23 December 2016

SUBMITTED ONLINE

Submission Title: Planning Environmental Impact Assessment: A Case Study from Ontario's Far North
Author: Cheryl Chetkiewicz, PhD, Associate Conservation Scientist, Wildlife Conservation Society Canada

Executive Summary: The mandate and establishment of the Expert Panel provides an important opportunity to assess the legislation, regulations, and processes around information gathering and decision-making within the current federal EA regime. As an Associate Conservation Scientist with Wildlife Conservation Society Canada, my comments and recommendations focus on the theme of Planning Environmental Assessment. I provide comments on the scope, triggers, and factors that need to be considered in the next generation of federal EA. I also provide examples and support for these recommendations based on experience with federal and provincial environmental assessment and cumulative effects research on wildlife in Ontario's Far North, one of the most intact regions in the world.

Wildlife Conservation Society (WCS) Canada welcomes this opportunity to provide submissions to the Expert Panel in relation to federal environmental assessment (EA) processes under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

WCS Canada is a conservation science NGO that has been incorporated in Canada since 2004. Our mission is to save wildlife and wildlands. As scientists, we conduct both field and applied research to address key issues affecting wildlife conservation and bring this scientific information and expertise to Governments and regulatory agencies, Indigenous peoples, conservation groups, and industry, in order to generate positive outcomes for conservation of wildlife and their habitats.

As an Associate Conservation Scientist, I have led WCS Canada's conservation program in Ontario's Far North since 2009. I have focused on cumulative effects assessment for fish and wildlife and conduct field and applied wildlife research to support decision-making around environmental assessment and land use planning in the Far North. I have been engaged with environmental assessment, at the provincial and federal level, in northern Ontario since 2009. In this region, proposed region-opening multi-metal mines as well as infrastructure proposals for new transmission lines, all-weather roads and rail access have been considered as part of EA processes in northern Ontario for the past five years. These proposals are concurrent with a number of other provincial planning processes including: the Regional Framework Agreement with nine Matawa First Nations communities[1], community-based land-use planning with various communities in the Far North[2], provincial commitments to addressing protection of ecosystems and ecological functions such as carbon[3] and woodland caribou[4], and provincial

[1] http://www.mndm.gov.on.ca/sites/default/files/rof_regional_framework_agreement_2014.pdf
[2] https://www.ontario.ca/page/land-use-planning-process-far-north
[3] https://www.ontario.ca/laws/statute/10f18
[4] http://files.ontario.ca/environment-and-energy/species-at-risk/277783.pdf

WCS CANADA
PO BOX 10285
THUNDER BAY, ON, P7B 6T8 CANADA
WWW.WCSCANADA.ORG

CHERYL CHETKIEWICZ
CCHETKIEWICZ@WCS.ORG
807-285-9125 (WORK) | 807-472-1440 (CELL)
FAX: 807-285-9128

commitments to addressing climate change[5]. In addition to promoting regional and strategic environmental assessment in Ontario's Far North[6], I have also worked to address legislative reform of Ontario's *Environmental Assessment Act* (EA Act)[7], specifically to better consider climate change, cumulative effects, private sector projects such as mines, and strategic and regional environmental assessment at the provincial level.

My remarks support and compliment that of my colleague Dr. Justina Ray, the President and Senior Scientist of WCS Canada, who also made a presentation to the Expert Panel in Winnipeg on the role of science in environmental assessment and is submitting formal written comments as well. Our collective experience with environmental assessment and land-use planning is focused on Ontario's Far North where there is ongoing interest in developing the region's natural resources. The so-called Ring of Fire's deposits of chromite, nickel and copper[8] have been touted as the "oilsands of the north"[9]. New mines in this remote region will require access, by road or rail, to get ore to processing facilities and southern markets. In 2014, the government of Ontario made a billion dollar commitment[10] to support this infrastructure. While First Nations communities have been asking for all-weather roads for decades, the government seeks an economic return on such an expensive and potentially risky investment. Yet, lasting benefits that outweigh adverse social, economic, and environmental impacts cannot be delivered adequately through project-level EA under *CEAA 2012*.

