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Impact Assessment Agence d'évaluation Agency of Canada d'impact du Canada

# Related to NWAC's Engagement on the Review of Physical Activities Regulations

Feedback Report September 2024



Native Women's Association of Canada L'Association des femmes autochtones du Canada

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# About the Native Women's Association of Canada, NWAC

Founded in 1974, the Native Women's Association of Canada, (NWAC) is a National Indigenous Organization, (NIO) representing Indigenous women, girls and gender-diverse people in Canada, inclusive of First Nations on and off reserve, status and non-status, disenfranchised, Métis, and Inuit. NWAC engages in national and international advocacy for policy reforms that promote equality for Indigenous women, girls, and gender diverse people.

NWAC was founded on the collective goal to enhance, promote, and foster the social, economic, cultural, and political well-being of Indigenous women within their respective communities and Canadian societies.

Through advocacy, policy, and legislative analysis, NWAC works to preserve Indigenous culture and advance the well-being of all Indigenous women, girls, and gender-diverse people, as well as their families and communities.

NWAC works on a variety of issues such as employment, labour and business, health, violence prevention and safety, justice and human rights, environment, early learning childcare and international affairs. To develop our policy reports and recommendations, we consult with Indigenous women through in-person/electronic engagements across the country.

The Native Women's Association of Canada (NWAC), as the national voice to represent the interests of Indigenous women, girls, gender diverse and Two-Spirit people in Canada, has long supported Environmental sustainability and as an extension, climate action and conservation in their efforts to advocate and protect the natural environment.





# SECTION ONE: **Proposed Amendments** to the Impact Assessment Act of Canada

The Impact Assessment Agency of Canada, (IAAC) convened a series of discussion dialogues to engage Indigenous peoples, stakeholders as well as the public on the proposed changes to three regulatory initiatives under the <u>Impact Assessment Act</u>, (IAA), namely:

- 1. <u>Review of Physical Activities Regulations</u>
- 1. The Designated Classes of Projects Order and
- 2. Indigenous Impact Assessment: Co-Administration Agreement Regulations

The IAAC published a **discussion paper** on the <u>Review of the Physical</u> <u>Activities Regulations</u> also known as the Project List. The review of the regulation ensures that the Project List focuses on projects listed for assessment that pose the most adverse environmental effects on land within federal jurisdiction.

## NWAC's Engagement on the Review of Physical Activities Regulations

The Native Women's Association of Canada, (NWAC) hosted an engagement session via Zoom on September 13, 2024, from 2:00 pm to 4:00 pm Eastern Standard Time, EST. The goal of this session was to allow Indigenous WG2STGD+ people to share their perspectives, knowledge and lived experiences on the proposed changes to Physical Activities Regulations.

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The session began with a presentation by the Impact Assessment Agency of Canada, (IAAC) on its proposed changes to the *Physical Activities Regulations*. This was followed by a group discussion with the participants asking questions, giving feedback on their perspective.

## **Indigenous Participation**

**Forty-three (43)** participants signed up, however only **twenty-six (26)** attended the session. The participants represented several regions across Canada Unfortunately, there were no participants from Prince Edward Island (PEI), Northwest Territories (NWT), British Columbia (BC) or Nunavut (NU).

## **About the Report**

This report represents the feedback, i.e., questions and comments of participants, and **NWAC's recommendations** related to the IAAC's engagement session on the Review of Physical Activities Regulations.

The questions and comments from participants are supplemented by responses and recommendations from NWAC's Environment Unit. These responses and recommendations were drawn from case study evidence on impact assessment in Canada.

NWAC proposed **questions one, two** and **three** to guide the engagement discussion, while the Impact Assessment Agency provided question four.

- 1. What **other options** should be considered during consultation?
- 2. What **other projects** should be listed under this option?
- 3. What are the **potential environmental effects** of the projects you have identified on Indigenous communities, (e.g., Indigenous rights or Indigenous values)?

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4. In what way does federal impact assessment add value above other provincial and federal assessment and regulatory processes, (e.g. what are features of the IAA that are important to you, while not duplicating other processes)?

