



Federal EA Review

Presentation to Expert Panel

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NunatuKavut means **Our Ancient Land** and is the territory of the Inuit of NunatuKavut – the Southern Inuit – who reside primarily in southern and central Labrador.





Our **traditional territory** covers the entirety of south central Labrador, the adjacent marine areas and also extends westward to the now Labrador/Quebec border.



The people of NunatuKavut.



What the people of
NunatuKavut do.



The places where our **people** live.





The NunatuKavut Community Council (NCC) is the representative government of approximately **6,000 people** who belong to this territory.



We are a people whose **identity** is shaped
by the **land, sea** and **ice**.

NCC's responsibility is to ensure the **land, ice** and
water rights and titles of its people are recognized
and respected as our Elders taught us.



*“Our vision is a **self-sufficient** and **self-governing** territory, which upholds the principles of inclusion and equality, while honouring its Inuit history, culture and tradition.”*

Our first nation-to-nation relationship was clearly articulated with the **British-Inuit Treaty of 1765.**





NCC is a also a modern
land claimant
organization.

Our Land Claim includes
the **Indigenous**
rights, titles and
Treaty rights of the
Southern Inuit.

Preliminary Remarks – IEP TOR

- The Indigenous Engagement Plan (IEP) for the EA Review is guided by the TOR, which specifically directs the Panel to consider:
How to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects.
- NCC welcomes this direction, which is lacking in the current legislation. However, the start of the current EA Review process has been less than promising.

Preliminary Remarks:

Issues with the Current Process

- This EA review process has a very tight timeline.
- NCC was not given adequate advance notice or confirmation of funding in advance of the Panel presentations in Happy Valley – Goose Bay on October 7, 2016.
 - NCC did get approval from the funding agency until October 6.
 - NCC chose not to make a presentation in HV-GB because the federal government did not engage with the community on an adequate level. NCC is here on this teleconference in good faith today.
- To demonstrate a sincere desire to follow the TOR of the IEB, the government must remedy this less than promising start.

Preliminary Remarks: Clarification

- NCC understands that the Expert Panel portion of the EA Review process is not a consultation, but a Pre-Consultation.
- When Panel Report is finalized, Indigenous Groups (IGs) will be engaged in formal consultations regarding its recommendations.
- NCC expects to be consulted in a timely manner by the Minister regarding the Panel's recommendations; and to have access to adequate funding to meaningfully participate.
- The EA Review Process itself can be instructive in highlighting deep challenges to Indigenous consultation and engagement; but also in co-creating solutions with IGs.

Environmental Assessment in Context: Change the Context of the EA Consultation

- Widespread recognition that the EA Process and Indigenous Consultation are broken and that trust needs to be built.
- Recent findings in neuroscience (as applied to management) show that trust is essential to move us from conflict to co-creation. This transformation will yield better results for Indigenous Groups and broader society.
- These findings are consistent with Indigenous traditions/ITK, where trust is essential and decision-making is less hierarchical.

Environmental Assessment in Context: Change the Context of the EA Consultation

- NCC suggests that the Context of the EA Consultation Process should be transformed as follows:

Mistrust	→	Trust
Top Down and Hierarchical	→	Equal Partnership/Nation-to-Nation
Tell/Ask	→	Share/Discover
Resistance	→	Collaboration/Co-Creation

- Building trust requires an investment of time, funding and goodwill; but worthwhile if Canada wishes to reconcile with IGs and work collaboratively for mutual benefits.

Environmental Assessment in Context: Change the Context of the EA Consultation

- NCC also wishes to find positive, collaborative alternatives to resistance in order to address disregard, disrespect and destruction on our territory.



Our Elders being arrested for standing up for our rights at Muskrat Falls



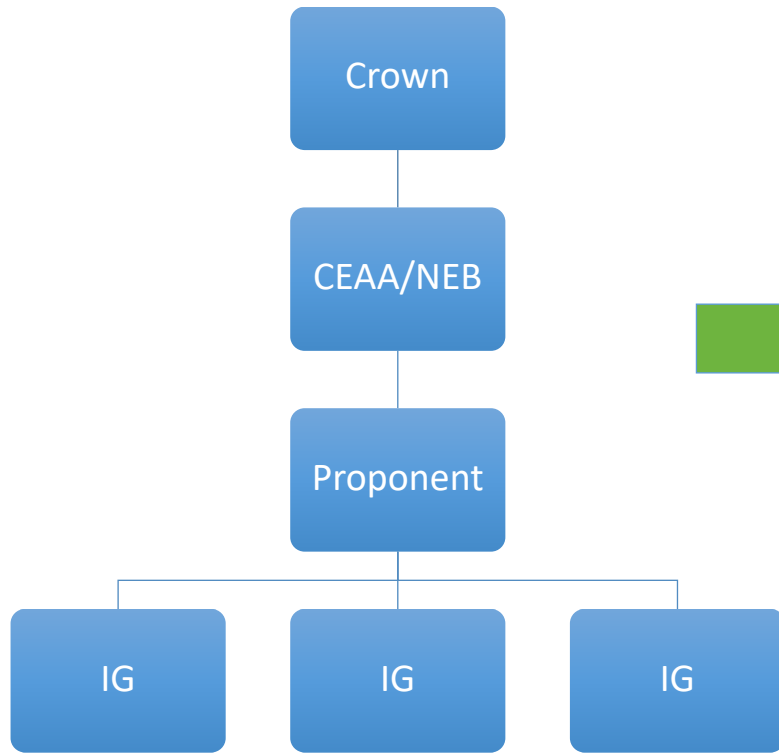
Destruction of a martin trap on a trap line at Muskrat Falls

