



**AFN Impact Assessment Webinar Series**  
**5 Year Review of the Physical Activities Regulation (Project List)**

August 27, 2024 1-3pm EST

Assembly of First Nations Environment, Lands & Water Branch



# AFN Mandate on Impact Assessment

- Call on Canada to ensure that regulatory and policy development fully respects the constitutional and other legal obligations of the Crown to First Nations and standards set by the *United Nations Declaration on the Rights of Indigenous Peoples* ([Resolution 69/2018](#)).
- Call on Canada to engage in focused dialogue with First Nations to substantively identify, recognize, and engage the protocols, elements, and processes to conduct joint regulatory and policy drafting ([Resolutions 69/2018, 06/2019](#)).
- Call upon Canada to meet or exceed precedent set in development and eventual passage of the Species at Risk Act – full, direct, and unfettered participation of First Nations ([Resolution 73/2017](#)).



# AFN Mandate on Impact Assessment

- Continue to support and coordinate interventions and participation of First Nations, regional organizations, and provincial territorial organizations in the co-development process, including creating regionally specific processes to address specific concerns and support provisions as part of nation-to-nation relationships ([Resolutions 73/2017](#), [07/2018](#), [69/2018](#)).
- Advocate for adequate funding directly to First Nations for their full and effective participation ([Resolutions 73/2017](#), [07/2018](#), [69/2018](#), [06/2019](#)).
- Conduct regional information sessions to support First Nations, regional organizations, and provincial/territorial organizations in the process ([Resolutions 73/2017](#), [07/2018](#), [69/2018](#)).



# ***Impact Assessment Requirements***

- IAA entered into force in August 2019. It repealed and replaced the Canadian *Environmental Assessment Act, 2012*.
- IAA outlines a process for assessing the impacts of major projects and projects carried out on federal lands or outside of Canada.
- The *Physical Activities Regulations*, also known as the Project List, is a regulation that sets out classes and thresholds for “designated projects” that are subject to the federal impact assessment requirements.



# Existing Project List

- Project List developed using criteria-based approach that only captured projects with the “greatest potential for adverse effects in areas of federal jurisdiction related to the environment.”
- Reduced scope of projects subject to federal assessment compared to *Canadian Environmental Assessment Act, 2012*.
- Thresholds encourage “project splitting” to avoid federal IA.



# Existing Project List

- 61 entries across 10 different sectors:
  - National parks and protected areas;
  - Defense;
  - Mines and mills;
  - Nuclear facilities;
  - Oil and gas;
  - Transmission lines and pipelines;
  - Renewable energy;
  - Transportation;
  - Hazardous waste;
  - Water projects.
- Thresholds for each project category identify “production capacity” or other size metric. A project must be above threshold to be captured.





# Project List 5 Year Review

- The Impact Assessment Agency of Canada (IAAC) is required to review the Project List 5 years after it was adopted and submit a report setting out conclusions and recommendations to the Minister of Environment and Climate Change Canada (ECCC).
- IAAC Discussion Paper has been release for feedback (July 30 – September 27, 2024; 60 days).
- IAAC’s lens for review is “regulatory efficiency” but does not include an analysis of impact to First Nations Inherent or constitutionally protected rights or title.
- First Nations took issue with the original approach to the Project List and made many suggestions for project categories that should be included.



# Alignment with UN Declaration

- *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) has come into force since the IAA.
- IAAC Discussion Paper does not include the UN Declaration as a lens, guide, or consideration for the 5 year review of the Project List.





# Discussion Question

- Do you support the Agency's method and scope for the 5 Year Review of the Project List? Why or why not?



# First Nations' 2019 Recommendations

- Craft Project List to avoid “project splitting.”
- Review should involve First Nations and be open, participatory, accountable. Should include timely public notices and appropriate comment opportunities. 2-3 year timeline.
- First Nations recommended specific categories of projects and indicated whether proposed thresholds would be acceptable.
  - Ex. Pulp and paper mills, aquaculture, fracking, marine oil tanker shipping, any project that would increase rail and/or marine traffic.
- Project List should include trigger based in GHG emissions, which would decrease over time with Canada’s international and domestic targets.