## Limitations

Unfortunately, engagement during the discussion <u>did not always follow</u> <u>a structured format based</u> on the questions. However, the responses presented in section two below take into consideration questions one, two and three and in a few instances question four.

# SECTION TWO: Options for consideration

## OPTION 1: Sensitive and Ancestral Lands

#### **Concern:**

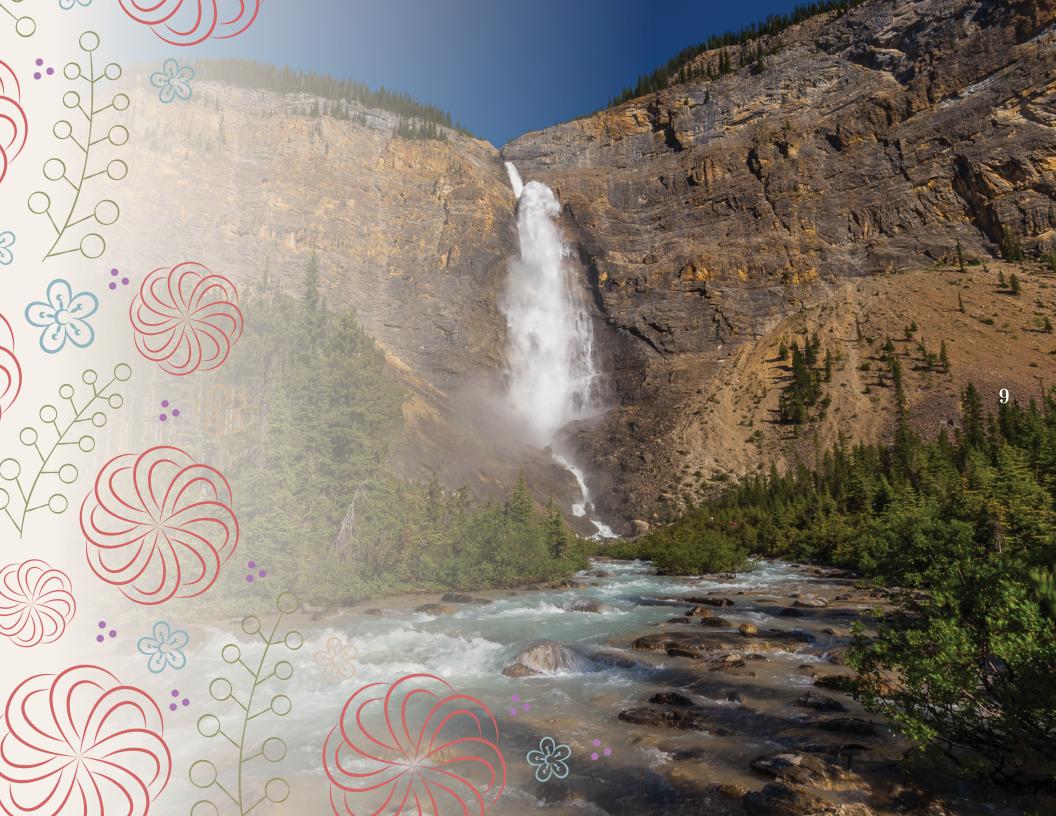
- A participant raised the issue about pesticides on sensitive federal lands, noting that this issue was **not considered** in the Project List.
- Pesticides and herbicides can have significant adverse effects on sensitive and protected Indigenous landscapes and ecosystems.
- Pesticides used on a project in one jurisdiction can have transboundary effects on Indigenous and other landscapes and ecosystems based on runoff or leaching particularly, during periods of rainfall.
- These effects can negatively affect terrestrial and aquatic species<sup>1</sup>.

### Recommendation: Project involving pesticide and herbicide applications

 Any project on Indigenous sensitive and ancestral lands involving pesticide and herbicide application should be included won the project list, e.g., Golf courses.

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<sup>&</sup>lt;sup>1</sup> Julie C Anderson, Sarah C Marteinson, and Ryan S Prosser, "Prioritization of Pesticides for Assessment of Risk to Aquatic Ecosystems in Canada and Identification of Knowledge Gaps," *Reviews of Environmental Contamination and Toxicology*, January 1, 2021, 171–231, <u>https://doi.org/10.1007/398\_2021\_81</u>.