The mandate and establishment of the Expert Panel provides an important opportunity to assess the legislation, regulations, and processes around information gathering and decision-making within the federal EA regime. Based on review of both the literature and engagement with Canada's leading EA practitioners, *CEAA 2012* is considered largely unworkable and considered a major step backward[11]. In addition, the way in which CEAA 2012 was developed with no engagement with the public or the Indigenous peoples of Canada are also problematic. As such, it is not enough to merely tinker with the current legislation or return to previous versions of *CEAA*. Instead, the Expert Panel should consider a return to first principles, including recommendations emerging from the "next generation" EA regime being advocated by many EA practitioners, academics, NGOs and other stakeholders across Canada[12,13]. This current review is considered an important opportunity for interested parties like WCS Canada as well the public and Indigenous peoples to consider a shift in federal EA away from one solely focused on making projects "less bad" to a more comprehensive approach that includes strategic- and regional-level assessment, adequately-scoped cumulative effects assessment, and outcomes that can consider long-term, multiple, and equitable benefits (*sensu* sustainability).

To compliment and augment my presentation to the Expert Panel, I have organized my written comments and recommendations to address one of the Panel's suggested themes, specifically "Planning Environmental Assessment", and the five questions therein[14].

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[5] https://www.ontario.ca/page/climate-change
[6] https://canada.wcs.org/Portals/96/Documents/RSEA_Report_WCSCanada_Ecojustice_FINAL.pdf
[7] https://canada.wcs.org/Portals/96/Documents/EABriefing.pdf?ver=2016-12-01-124453-427
[8] http://www.lop.parl.gc.ca/Content/LOP/ResearchPublications/2014-17-e.htm
[9] http://www.huffingtonpost.ca/2013/04/26/ring-of-fire-ontario-tony-clement_n_3159644.html
[10] https://news.ontario.ca/mof/en/2014/04/ontario-investing-in-the-ring-of-fire.html
[11] Doelle, M. 2012. CEAA 2012: The End of Federal EA as We Know It? Journal of Environmental Law and Practice **24**:1-17.
[12] http://www.envirolawsmatter.ca/easummit
[13] Gibson, R. B., M. Doelle, and A. J. Sinclair. 2016. Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment. Journal of Environmental Law and Practice **29**:257-283.
[14] http://eareview-examenee.ca/submissions-guide/

Planning Environmental Assessment

Q1. Under what circumstances should federal assessment be required?

Determining which projects should trigger the application of federal EA processes is an important consideration in a new EA regime. While a variety of approaches to federal EA triggers have evolved through legislation and regulation over the years, the *CEAA 2012* is project-specific and restricts the application of federal EA requirements to designated projects identified by the *Regulations Designating Physical Activities*[15]. With some exceptions, this regulatory list is focused on "mega-projects" such as oil and gas facilities, large mines, nuclear power plants, and pipelines. While the result is that the number of EAs now triggered under *CEAA 2012* has significantly decreased, the quantitative thresholds approach used in the current regulatory list such as tonnage, rate of production, length of linear feature, etc. does not necessarily capture medium or small projects nor their direct, indirect and cumulative environmental effects[16,17]. This "one-size fits-all" approach as well as a narrowed scope to focus on "mega-projects" should be replaced by a more flexible and tiered series of EA tracks (or levels of assessment). Since "mega-projects" also tend to include multiple components, any new federal EA regime needs ensure it does not limit the federal EA to sub-components. This is highly relevant when considering cumulative effects assessment which I suggest should be conducted at the regional level (more below).

The other circumstance in which a federal EA may be required is if the Minister of the Environment and Climate Change requires a project to undergo an environmental assessment. The most likely reason for this is if she is of the opinion the project may cause adverse environmental effects or public concern. While this discretion offers flexibility to consider non-listed projects, it seems highly likely that the only way the Minister will know about these projects is through lobbying with an equally likely assumption that a proponent would lobby against a federal EA which continues to politicize the EA process. One suggestion would be to have a general and specific list of EA triggers and largely avoid a case-by-case outcome based on Ministerial discretion.

