

Saugeen Ojibway Nation Comments on the Federal Review of Environmental Assessment Processes: Expert Panel Draft Terms of Reference

The Saugeen Ojibway Nation (“SON”) is comprised of the Chippewas of Nawash Unceded First Nation and the Saugeen First Nation. In SON’s Traditional Territory (“Anishnaabeking”), SON’s members have proven and asserted Aboriginal and Treaty rights, including a court-recognized commercial fishing right. SON also has a land claim over the beds of waters, and a claim about treaty validity. The SON exercises its constitutionally protected rights, both asserted and proven, throughout the Traditional Territory.

The SON Environment Office has reviewed the “Expert Panel Draft Terms of Reference” (“ToR”) (as available at: <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/share-your-views/eap-draft-terms-reference/draft-terms-reference-ea.html>) and has several comments, questions for clarification, and concerns about the ToR.

SON is concerned that the 5-month time window (September 2016-January 30 2017) allocated to this process is unrealistic. Considering the depth and breadth of scope required to ensure that First Nations are engaged and input is incorporated in a meaningful way into the review, this window of time may be impracticable, and flexibility is needed.

SON has provided a table that outlines specific questions, issues and concerns regarding the ToR, specifically. At a high level, SON’s concerns with the ToR include: the way in which the Panel proposes to engage Indigenous People in the process and how specific communities are to be selected for in-person consultations.

The Terms of Reference state, “the Panel shall, where practicable, hold Indigenous in-person consultation activities in regions or communities where project environmental assessments have been recently conducted or where communities have expressed interest in the review.” SON’s comments on the ToR should be recognized as an expression of interest in being involved in the review process, including in-person consultation activities to occur in the Fall of 2016. Furthermore, SON has significant recent and ongoing experience with environmental assessment processes through which it has acquired valuable insights to contribute to the review.

| Reference | SON Comment |
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| Context The mandate letter of the Minister of Environment and Climate Change (the Minister) directs her, as a top priority, to “immediately review Canada's environmental assessment processes to regain public trust and help get resources to market and introduce new, | This mandate is explicitly and self-evidently biased toward basing EA decision-making within the context of a single, dominant knowledge system - that of Western Science. The mandate as worded does not acknowledge Indigenous knowledge systems as full and equal partners with Western Science in EA decision-making. The wording of this mandate must be revised to acknowledge Indigenous knowledge systems as equals in the process, rather than subservient or accessory to a dominant Western Science knowledge system and its cultural values and processes. In 2010 the Saugeen Ojibway Nation-sponsored research program at |

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| <p>fair processes that will ... introduce new, fair processes that will ... ensure decisions are based on science, facts and evidence and serve the public's interest."</p> | <p>University of Guelph prepared an extensive report for Canada regarding the role of Indigenous and Western Science knowledge systems in EAs and natural resource management decision-making:</p> <p>Crawford, S., Wehkamp, C.A., and Smith, N. 2010. Translation of Indigenous/Western science perspectives on Adaptive Management for environmental assessments. Report prepared for the Research and Development Monograph Series 2009, Canadian Environmental Assessment Agency, Ottawa, Ontario, Canada. http://publications.gc.ca/site/eng/376548/publication.html.</p> <p>"Adaptive management must be seen for what it is - a management technique that is fundamentally based in Western science, based on our need to use management decisions as an institutional learning tool. There is no separation between management and policy and science; they are one. While Adaptive Management may be a culturally specific (i.e. Western) form of a general solution in human ecology, Indigenous communities must determine for themselves whether they see common elements and/or opportunities between Adaptive Management and their own culturally specific knowledge systems.</p> <p>If so, then the Agency and other responsible authorities can offer Adaptive Management as a viable framework within which Indigenous and Western science knowledge holders can learn together: asking questions, putting forward possible explanations, generating and evaluating predictions as 'proof in the pudding,' and building trust in each other's commitment to ongoing improvement of our EAs.</p> <p>If not, then Adaptive Management and Western science cannot and should not be forced on Indigenous cultures for EAs, or any aspect of resource management for that matter. This cultural tyranny would only produce conflict, mistrust and bad management - the complete opposite of what Adaptive Management seeks to achieve.</p> <p>So, the key issue really has to do with dialogue between community-based Indigenous and Western science knowledge holders, to determine if Adaptive Management is a viable framework for true collaborative management in EAs. If the [Canada] decides that it is willing to invest in these kinds of cross-cultural relationships, then we can identify a handful of tactically important recommendations for making progress."</p> |
| <p>Context</p> <p>"Ensure decisions are based on science, facts and evidence and serve the public's interest; "</p> | <p>Indigenous knowledge systems must also be incorporated.</p> <p>Indigenous ecological knowledge will also need to be incorporated on a case-by-case basis, as each Nation will have their own unique understanding and knowledge of their environment.</p> |
| <p>Context</p> <p>"Provide ways for Canadians to express their views and opportunities for experts to meaningfully participate"</p> | <p>This should be revised to read:</p> <p>"Provide ways for First Nations and Canadians to express their views and opportunities for experts to meaningfully participate"</p> |