#### **Concern:**

- One participant wanted to find out whether water towers were included on the Project List. The participant noted that there were multiple Indigenous communities across Canada that do not have access to fresh and clean water.
- This was in their view a violation under the <u>International Covenant on Economic, Social and</u> <u>Cultural Rights</u>, ICESCR which Canada is mandated to follow being a signatory State Party since 1976<sup>2</sup>. According to General Comment 15 under Articles 11 and 12 of the ICESCR, "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses."<sup>3</sup>

### Recommendation: Add water towers to the Project List

- Given that **reserve lands** are under **federal jurisdiction**, it was recommended that **water towers** and **clean water infrastructure** be added to the Project List.
- Water legislation in Canada is shared between all levels of government, however if a community doesn't have the resources to develop water infrastructure, this can cause **socio-economic risk**.
- Adding water tanks and clean water infrastructure to the project list would allow Indigenous WG2STGD+ people to provide representation for these projects in their communities thereby protecting their right to fresh and clean water.

<sup>&</sup>lt;sup>2</sup> Canadian Heritage, "Canada's Appearance at the United Nations Committee on Economic, Social and Cultural Rights," www.canada.ca, October 24, 2017, <u>https://www.canada.ca/en/canadian-heritage/services/canadaunited-nations-system/reports-united-nations-treaties/commitments-economic-social-cultural-rights/canadaappearance.html.</u>

<sup>&</sup>lt;sup>3</sup> United Nations, "General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)," Refworld, 2003, <u>https://www.refworld.org/legal/general/cescr/2003/en/39347</u>.

## OPTION 3: Pulp and Paper Mills

### **Concern:**

- Pulp and paper mills along with treatment plants have been shown to pose great adverse environmental effects to water, land, and the communities surrounding them.
- As seen in the Boat Harbour, Pictou, Nova Scotia case, the pulp and paper mill dumped untreated effluent into the waterways which then created adverse impacts on fish and other aquatic species and land within Pictou Landing First Nation<sup>4</sup>.
- Activities related to the pulp and paper milling also resulted in significant health issues within the community linked to low water quality, contaminated land and air pollution. Many residents in this community suffer from asthma and the cancer rate has increased greatly in the area<sup>5</sup>.

# Recommendation: Add pulp and paper mills to the Project List

• Pulp and paper mills along with treatment plants should be added to the Project List.

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- In the Nova Scotia case, the pulp and paper mill closed in January of 2020, but the harm had already been done consequently it would take a significant amount of time to restore the water, land and surrounding areas to some level of suitability.
- Adding pulp and paper projects to the list would also allow for compliance follow-ups.

<sup>&</sup>lt;sup>4</sup> Megan Fraser, "Assessing Impacts of Historical Pulp Mill Effluent on Coastal Food Web Structure and Identifying Suitable Bioindicators for Wastewater: A Stable Isotope (Δ13C and Δ15N) Analysis," *Library.dal.ca*, June 28, 2022, <u>http://hdl.handle.net/10222/81758</u>.

<sup>&</sup>lt;sup>5</sup> Personal Experience (2012). Pictou Landing First Nation

