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Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

**Brief of the Kativik Environmental Advisory Committee on
*Bill 46, An Act to amend the Natural Heritage Conservation
Act and Other Provisions***

Submitted to the
Committee on Transportation and the Environment

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About the KEAC

The Kativik Environmental Advisory Committee (KEAC) was created pursuant to Section 23 of the *James Bay and Northern Québec Agreement*. It is a consultative body to responsible governments in matters relating to environmental and social protection in Nunavik and, as such, is the preferential and official forum for the Government of Canada, the Gouvernement du Québec, the Kativik Regional Government and the northern villages. Below, the KEAC provides feedback for the Committee on Transportation and the Environment on *Bill 46, An Act to amend the Natural Heritage Conservation Act and Other Provisions*.

Contact Information

Mail:

Kativik Environmental Advisory Committee
Secretariat
P.O. Box 930
Kuujjuaq QC J0M 1C0

Telephone: 819-964-2961, ext. 2287

Fax: 819-964-0694

Email: keac-ccek@krg.ca

INTRODUCTION

Nunavik is the northernmost region of the province of Québec, covering 507,000 km² (Map 1) north of the 55th parallel. It has a population of 13,188, of whom roughly 90% are Inuit (Statistics Canada, 2017). Residents live in 14 northern villages situated along the coasts of Hudson Bay and Ungava Bay. The lands and the village of the Naskapi Nation of Kawawachikamach, which has over 1,000 members, are situated on the southern border of the region. Pursuant to Section 24 of the *James Bay and Northern Québec Agreement* (JBNQA) and Section 15 of the *Northeastern Québec Agreement* (NEQA), Inuit and Naskapi may practise their hunting, fishing and trapping activities across Nunavik. Pursuant to the NEQA, the Naskapi Nation of Kawawachikamach possesses an exclusive hunting, fishing and trapping territory covering 4,144 km². In the portion of this territory north of the 55th parallel, Section 23 of the JBNQA is applicable. Kawawachikamach is the only village of the region accessible by rail. The 14 northern villages are only accessible by air and by sea during the ice-free period. In the north, the Internet is available via costly satellite communications with limited capacity, which complicates access to information and increases the logistical challenges posed by all kinds of projects.

Currently in Nunavik, there are eight proposed biodiversity reserves, one proposed aquatic reserve, three territories reserved for the creation of protected areas, four national parks, and four national park reserves. All these territories are developed and managed by the Kativik Regional Government (KRG), in cooperation with the Ministère de l'Environnement et de la Lutte contre les changements climatiques (the environment and the fight against climate change, MELCC) and the Ministère des Forêts, de la Faune et des Parcs (forests, wildlife and parks, MFFP). Pursuant to Schedule 1 of Section 23 of the JBNQA, in Nunavik all projects for parks, ecological reserves or other similar land classifications are subject to the environmental and social impact assessment and review procedure.



Map 1: Nunavik (Makivik Corporation, 1995)

GENERAL FEEDBACK

The KEAC reacts favourably to Bill 46, which will accelerate the creation of protected areas and expands the number of protection tools for natural environments. The KEAC welcomes the stipulation under section 2.1 (amended Act) to the effect that the *Natural Heritage Conservation Act* must be construed in a manner consistent with the principles set out in section 6 of the *Sustainable Development Act* (c. D-8.1.1). These principles correspond to a vision and methods of conservation that will benefit future generations in Nunavik. Certain environmentally harmful activities carried out in or near protected areas, such as mineral exploration and mining, have long been of concern to the KEAC. It therefore strongly approves sections 48 and 53 (amended Act), which provide greater clarity regarding the types of activities authorized or prohibited in protected areas.

The KEAC supports adding an obligation to consult Aboriginal communities separately when the circumstances so require, and to accommodate them when it is fitting to do so (section 2.1, amended Act). Similarly, the KEAC supports the stipulations permitting Aboriginal communities to file applications for recognition of man-made landscapes and requiring Aboriginal communities to be consulted as part of analysis of such applications (sections 65.1 and 65.2, amended Act).

The KEAC supports the wording in section 12 (amended Act) that empowers the Minister to delegate to Aboriginal communities all or some of the powers assigned to the Minister under the Act with regard to the management of areas under the Minister's authority that are covered by conservation measures. This proposal introduces greater flexibility in the delegation of responsibilities to Aboriginal communities and should serve to enable Inuit and Naskapi to become more involved in implementation and management activities under the *Natural Heritage Conservation Act*. The KEAC nonetheless believes that the delegation of powers could be expanded for monitoring actions and inspections. In fact, inspections represent a considerable challenge in Nunavik due to the size of the territory and high travel costs, which limit the frequency of inspections by provincial authorities. Know-how is present in the region and has been demonstrated through partnerships between the KRG, the MELCC and the MFFP. Greater flexibility in the delegation of powers would contribute to the achievement of the objectives of the *Natural Heritage Conservation Act*.