Recommendation 1: The Expert Panel should consider combining general triggers (e.g., federal proponency, lands, funds, instruments) and specific triggers (e.g., regulatory lists) to determine when federal EA requirements apply. This should be used to capture a broader range of activities and activities that merit some degree of scrutiny under the new EA regime before federal decisions are made to enable proposals to proceed.

Recommendation 2: The Expert Panel consider the renewed use of an updated (and possibly expanded) Exclusion List to help screen out environmentally insignificant projects (or classes of projects) which may involve areas of federal responsibility, but which do not necessarily require the application of federal EA processes. This would reflect an "all-in-unless-exempted" approach used is previous versions of *CEAA*.

Recommendation 3: Assessments would be required prior to federal regulatory decisions under such statutes as the *Fisheries Act*, *Navigation Protection Act*, *Species at Risk Act* and *Migratory Birds*

[15] http://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-147/page-3.html#h-1
[16] Gibson, R. B. 2012. In full retreat: the Canadian government's new environmental assessment law undoes decades of progress. Impact Assessment and Project Appraisal **30**:179–188.
[17] Doelle, M. 2012. CEAA 2012: The End of Federal EA as We Know It? Journal of Environmental Law and Practice **24**:1-17.

Convention Act. Statutory and regulatory provisions that would trigger an assessment would be listed in regulations similar to the Law List Regulations under *CEAA 1992*.

Q2. For project environmental assessments, do you think the current scope and factors considered are adequate?

Q3. Are there other things (effects, factors, etc.) that should be scoped into an environmental assessment?

CEAA 2012 includes a broad definition of "environment". However, the definition of "environmental effects" is more narrow and restricted to certain federal matters including: fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act;* aquatic species at risk defined in subsection 2(1) of the *Species at Risk Act*; migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*; impacts that are transboundary in nature; and, impacts on Indigenous peoples as a result of the project (section 5). Additional effects can be assessed if a project requires a federal regulatory approval. As such *CEAA 2012* has reduced the nature and scope of EA information collected and provided by the federal agency to the decision-maker, Indigenous peoples, interested parties, and the public engaged with the project.

Factors in section 19 of *CEAA 2012* focus on the mitigation of significant adverse environmental effects (e.g. making a bad project a little less bad), as opposed to an explicit "contribution to sustainability" test[18]. The new EA regime should include a sustainability test or assessments rather than simply mitigation of impacts. As such the prescribed environmental planning factors will have to be considerably broadened and expanded in accommodate this approach.

Better direction is also required in federal EA with respect to the environmental effects of malfunctions or accidents that "may occur" in connection with the designated project and any cumulative environmental effects (section 19 (1) a). In northern and remote regions like Ontario's Far North, the chance of accident or malfunctions in combination with climate change impacts presents high risks to projects. The impacts on globally significant and intact wetlands, peatlands and boreal forests, significant ecosystem services related to climate change, and treaty and Aboriginal rights to a healthy environment cannot be adequately assessed in project-by-project approaches to development. Based on the precautionary principle, the federal EA regime should consider the environmental effects associated with the "worst-case scenario" such as accidents/malfunctions which may have a low probability of occurrence, but if they do occur, then potentially catastrophic off-site impacts upon the environment and/or human health may result. Recent real-world experiences (e.g. Fukushima, Chernobyl, Gulf of Mexico Deep Water Horizon oil spill, Mt. Polley tailings failure, etc.) clearly demonstrate the significant consequences when these accidents do occur.

Recommendation 4: The new federal EA legislation should broaden the list of "environmental effects" considering the broader definition found in *CEAA 1992*[13] as well as the need to consider a sustainability test more explicitly in each EA[19] as well as regional approaches or frameworks for cumulative effects assessment.

[19] Gibson, R. B. 2013. Avoiding sustainability trade-offs in environmental assessment. Impact Assessment and Project Appraisal **31**:2-12.