## OPTION 4: Mines and Metal Mills

### **Concern: Effects on Indigenous Lands**

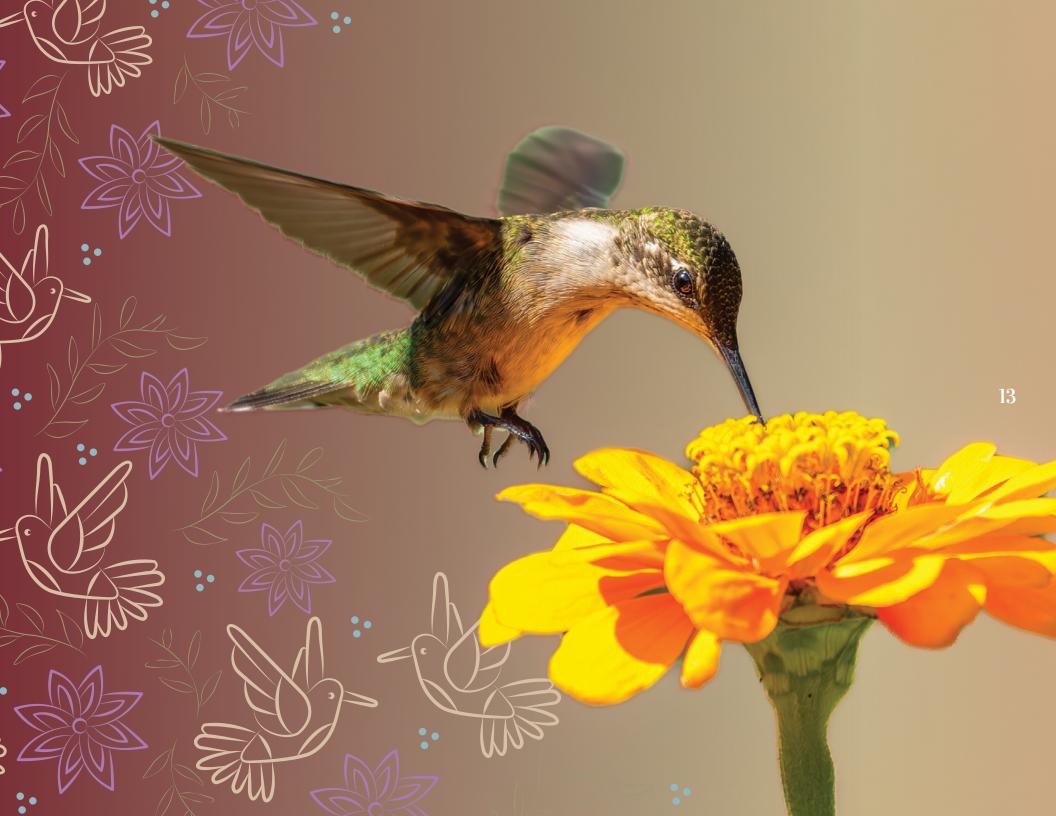
- The mining industry has significant adverse effects on Indigenous peoples and their communities. The process of creating a mine alters the state of the environment creating permanent change to the ecosystem even after remediation.
- According to Natural Resources Canada, there are approximately 10,000 orphaned and abandoned mines that have not been properly reclaimed<sup>6</sup>. Unreclaimed mines can have significant adverse effects on Indigenous people who are connected to these lands.
- The harmful effects on Indigenous communities include but are not limited to physical displacement, mental health degradation, loss of ecosystem services (medicinal plants, water and ceremonial lands), and potential health issues due to the emissions and waste produced<sup>7</sup>.
- There are mines that are currently in operation that were not subjected to an impact assessment and therefore are not subject to as strict compliance regulations.
- Several mines have been abandoned in Indigenous communities without remediation permanently altering the landscape. For example, sinkholes have occurred in places where underground mines have been abandoned.

#### Recommendation: Add abandoned mines to the Project List

- Industrial projects significantly modify existing landscapes. Hence, adding a process or procedure that regulates abandoned mines would provide clear guidelines for compliance and eliminate the responsibility for remediation on the local Indigenous communities.
- Impact assessment reviews should be completed on projects that were previously established prior to the IAA.
- Cumulative effects should be considered on communities not in the immediate jurisdiction of a project.

<sup>&</sup>lt;sup>6</sup> Public Services and Procurement Canada Government of Canada, "Information Archivée Dans Le Web," publications.gc.ca, n.d., <u>https://publications.gc.ca/collections/collection\_2010/nrcan/M39-124-eng.pdf</u>.

<sup>&</sup>lt;sup>7</sup> Laura Fuentes et al., "Impacts of Environmental Changes on Well-Being in Indigenous Communities in Eastern Canada," International Journal of Environmental Research and Public Health 17, no. 2 (January 19, 2020): 637, <u>https://doi.org/10.3390/ijerph17020637</u>.





### OPTION 5: Oil, Gas and Other Fossil Fuels

• In situ oil sands and fossil fuel power generation.