Environmental Assessment in Context:

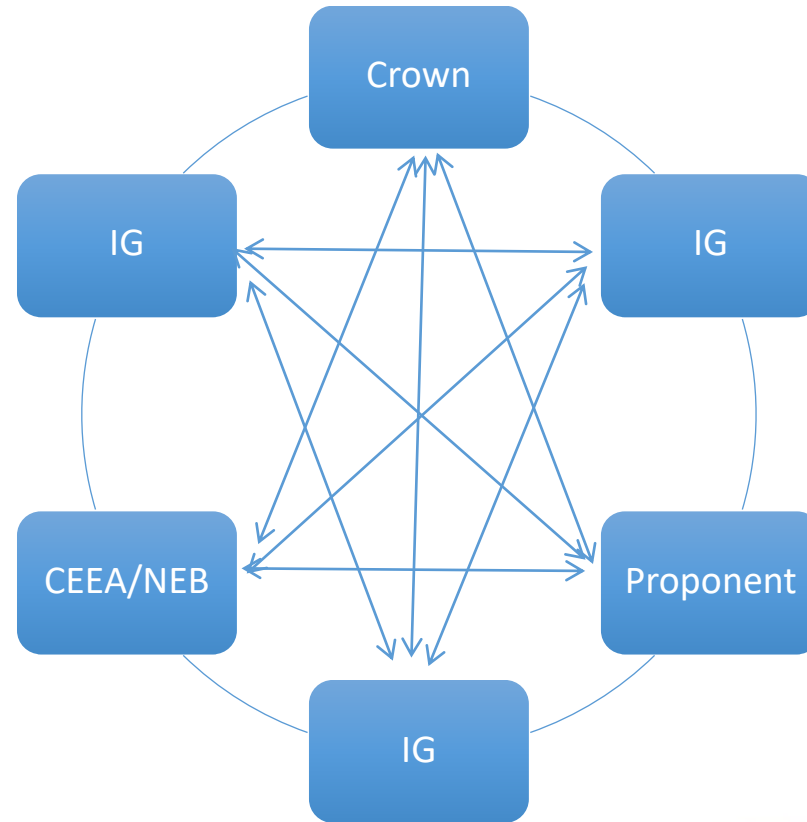
Change the Context of the EA Consultation: How?

- Ask Indigenous Groups how they would design a consultation (not as a one-off but on an ongoing basis and understand that the approach will evolve); ITK should be integrated in the design of the consultation.
- **The following points will be elaborated on in subsequent sections:**
- Facilitate Indigenous participation by changing the following:
 - Timelines are unreasonably short and inflexible for IGs.
 - Multiple concurrent consultations are overwhelming the capacity of IGs. Should be staggered.
 - Provide adequate funding (for ITK, expert, legal, community) to enable meaningful participation.
 - Integrate ITK as a complement to Scientific Knowledge in Evidence-Based EA Assessments.
- Correct the Crown's bias towards project development:
 - Transform the NEB so it is no longer a captive regulator (part of Modernization of NEB consultation).
 - Incorporate an automatic triggering mechanism for an EA in CEAA.
 - Require proponent to justify the need for project and consider alternatives.
 - Require consideration of cumulative effects and avoid project splitting.
 - Involve IGs early in the process (and at every step).
 - Ensure that the duty to consult is carried out in good faith and supported by CEAA.
 - Recognize the principles of UNDRIP in CEAA and respect IGs' right to say no.
- Integrate ITK and recent findings in management and neuroscience to design consultations that build trust and emphasize collaboration.

Environmental Assessment in Context: Change the Context of the Consultation: Transformation



Mistrust, Top-Down, Resistance



Trust, Partnership, Co-Creation

Overarching Indigenous Considerations: Timelines

- Indigenous Groups often given inadequate and inflexible timelines (under CEAA 1992 and 2012) for their participation and submissions, whereas proponents are often granted longer timelines that are then further extended in response to proponents' requests.
- Proponents succeed in using their much greater resources (in terms of funding and ability to control timelines and information) to maximize their advantages in EA processes.
- In EAs under CEAA 1992 (notably for Muskrat Falls and Labrador-Island Transmission Link), IGs were given inadequate time for comments, whereas proponents benefitted from lengthy time periods.

Overarching Indigenous Considerations: Capacity

- Multiple concurrent federal consultations are now overwhelming the capacity of NCC.
- These consultations are highly relevant to the future of our territory, our people and our way of life.
- NCC wishes to give careful consideration and to participate meaningfully in each consultation.
- Consultations should be better staggered for meaningful participation and to respect IGs' capacity.