Cumulative Effects Assessment

Cumulative effects have been defined as the synergistic, interactive, or unpredictable outcomes of multiple land-use practices, development, and climate change that aggregate over time and space, and have significant impacts for valued components of the environment. Under *CEAA 2012*, cumulative effects are defined outcomes of industrial developments in combination with other projects and these combined effects as well as the effects of accidents and malfunctions, mitigation measures, the significance of effects, and comments from the public are part of the cumulative effects assessment under current legislation. Yet, major reviews of 40 years of practice of assessing cumulative effects in Canada at the project-level have shown that rigorous, useful, and tractable cumulative effects assessment, especially as part of project-level environmental assessments[20,21] remain elusive.

Under *CEAA 2012*, and its predecessor, the traditional approach to environmental assessment in Canada has been to address the symptoms or outcomes of individual project impacts, mitigating them until they are deemed acceptable (i.e., making impacts less bad), rather than also addressing the broader regional environmental change and the cumulative effects on social and ecological systems[22]. There is constant and consistent messaging from practitioners and experts that cumulative effects assessment and management in its current form under project-level environmental assessment is simply not working[23] and the recommendation that cumulative effects should be considered at the regional level.

The concept of regional cumulative effects assessment in Canada is not new[21]. With the release of the Canadian Council of Ministers of the Environment[20] guidance on strategic assessment. Examples of regional frameworks for cumulative effects assessment include Alberta's oil sands (Johnson et al., 2011), British Columbia's Elk Valley[24], and my colleague, Dr. Anastasia Lintner, and I have made a case for regional assessment to address cumulative effects in Ontario's Far North[25]. However, the best example of an REA or SEA-like process informing project-level environmental assessment is the Mackenzie Valley Pipeline Inquiry, led by Mr. Justice Thomas Berger[26]. This process set an international standard for critical and cross-cultural public assessment of proposed development options that has not been seen in Canada since.

While the Minister also has the authority to establish a committee to conduct a regional study to assess cumulative effects, it is unclear if this has actually occurred in practice. In general, the ability to require a regional study to address cumulative effects is a positive aspect of *CEAA 2012*. However, more useful would be a *legislated* framework enabling regional environmental assessment in order to address cumulative effects more explicitly rather rely on discretionary regional studies.

Finally, *CEAA 2012* supports deferring assessment obligations, wherever possible, to provincial assessment processes. In Ontario, for example, while project assessment may be harmonized, Ontario's environmental assessment process is particularly problematic from the perspective of cumulative effects

[20] Duinker, P. N., E. L. Burbidge, S. R. Boardley, and L. A. Greig. 2013. Scientific dimensions of cumulative effects assessment: toward improvements in guidance for practice. Environmental Reviews **21**:40-52.

[21] Duinker, P. N. and L. A. Greig. 2006. The Impotence of Cumulative Effects Assessment in Canada: Ailments and Ideas for Redeployment. Environmental Management **37**:153-161.

[22] Canadian Council of Ministers of the Environment. 2009. Regional Strategic Environmental Assessment in Canada: Principles and Guidance. Canadian Council of Ministers of the Environment, Winnipeg.

[23] Noble, B. 2015. Cumulative Effects Research: Achievements, Status, Directions and Challenges in the Canadian Context. Journal of Environmental Assessment Policy and Management **17**:1550001.

[24] Available online at: www.elkvalleycemf.com

[25] https://canada.wcs.org/Portals/96/Documents/RSEA_Report_WCSCanada_Ecojustice_FINAL.pdf

[26] Berger, T. R. 2010. Northern Frontier, Northern Homeland Douglas & McIntyre.

since cumulative effects assessments are not required (unless by discretion of the Minister) under Ontario's *Environmental Assessment Act* (EA Act). These is no language in the EA Act about regional studies, strategic environmental assessment (SEA), and/or regional environmental assessment (REA). While federal guidance on CEA exists, there is no such guidance at the provincial level. These are important gaps in provincial legislation that new federal EA legislation must consider.