The KEAC noted that terminology used to refer to Aboriginal communities will need to be adjusted in order to properly identify administrative and political structures in Nunavik. Specifically, paragraph (3) of section 14 of the Act refers to "the Aboriginal communities concerned, represented by their band council". Inuit communities do not have band councils; rather, they are organized as northern villages (municipalities). Similarly, the KEAC would like to receive confirmation that the phrase "delegate to any person or to any Aboriginal community" (section 12 amended Act) may be interpreted as including local and regional organizations in Nunavik.

In different parts of Bill 46 (sections 15, 30 and 34, amended Act), an obligation to publish notices in a newspaper distributed in the region in which the natural setting is situated has been replaced by "any other means of informing the public". The KEAC understands that this amendment is intended to provide the MELCC with greater flexibility; however, the KEAC would like to make the government aware that communication strategies designed for the south of the province are not necessarily well adapted to Nunavik. While Internet access is more limited, radio remains a popular

form of communication. A regional bilingual (English/Inuktitut) newspaper is also distributed to homes throughout the region. In addition to French and English, information disseminated in Inuktitut and Naskapi is recommended for effective communications north of the 55th parallel.

SPECIFIC FEEDBACK

Chapter I: General Provisions, Division II: Responsibilities and General Powers of the Minister

Bill 46 provides for several registers: the public register of protected areas (section 5, amended Act), the public register of other effective conservation measures (section 6.1, amended Act), the public register of natural settings designated by a plan or by the Minister (section 24.1, amended Act), and the public register of northern conservation areas (section 26.2, amended Act). This multiplication of registers could lead to confusion among the general public. In order to promote access to simple and complete information for public purposes, the KEAC recommends the creation of an integrated register that can be accessed easily by all, including Inuit and Naskapi.

Chapter II: Conservation Measures, Division I: Natural Settings Designated by the Minister

Some amendments to provisions concerning natural settings designated by the Minister reduce the applicable level of protection to almost nil, despite the fact that these settings are designated because they possess “significant ecological value”, are remarkable “because of their integrity, rarity or surface area”, and contribute to “public safety” (section 13 of the Act).

More specifically, under section 13.1 (amended Act), the carrying on of an activity in a designated natural setting is subject to the authorization of the Minister. Ministerial authorization under the Act is provided for the purpose of “safeguarding the character, diversity and integrity of Québec’s natural heritage through [conservation] measures” (section 1 of the Act). It is governed by sections 22 to 24 of the Act, which take into consideration conservation of the natural environment and biodiversity, compatibility with the natural environment, adverse effects on ecological functions, etc. Accordingly, activities authorized under the Act continue to be subject to other authorizations required under provincial and federal laws.

Notwithstanding, subparagraph (1) of the first paragraph of section 13.2 (amended Act) does not follow this logic and fails to consider the conservation objectives of the Act. Specifically, activities subject to authorization under the *Environment Quality Act* will not require authorization under the *Natural Heritage Conservation Act*. Although the purpose of the *Environment Quality Act* is to control pollution and regulate activities that are likely to adversely affect environmental quality, not ensure natural heritage conservation, it will be used to determine the activities permissible in a natural setting designated under the *Natural Heritage Conservation Act*. This regrettable provision (introduced in 2017 and reinforced under Bill 46) should be removed in order to achieve independent legislation and ensure that economic development activities under the *Environment Quality Act* are not allowed to take precedence over the conservation objectives of the *Natural Heritage Conservation Act* in settings designated for natural heritage protection in Québec.

The second paragraph of section 18 of the Act covers the replacement of wetlands and bodies of water to ensure no net loss if the Minister decreases surface area in a specific location. This provision could be improved by introducing a mechanism and timeframes for compensating for the loss of protected wetlands and bodies of water, in particular to ensure that they are replaced in the same region with similar biological and climatic conditions. Timeframes should also be specified for replacements in order to preclude any net loss.

Section 18.1 (amended Act) covers the procedure applicable to a decision of the Minister to amend the boundaries of land that is the subject of a designation or to terminate a designation. The KEAC is of the opinion that the provisions established in Bill 46 are not compatible with the environmental and social impact assessment and review procedure under Section 23 of the JBNQA. In Nunavik, the creation of a protected area triggers the assessment procedure and an authorization is delivered pursuant to the *Environment Quality Act*. If the *Natural Heritage Conservation Act* provides that the boundaries of a recognized protected area can be amended, the Act must be aligned with the assessment procedure under Section 23 of the JBNQA. Currently, the Bill does not do this.

Chapter II: Conservation Measures, Division II: Northern Conservation Areas

Bill 46 provides for the creation of a new status: northern conservation area. It could serve to protect numerous areas important for Nunavik communities for their ecological value, cultural value and subsistence purposes. Notwithstanding, sections 25, 26, 26.1 and 26.2 (amended Act) provide little information about northern conservation areas or about the applicable level of protection. For example, no guidelines on prohibited activities are set out, demonstrating that the status has not been adequately defined. In order to achieve a firm foundation for natural heritage conservation in Québec, the KEAC recommends that effective and consistent measures be established for northern conservation areas.

The KEAC understands that subsequent regulations will serve to more precisely define northern conservation areas and how they will be implemented. However, prior to incorporating this new protection status in Bill 46, the KEAC believes it would have been appropriate for the government to consult the KEAC and provide clarifications on its intentions regarding the type of protection contemplated. The KEAC is hopeful that it will be permitted such an opportunity during development of the attendant regulations.