Overarching Indigenous Considerations: Funding

- Funding for Indigenous participation inadequate under CEAA 1992; continues to be inadequate under CEAA 2012
- Full Indigenous participation requires public consultation and ITK input; EA processes typically also require high-quality technical expertise (complementary science/ITK, engineering, economic) combined with competent and specialized legal assessment.
- Access to adequate levels of intervenor funding is essential to allow IGs to meaningfully participate and to hire high-quality expert and legal assistance.
- Current very low levels of intervenor funding for IGs and other intervenors substantially disadvantage IGs and can substantially advantage proponents. And proponents can often recover costs from customers.

Overarching Indigenous Considerations: Funding

- Many positive changes could help fix broken EA process and build trust with IGs, but this whole EA review will be an empty gesture absent dramatic enhancement of intervenor funding (and a workable process for intervenors to access it) to allow for meaningful participation and skilled expert and legal assistance.
- Inadequate funding is particularly problematic because the Crown relies on EA process to assist in discharging duty to consult with Indigenous on various projects

Overarching Indigenous Considerations: Indigenous Traditional Knowledge (ITK)

- CEAA 2012 has no requirement for the consideration of ITK, but provides that Aboriginal traditional knowledge MAY be included in EA.
- Lack of ITK requirement is inefficient and implies that time and money will be spent negotiating with proponents and government to ensure ITK is considered. Oftentimes, agreements are reached too late in the process.
- Lack of consideration of ITK under CEAA 1992 has been highly problematic for NCC's communities, particularly in the context of the Muskrat Falls and Labrador-Island Transmission Link EAs. The failure to integrate ITK and the disregard of NCC's warnings about local soil composition has contributed to serious problems of leakage in the cofferdams, as well as impacts on salmon (which the EA maintained did not exist in the Lower Churchill River).

Overarching Indigenous Considerations: Indigenous Traditional Knowledge (ITK)

- NCC's position is that ITK should be an integral part of any EA review with impacts on IGs and ITK consideration must be adequately funded.
- Funding of ITK is also essential to NCC when engaged in consultation so as to understand potential impacts to rights and members.
- ITK should be led by communities and not the proponent or CEAA.
- **EAs should be evidence-based and incorporate complementary (non-Indigenous) scientific knowledge (SK) and ITK findings. EAs should consider evidence deriving from multiple sources, including both SK and ITK.**

Overarching Indigenous Considerations: Indigenous Traditional Knowledge (ITK)

- Under CEAA 1992 and especially CEAA 2012, scientists have complained of a lack of evidence-based rigour and a lack of predictions well-grounded in science. Instead, EAs have been replete with unjustified guesses.
- To address the problem of lack of both SK and ITK evidence in the EA process, NCC recommends the design and implementation of an Operational Policy Statement that specifies that all predictions about environmental effects and the significance thereof be accompanied by:
 - i. an explicit statement about the underlying causal hypotheses (if any);
 - ii. an explicit account of the project-specific evidence (based on complementary findings of SK and ITK) that, in the view of the assessor, justifies the predictions;
 - iii. an explicit assessment of the extent to which the predictions are consistent with the weight of current scientific (complemented by ITK) evidence; and
 - iv. if they are not, an explanation for the discrepancy.

Overarching Indigenous Considerations: Indigenous Traditional Knowledge (ITK): Integration with SK

- There must be serious consideration of a process by which ITK is integrated into an EA so it can be complementary. It should not be a matter of merely “adding ITK” to check a box.
- A way forward can be found in a number of useful studies on the integration of conventional scientific and traditional knowledge (Giles et al). These were undertaken by collaborative initiative by the Institute of the Environment (IE) at the University of Ottawa, the Assembly of First Nations and Indigenous community partners across Canada
- These studies use fuzzy cognitive mapping (FCM) as a technique to extract, present and compare Canadian Indigenous and conventional science perspectives.
- The process described in these papers is being used in a range of settings, including integrating ITK and SK in the context of polar bear management in Nunavut and in incorporating ITK in Committee on the Status of Endangered Wildlife in Canada (COSEWIC) reports for species at risk under SARA, as well as an exploration of Indigenous views of health in relation to diabetes.

Overarching Indigenous Considerations/Planning the EA: Correcting the Crown's Bias Towards Project Development

To correct the Crown's bias towards project development:

- Transform the NEB so it is no longer a captive regulator (part of Modernization of NEB consultation).
 - Incorporate an automatic triggering mechanism for an EA in CEAA.
 - Require proponent to justify the need for project and consider alternatives.
 - Require consideration of cumulative effects and avoid project splitting
 - Involve IGs early in the process (and at every step).
 - Ensure that the duty to consult is carried out in good faith and supported by CEAA.
 - Recognize the principles of UNDRIP in CEAA and respect IGs' right to say no.
- The above points are very important, but their consideration exceeds the time set aside for this presentation. They will therefore be dealt with in NCC's written submission. NCC welcomes questions from the Panel about these points or any others in our presentation.**