#### **Question:**

"What is the justification for removing or proposing to remove those first two entries rather than shrink the threshold like the proposal for coal to capture more of those fossil fuel projects? It seems counterintuitive to make the process less onerous for fossil fuel projects when, for example, we are doing the opposite for coal." (Sic)

# Recommendation: Lower the thresholds for coal and fossil fuel projects

- The threshold for coal should be lowered from 5000 tonnes/ day to 3000 tonnes/day in order to mitigate adverse environmental effects caused by daily production.
- Lowering the thresholds for coal mines as well as all fossil fuel power generation is important to help meet Canada's netzero carbon emissions goals set out by the *Canadian Net-Zero Emissions Accountability Act*<sup>8</sup>.
- Removing fossil fuel power generation off the list entirely, sets a precedent that Canada isn't fully committed to its plans of significantly lowering the greenhouse gas emissions by 2030 and aiming for net-zero by 2050.

<sup>8</sup> Government of Canada, "Net-Zero Emissions by 2050," Government of Canada (Government of Canada, July 11, 2023), <u>https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050.html</u>.





# section three: General Comments

The comments in this section do not directly address the options for consideration presented in the discussion paper. However, they have been included to reflect some of the general concerns raised by participants during the discussion session.

## Technicality and Accessibility of Information

- One participant expressed concerns about the presentation and layout of the discussion paper. One of the biggest concerns was the highly technical language used in the paper.
- The participant stated that the paper was written using **Eurocentric terminology** which is not inclusive of Indigenous perspectives.
- The participant also indicated that there needs to be more consideration for Indigenous voices that may not be directly involved with the project in question but could potentially be indirectly affected by the project.

## Verification of Uptake of Comments and Feedback

• One participant wanted to find out how feedback would be taken up and considered by the Impact Assessment Agency.

## Accessibility of Project List Information

 The availability of information was also a concern mentioned during the discussion. One participants wanted to know if the projects and their stages were accessible to the public and how information about the project would be shared. The participants thought this was vital as Indigenous women and gender diverse peoples have a strong connection with not only the planet but with each other as well. Connectedness is a valuable aspect within the culture, and it is important to know what is going on within each other's communities.

## Plain Language Information

• There was general consensus by some participants that in order to receive effective feedback, the IAA needs to provide materials with less technical language such as **plain language** versions of published documents as well as different formats such as **videos**. This would allow for all Indigenous WG2STGD+ people to understand the material regardless of potential disabilities people may have.

## **Present Information Using Multiple Media**

 In addition to the the need to present the information using different media, it was felt that the Impact Assessment Agency of Canada IAAC should hire consultants who have an Indigenous cultural background and understanding of traditional knowledge as well as western knowledge. This will allow for more representation and a more holistic perspective to the engagement process.

## **Outreach Programs**

 More outreach programs should be created to inform communities about the Impact Assessment Act. If communities only hear about the IAA when there is an impact assessment related to a project, they will not have enough time for adequate consultation on the matter. Another comment was that the Impact Assessment Act is rather dense and needs time to be fully understood.

## Renewable Energy Projects

• There are just under two-hundred renewable energy projects associated with Indigenous communities across Canada, however, Indigenous ownership over these projects is lacking<sup>9</sup>. This causes economic harm to the communities connected with these projects.

<sup>9</sup> Christina Hoicka, Katarina Savic, and Alicia Campney, "Reconciliation through Renewable Energy? A Survey of Indigenous Communities, Involvement, and Peoples in Canada," *Energy Research & Social Science* 74 (April 1, 2021): 101897, https://doi.org/10.1016/j.erss.2020.101897.



## **Reconciliation Principles and Advancement**

- The principles of reconciliation should be reflected in the Project List review. This could mean expanding the Project List on sensitive lands to include green energy infrastructures such as solar, onshore wind farms, and hydrogen production.
- Including these projects on the list would allow Indigenous communities to have a voice during the consultation phase of the Impact Assessment process to explore the potential economic benefits to Indigenous communities.
- Based on NWAC's previous Project List Review Preliminary Feedback Report<sup>10</sup>, the Project List does not effectively assist the advancement of reconciliation between Indigenous peoples and the federal government. Therefore, a pertinent question is how reconcilliation could be represented in the options or considerations.

<sup>&</sup>lt;sup>10</sup>Native Women's Association of Canada, "Project List Review – Preliminary Feedback" (December 14, 2023)





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