Recommendation 5: Federal legislation must consider decision-making based on cumulative effects assessment at a regional, strategic and project level and focus on valued components (e.g., species, ecosystems processes, social wellbeing) rather than human activities. All impacts should be presumed to be cumulative and assessment should include indicators associated with sustainability, including how well aligned the project outcomes are with federal (and ideally provincial) commitments to address carbon emissions[27] and protect biodiversity[28].

Q4. Under which circumstances should environmental assessment be undertaken at the regional, strategic, or project-level?

Environmental assessment at the federal level must recognize that regional environmental assessment (REA) furthers the understanding of actual and potential cumulative effects arising from past, present and alternative future scenarios, provides better opportunity for Indigenous peoples and the public to help shape regional visions, and eases the burden of addressing regional scale issues such as infrastructure in project-level assessments. Plans, policies and programs are assessed at the federal level through strategic environmental assessment (SEA) are assessed and linked to regional and project assessments to help ensure their net contribution to sustainability and avoid policy debates that currently tend to burden project-level environmental assessments. Ultimately, project-level, regional and strategic assessments are tiered, with project assessments fitting within the vision set at the regional and strategic levels, informed by and feeding back into those processes and outcomes.

Potential triggers for REA and SEA in federal legislation could include:

- a strategic decision is to be made to establish a framework and conditions for future development, land and resource use, or management actions in a region;
- proposals to develop a regional plan or strategy concerning resource use, resource allocation, conservation, or development;
- acceptance of one or more applications for development in a previously undeveloped region for which no current regional plan or strategy exists;
- a measured decline in the key natural resources or ecological integrity of a region;
- First Nations or public demands that a REA or SEA be conducted;

Recommendation 5: Federal legislation must set out a legal framework for regional and strategic environmental assessments, including: when they are triggered; their processes and substantive requirements; linkages to project-level assessment; resource management and planning; public and stakeholder engagement; and Indigenous co-governance.

[27] Canada's Intended Nationally Determined Contribution Submission to the United Nations Framework Convention on Climate Change (2015) http://www4.unfccc.int/submissions/INDC/Published%20Documents/Canada/1/INDC%20-%20Canada%20-%20English.pdf

[28] Convention on Biological Diversity (1992) https://www.cbd.int/convention/text/default.shtml

In general, this kind of approach in a new federal EA regime will require a mechanism and governance structure supporting cumulative effects assessment at a regional scale. One suggestion is a central agency or regional body that would be responsible for coordinating and/or conducting a cumulative effects assessment at a regional scale. This approach will also require new models of governance for regional assessment that can incorporate the regional cumulative effects assessment. Impact review boards and independent advisory committees such as those established under modern land claim agreements could offer models for governance structures under federal legislation. This scale of assessment would also support REA and SEA neither of which are possible under *CEAA 2012*.

Regional Environmental Assessment (REA)

Under current legislation, there is no legal requirement, provision, or definition of regional environmental assessment (REA). REAs have emerged for various reasons and in various forms and contexts, including to help assess cumulative effects, provide clearer contexts for project-level environmental assessments and decisions, and recognize limits on tolerable change.

Under *CEAA 2012*, the Minister of the Environment and Climate Change can commission regional studies on the existing or future effects of physical activities carried out in a region (sections 73-77). The Minister may appoint a committee to study existing or future effects of physical activities (*sensu* cumulative effects) in a region wholly composed of federal lands (subsection 73(1)) or may partner with another jurisdiction for a regional study on lands partly or wholly outside federal jurisdiction (subsection 74(1)). This committee could function along the same lines of a review panel with the ability to hold public hearings and commission studies, and their report would go to the Minister as well as the public (sections 75, 76 and 77). In this way, regional studies provide for more comprehensive analysis of potential impacts in an area and help to inform environmental assessment decisions. Yet, decisions made by the Minister under sections 73-77 are highly discretionary and do not specifically mention any opportunities for public engagement, except as readers of the final report. And, although the language in section 77 suggests that the Minister could establish a regional effects study committee with a similar mandate as a review panel, there is nothing compelling the Minister to ensure that such a committee would "function along the same lines" as a review panel (given discretion to establish or approve a Terms of Reference with no mandated requirements for public engagement). While I am not aware of any regional studies actually being implemented under *CEAA 2012*, this provision offers an important opportunity to address sustainability and cumulative effects at a regional scale could also enable harmonization with provincial/territorial jurisdictions.