In order to achieve genuine conservation, a designation should provide more permanent status. In this respect, the KEAC is especially concerned about paragraph 3 of section 26.2 (amended Act) which stipulates that the designation of northern conservation areas could be for a limited term. The KEAC recommends against the creation of this regulatory power and, instead, that the permanent nature of the protection of northern conservation areas be stipulated in the Act.

Lastly, the KEAC understands that this new protection category will be in addition to the different conservation tools available in Nunavik, and underscores that it should remain only an option and not serve to deprive Nunavik of any of the other types of status provided for under the Act.

Chapter II: Conservation Measures, Division III: Protected Areas

To ensure clarity, the KEAC recommends that obligation to consult concerned Aboriginal communities be stipulated in the second paragraph of section 29 (amended Act) for areas to be selected, the protection status to be applied and conservation objectives to be achieved.

The KEAC examined the objectives applicable to the information period established under section 30 (amended Act). The information period must last at least 30 days. What grounds might lead the Minister to extend this period? Will the period be determined on a project by project basis? Is there a maximum period? Questions also arise concerning coordination and alignment with the assessment procedure under Section 23 of the JBNQA, which also provides for an information period and consultation. The KEAC proposes that more precise guidelines be set out for the information period contemplated under Bill 46.

The Bill aligns with the environmental and social impact assessment and review procedure established under Title II of the *Environment Quality Act* (CQLR, c. Q-2) for public consultations on proposed protected areas (section 32, amended Act). This alignment must also be established for the creation of and changes to natural settings designated by the Minister, northern conservation areas and man-made landscapes.

Section 35 (amended Act) provides that the Minister may mandate the Bureau d'audiences publiques sur l'environnement (environment public hearings), or any person the Minister designates as a commissioner for that purpose, to hold a public consultation. The KEAC supports this flexibility in the designation of commissioners because the organization of public consultations in Nunavik requires procedural adaptability and the related know-how is available within organizations created under the JBNQA.

The second paragraph of section 41 (amended Act) could be improved by clarifying in the Act the compensation mechanism and the timeframes for compensating for any decrease in the total surface area of protected areas in Québec, in particular to ensure that excised surface areas are replaced with protected area in the same region with similar biological and climatic conditions. The KEAC reiterates that, if the Act provides for the amendment of boundaries of recognized protected areas, it must also align with the assessment procedure under Section 23 of the JBNQA, which is not currently the case under Bill 46.

The KEAC is concerned about the leeway contained in section 43 (amended Act) covering activity authorization. The protection provided for protected areas under the Act must be robust and permanent. The KEAC is fearful, for example, that criteria established under the *Environment Quality Act* (to control pollution) might not be implemented in a protected area created under the *Natural Heritage Conservation Act*.

The purpose of the new protected area with sustainable use status defined under section 46 (amended Act) is to protect biological diversity and the associated cultural values as well as to allow sustainable use of the resources in protected areas. Bill 46 provides few details on the type of protection, the definition of sustainable use of resources, and prohibited activities. The KEAC recommends that these details be clarified in the Act. Furthermore, pursuant to Section 24 of the

JBNQA and Section 15 of the NEQA, Inuit and Naskapi are entitled to practise their hunting, fishing and trapping activities throughout Nunavik, and this right must be maintained.

The KEAC supports the creation of the new marine reserve status as proposed in section 52 (amended Act), and hopes that such a status will one day be implemented in Nunavik. In this respect, the *Nunavik Inuit Land Claims Agreement* (NILCA) is applicable in the off-shore region of Northern Québec. It is important to recall that the NILCA includes a process for the establishment and planning of protected areas in the Nunavik marine region, including marine protected areas.

Chapter III: Administrative Measures and Penal Provisions, Division II: Orders

The KEAC questions use of the term “irreversible” in section 69.1 (amended Act). It weakens the orders framework by restricting the capacity of the Minister to act against serious degradation of a designated natural setting or area in only those cases where it is possible to demonstrate beyond any doubt that the degradation is irreversible.

Transitional and Final Provisions

Section 56 (amended Act) could be enhanced to include proposed protected areas in plans to accelerate the creation of new protected areas. In Nunavik, there are nine proposed protected areas, which in most cases have had this status for more than a decade. It would be appropriate to formalize their designation in the amended provisions of the Act as permanent protected areas.

CONCLUSION

The MELCC has been working for several years to protect 30% of the Plan Nord territory, called northern conservation areas in Bill 46. It is unfortunate that the KEAC was not previously consulted and does not have access to more information at this stage, even though the KEAC is the preferential and official forum for the Government of Canada, the Gouvernement du Québec, the Kativik Regional Government and the northern villages in matters relating to environmental and social protection in Nunavik. It is paradoxical that this consultation should take place in the context of Bill 46 which introduces the obligation to consult Aboriginal communities at different stages in the protection area creation process. The KEAC intends to closely monitor the application of the amended *Natural Heritage Conservation Act* and would like to be consulted on the development of regulations arising from the new legislation.