
- Failure to apply the Precautionary Approach in the face of scientific uncertainty
- Insufficient consideration of Aboriginal interests
- Failure to seriously consider project implications for climate change
- Insufficient resources committed to monitoring and follow-up
- Proponent rejection of recommendations by the review panel
- Lack of transparency in multijurisdictional assessments

We at NLEN are optimistic that these shortcomings can be overcome. The Multi-interest Advisory Committee's mandate and reports to the CEAA Review Panel indicate that concerns such as ours will be seriously considered in the CEAA review, and that a better path forward will be found. **To that end, we recommend the Panel give careful consideration to the detailed analysis and recommendations of the Canadian Environmental Network (RCEN) in their submission, *Achieving a Next Generation of Environmental Assessment*⁹.**

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Notes

1. Commercial Nickel Processing Plant, Long Harbour, Placentia Bay Canadian Environmental Assessment Act Screening Report - June 2008 CEAA No.: 06-01-23173 <http://www.ceaa.gc.ca/050/documents/27933/27933e.pdf> .
2. Gibson, R. J. and Jacobs, J. D. 2015. Why habitat compensation under the Fisheries Act fails - The case of Sandy Pond. *Canadian Society of Environmental Biologists Newsletter* 72(2):13-14.
3. Lower Churchill Hydroelectric Generation Project Canadian - Environmental Assessment Registry: 07-05-26178 <http://ceaa-acee.gc.ca/052/details-eng.cfm?pid=26178>
4. Loc. cit. p 7.
5. Durkalec, A., Sheldon, T., Bell, T. (Eds). 2016. Lake Melville: *Avativut Kanuittailinnivut* (Our Environment, Our Health) Scientific Report. Nain, NL. Nunatsiavut Government.
6. See for example: <http://saveourseasandshores.ca/category/learn-more/old-harry/>
7. Corridor Resources <http://ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=60633>
8. Letter: Kent to Ruelokke of 15 August 2011 <http://ceaa-acee.gc.ca/050/documents/51583/51583E.pdf>
9. Environmental Planning and Assessment Caucus of the Canadian Environmental Network, *Achieving a Next Generation of Environmental Assessment* (December 14, 2016), http://rcen.ca/sites/default/files/epa_caucus_submission_to_expert_panel_2016-12-14.pdf.