Strategic Environmental Assessment (SEA)

Under the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*[29] (the Directive), federal government bodies conduct strategic environmental assessments (SEA) on their new plans, programs, and policies when the proposal is submitted to a Minister or Cabinet for approval and when the proposal may result in important negative or positive environmental effects. However, implementation of the Directive has been both slow and largely ineffective based on reports to Parliament and audits by the *Commissioner of the Environment and Sustainable Development (Auditor General of Canada)*[30].

Since its implementation, there have been six audits of federal departmental application of the Directive. A 1998 study showed the government was slow to implement SEA and a 2004 audit found a

[29] http://www.ceaa.gc.ca/default.asp?lang=En&n=b3186435-1

[30] http://www.oag-bvg.gc.ca/internet/English/parl_lp_e_901.html

number of deficiencies, including: there was a low level of commitment in conducting SEAs; most departments were not implementing the Directive; there were major gaps in how the Directive was being applied; few departments had training or tracking systems for SEAs; few SEAs were being conducted in detail; there was insufficient direction to departments; and there was no monitoring of compliance with the Directive. A key recommendation of the 2004 audit was that the Canadian Environmental Assessment Agency should assess the quality of SEAs being done. A 2008 follow-up to the 2004 audit revealed little progress in addressing the Commissioner's recommendations. In particular: most departments were not preparing public statements; there was weakness in transparency and accountability; there were insufficient mechanisms for holding agencies to account under the Directive; and public statements that were released were difficult to find. In 2013, the Commissioner developed a six-year strategy to examine how all 26 federal departments and agencies required to contribute to the Federal Sustainable Development Strategy apply the Directive and its related guidelines. To date, they have found that while some federal departments (Natural Resources and Transport Canada) have established mechanisms for implementing the Directive, most have not. Information about SEAs conducted is not properly inducted and most departments are not making public statements regarding SEAs or ensuring that potential environmental impacts are included in proposals. A 2015 audit examined whether four departments (Agriculture and Agri-Food Canada, the Canada Revenue Agency, Canadian Heritage, and Fisheries and Oceans) adequately applied the Directive, reported on the extent and results of their SEA practices and met their departmental sustainable development strategy commitments to strengthen their SEA practices. The audit found that in the majority of cases, Ministers are not being provided with information about environmental effects of plans, policies or proposals. For example, the Directive was only applied to five out of 16,000 proposals to Ministers and to Cabinet, most of which did not meet Directive requirements. The results of the six audits have shown that there needs to be leadership in SEA and the need for a body overseeing departments' SEA processes and ensuring that departments are implementing the Directive[31]. Outside the federal process, SEA in Canada has been applied on an *ad hoc* basis with mixed outcomes that are dependent on assessment experience and frameworks[32, 33].

Q5. Who should contribute to the decisions of whether a federal environmental assessment is required?

This question speaks more broadly to the role of public engagement in federal EA and the role of Indigenous peoples of Canada in federal EA. In general, however, the key question is who gets to decide on federal EA to which there have largely been two general options approaches: 1) allowing the final EA decision to be made by a political entity; or 2) allowing the final EA decision to be made by an independent expert tribunal. The role of the public and Indigenous peoples of Canada in these processes is highly variable and depends on the EA.

The public

To be meaningful, public participation has to be early, ongoing and part of all levels of assessment. Federal EA legislation should recognize the federal government is responsible for public participatory processes, which at a minimum include: fair notice; disclosure; respect; access to information; adequate

[31] Noble, B. F. 2009. Promise and dismay: The state of strategic environmental assessment systems and practices in Canada. Environmental Impact Assessment Review **29**:66-75.

[32] Fidler, C. and B. F. Noble. 2013. Advancing Regional Strategic Environmental Assessment in Canada's Western Arctic: Implementation Opportunities and Challenges. Journal of Environmental Assessment Policy and Management **15**:1350007.