Proposed Change	Type of Project	Consistent or Inconsistent with FN Submissions or Positions
Remove	In situ oil sands	Inconsistent with AFN Resolution 06/2019 and 2019 submissions.
	Fossil fuel power generation	Inconsistent with 2019 submissions.
Add	Projects with high potential for effects on “sensitive federal lands”	May be consistent with 2019 submissions.
	Wave energy	Consistent with 2019 submissions.
Adjust to capture more	Coal mines	May be consistent with 2019 submissions.
Adjust to capture less	Railway yards	Inconsistent with 2019 submissions.
	SMRs and large-scale nuclear reactors using known technologies on licensed sites	Inconsistent with AFN Resolution 06/2019 and 52/2023 and 2019 submissions.
	Uranium mines on licensed sites	Inconsistent with 2019 submissions.



# Discussion Questions

- Are thresholds appropriate for capturing projects that pose a threat to First Nations' Inherent, Treaty and constitutionally-protected Rights?
- Are IAAC's proposed changes to project types outlined above consistent or inconsistent with your communities' submissions, resolutions, mandates, etc.?



# Coal Mines

- IAAC has proposed lower thresholds for new coal mines (Discussion Paper p. 35): 3000 t/day for new and expansions.
  - Return to CEAA, 2012 threshold.
- Current listing: coal mines with a production capacity of 5000 t/day or more.
- No coal mine has met the current threshold since 2019.
- Designation requests received from Indigenous peoples. Concern with impact to Rights and selenium harm to fish.

Would the proposed threshold appropriately capture coal mines?



# Nuclear Projects

- IAAC has proposed to exempt single SMR proposals and increase thresholds for multiple SMRs or, alternatively, remove all SMRs as well as large-scale nuclear reactors using known technologies. IAAC is also considering exempting or scoping down assessments of nuclear projects using known technologies on brownfield fossil-fuel electricity generating sites (Discussion Paper p. 38).
- Current entry: nuclear reactors with combined 900 MWth on Class 1 site and 200 MWth outside Class 1 site.
- No nuclear projects triggered IA since 2019. Minister has rejected one s. 9 designation request.

What do you think about IAAC exempting SMRs and large scale nuclear reactors (using known tech) from federal IA requirements?





# In Situ Oil Sands

- Current entries: new or expansion of in situ oil sands extraction facilities with a bitumen production capacity of 2 000 m<sup>3</sup>/day or more, in a province without provincial legislation to limit greenhouse gas emissions from oil sands or limit has been reached.
- Because of the provincial emissions cap where projects are proposed, no in situ oil sands facilities have been captured for federal IA since 2019.
- IAAC has proposed to remove new in situ oil sands facilities and remove expansions of in situ oil sands facilities (Discussion Paper p. 40).
- AFN Resolution 06/2019 specifically calls for the inclusion of in situ oil sands facilities on the Project List.

What do you think of IAAC's proposal to remove these projects so they no longer require federal IA?



# Fossil Fuel Power Generating Facility

- Current entries: new or expanded fossil fuel-fired power generating facility 200MW or more.
- Since 2019, 5 have entered the IA process and 3 have been screened out. All 6 that entered the process under CEAA, 2012 were also screened out.
- IAAC has proposed removing fossil fuel-fired power generating facilities from the Project List.

Should fossil fuel power generating facilities be captured due to their contribution to GHG emissions and impact to First Nations?



# Discussion Questions

- What additional kinds of projects should be included on the Project List due to potential impacts to First Nations' Inherent, Treaty and constitutionally-protected Rights?
- Are there new technologies or types of projects that you are concerned about due to their potential to impact First Nations' Inherent, Treaty and constitutionally-protected Rights?



Thank you