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| Mandate “The Panel shall prepare a report that sets out...” | To ensure transparency, the Expert Panel’s report should include reporting on how First Nations were selected for engagement and engaged in the review (e.g., methods). |
| Scope of Review “1. How to ensure decisions are based on science, facts and evidence and serve the public’s interest” | This should be revised to read: “ensure decisions are based on science, local and/or traditional ecological knowledge, facts and evidence...” |
| Scope of Review “This will include...such as Indigenous consultation, public participation, the role of science and harmonization...” | This should be revised to read: “This will include...such as Indigenous engagement and consultation, public participation, the role of science and Indigenous knowledge...” |
| Scope of Review “The Panel shall also consider how to enhance regulatory certainty in the development of major projects in Canada” | Enhancing regulatory certainty should be one of the main outcomes of this process. |
| The Review Process The Panel "The Minister will appoint individuals to the Panel that have knowledge or experience relevant to environmental assessment processes." | The Panel will not be able to effectively comprehend its responsibilities and/or execute its mandate unless at least one of the Panel Members possesses advanced experience with Indigenous knowledge systems (plural) as they relate to the Western Science (singular) of modern EAs and natural resource management. |
| The Review Process The Panel “The Panel will consist of at least three members, including one Chairperson.” | This ToR should provide explicit criteria regarding appointment of individuals to the Panel. To achieve the desired outcome of the process, it is essential to include First Nation persons, with substantial understanding and experience with Indigenous knowledge systems, also selected by explicitly identified criteria. |
| Conduct of the Review Timeline | The identified timeline is unrealistic given the scope and goal of the engagement activities associated with the review. While it is pertinent that this review be completed in a relatively short period, when considering the depth and breadth of scope required to ensure that First Nations are engaged and input is incorporated in a meaningful way into the review, this window of time seems impracticable. |
| Conduct of the Review | Which organizations? |

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| <p>Indigenous Engagement and Consultation</p> <p>“The Panel shall meet with the leadership of National Indigenous Organizations in preparation of the Plan”</p> | <p>The Panel should understand that National Indigenous Organizations do not necessarily represent many First Nations communities that may be interested in being involved in this review and engagement process.</p> <p>The Panel will need to scope out other means of ensuring that the Indigenous Engagement Plan is appropriate.</p> <p>This Plan should be open for comment.</p> |
| <p>Conduct of the Review Indigenous Engagement and Consultation</p> <p>“The Panel shall work with regional Indigenous organizations in the planning and hosting of Indigenous in-person consultation activities”.</p> | <p>Which organizations?</p> <p>The Panel should understand and explicitly recognize that regional Indigenous Organizations do not necessarily represent all First Nations communities that may be interested in being involved in this review and engagement process.</p> <p>The Panel should propose other processes to plan in-person consultation activities.</p> |
| <p>Conduct of the Review Indigenous Engagement and Consultation</p> <p>“The Panel shall, where practicable, hold Indigenous in-person consultation activities in regions where project environmental assessments have been recently conducted or where communities have expressed interest in the review.”</p> | <p>What does this mean, “where practicable”? How will the Panel decide whether or not to hold a session in a community that has expressed interest?</p> <p>How will First Nations People express interest in the review and/or in-person consultations?</p> |
| <p>Conduct of the Review Indigenous Engagement and Consultation</p> <p>“The Panel shall take into account the timing of traditional activities in the local regions and communities when setting the time and location of Indigenous in-person consultation activities.”</p> | <p>Given the proposed timing for the in-person consultation activities (fall 2016), this will be difficult, as many traditional land use activities occur during fall.</p> |
| <p>Multi-Interest Advisory Committee</p> <p>“A Multi-Interest Advisory Committee with</p> | <p>Which organizations will individuals be selected from?</p> <p>What are the selection criteria?</p> <p>There should be explicit criteria under which individuals are selected to participate in the Advisory Committee.</p> |

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| representatives of Indigenous organizations...” | |
| Multi-Interest Advisory Committee “The Multi-Interest Advisory Committee will meet as required in order to discuss the issues and will provide its consensus advice, to the extent possible, for the Panel's consideration and in accordance with any timeline provided by the Panel.” | Will these sessions be open to the public? These sessions should be broadcast via web-cast or other means so that interested parties can be informed of progress in the process. |
| EA Review Report | The report should include a methods section, outlining selection criteria for members of the Expert Panel and the Multi-Interest Advisory Committee. This section should also include how and which communities were selected for in-person consultation activities. The report should also be condensed and made available as a summary document. |
| Participant Funding | More information should be provided regarding participant funding eligibility and timeline. When will participant funding be available and what are the criteria for being eligible for participant funding? |
| Official Languages | Summary documents should be produced and available in languages of First Nations People. |