[33] Noble, B. F. 2009. Promise and dismay: The state of strategic environmental assessment systems and practices in Canada. Environmental Impact Assessment Review **29**:66-75.

resources and education; the ability to influence outcomes; integration of public opinion and expertise; written reasons; explanations of how comments were received, considered and reflected in decisions; rights of appeal; and trustworthy and independent reviewing bodies. While jurisdiction may limit the ability of the federal to make outright decisions, there are no such limits on gathering information, assessing the information, and engaging the public. The jurisdictional constraints on the federal government should arise at the triggering and decision making stage, not the information-gathering, assessment and public engagement stages. The federal government should also make all information from environmental assessments permanently and publicly available in a free, searchable federal registry and repository as a condition of environmental assessment and review processes, including the data collected prior to assessment baseline data. This would support monitoring and evaluation of hypotheses about the project's impacts, alternatives, and mitigation proposals and provide benchmarks for future studies.

Going forward with federal environmental assessment, the public must be actively and dynamically engaged from the early stages, before proposals are submitted and strategic decisions are made, all the way through monitoring and enforcement. Public participation is not a "one-size-fits-all" process, meaning that while hearings play an important role, the public should also be involved in designing alternative processes that are appropriate for the circumstances and public's needs. Written comment periods are not enough. Consideration of alternatives, including the no-project alternative, and a "need for" analysis that is based on the public interest perspective, are integral components of public participation in federal EA.

Indigenous Peoples of Canada

The current government's commitment to nation-to-nation relationships with Indigenous peoples in Canada is significant. One of the ways that relationship can be expressed is through environmental assessment. Indigenous peoples must be engaged in determining whether a federal environmental assessment is required since environmental assessment and the decision-making processes around development projects can be an important tool for the disposition and/or disconnection of their rights and culture.

Moving forward with federal assessment, means that the federal government complies with the United Nations Declaration on the Rights of Indigenous Peoples[34], with assessments conducted on a nation-to-nation basis and in respect of Indigenous peoples' right to free, prior and informed consent. The duty of reconciliation and the Truth and Reconciliation Commission's Recommendations[35], as well as climate change obligations, are guiding principles. Processes like collaborative consent[36] are iterative and adaptable to different circumstances and nations. While legislation and nation-to nation agreements set out frameworks, they have flexibility built-in in order to adjust models for specific groups and circumstances and policy spaces for nation-to-nation dialogue.

Recommendation 6: Legislation should set out general requirements and principles for meaningful participation so the public can see in the legislation what, at a minimum, will be available to them. Specific processes, however, should not be set out in legislation and addressed with guidelines to

[34] http://indigenousfoundations.arts.ubc.ca/home/global-indigenous-issues/un-declaration-on-the-rights-of-indigenous-peoples.html

[35] http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf

[36] http://aptn.ca/news/wp-content/uploads/sites/4/2016/05/Collaborative-Consent-Nation-to-Nation-Path-to-Partnership-with-Indig-Govts-Ishkonigan-et-al-Dec-20-15.pdf

provide a “tool box” of options, since every participation process should be different based on the public involved in shaping them.

Recommendation 7: There should be an appellate body to enforce requirements and standards, ensure fairness and adherence to minimum standards and principles, and provide a right of appeal for participants.

Recommendation 8: Key aspects of collaborative consent with Indigenous peoples should be set out in legislation. However, there needs to be flexibility in order to adjust models for specific groups and circumstances. Nation-to-nation agreements should be used to define and separate the issues.

In conclusion, I hope that my submission and recommendations together with my presentation to the Expert Panel will be useful in the mandate of the Expert Panel and I anticipate that these points can inform the next generation of federal EA and thereby encourage better social, ecological, and economic outcomes in regions like Ontario’s Far North. If you have any questions, please contact Cheryl Chetkiewicz (cchetkiewicz@wcs.org or 807-285-9125).

Sincerely yours,

Cheryl Chetkiewicz, PhD
Associate Conservation Scientist & Landscape Lead