



**IDDPNQL**  
INSTITUT DE DÉVELOPPEMENT DURABLE DES  
PREMIÈRES NATIONS DU QUÉBEC ET DU LABRADOR

# **REVIEW OF ENVIRONMENTAL AND REGULATORY PROCESSES**

## **Context and objectives**

Preparation workshop on the First Nations  
consultation process

September 20, 2016



# Presentation outline



- Context and objectives of the review
- How the process works
- Federal environmental assessment processes associated with the *Canadian Assessment Act 2012* (CEAA 2012)
- Modernizing the National Energy Board
- *Fisheries Act*
- *Navigation Protection Act*
- Support offered by the FNQLSDI





# Context of the review



- Implementation of the **2012 federal budget** through the use of two tools:
  - ✓ *Jobs, Growth and Long-term Prosperity Act*  
**(Omnibus Bill C-38)**
  - ✓ *The Jobs and Growth Act 2012*  
**(Omnibus Bill C-45)**
- More than 90 federal laws modified **without the consultation or the possibility of the participation** of Aboriginal communities.
- **June 20, 2016** → In response to criticisms of the legislative modifications, the current federal government is undertaking a comprehensive review of environmental and regulatory processes.

## “OMNIBUS” BILL

A proposed law that covers a number of diverse or unrelated topics. An omnibus bill is a single document that is accepted in a single vote by a legislature but packages together several measures into one or combines diverse subjects

- **Government of Canada** – Glossary of terms – human rights





# Objectives of the review



- Restoring public **confidence** by addressing the following:
  - ✓ Rebuilding **trust** in environmental assessment processes (CEAA 2012) ;
  - ✓ The modernization of the National Energy Board ;
  - ✓ The restoration of lost protections and introduction of modern safeguards to the *Fisheries Act* and the *Navigation Protection Act*.

## CONSULTATION AT THE CORE OF THE REVIEW

“The Government believes that rebuilding trust begins with a coordinated, open and transparent process based on scientific evidence, working in partnership with Indigenous Peoples, and provinces and territories, and taking into account input from a range of stakeholders, including the public, industry, and environmental groups.”

- **Government of Canada**, *Government launches review of environmental and regulatory processes to restore public trust*, News release, June 20, 2016.



# How the process works



- The “Review of Environmental and Regulatory Processes” is a process integrating **4 components**.
- The components are reviewed **separately**, with roughly the same **deadlines**.

	<i>Canadian Environmental Assessment Act</i>	National Energy Board	<i>Fisheries Act</i>	<i>Navigation Protection Act</i>
Reviewed by	Expert Panel	Expert Panel	Parliamentary Standing Committee	Parliamentary Standing Committee
Progress	Constituted August 15, 2016	To be constituted	Already in place	Already in place

# How the process works



***Current situation***



***Submission of reports***

Each committee presents its report with **recommendations** on the component it reviewed



***Analysis of reports***

- Analysis of the **integration** of FN comments
- Possibility of new consultations





# *Environmental Assessment process* (CEAA 2012)



## Objectives and modifications

- The objectives of this component of the review:
  - ✓ “Develop new, fair processes that are robust, incorporate scientific evidence, protect our environment, respect the rights of Indigenous peoples, and support economic growth.”
  
- Principal modifications between the CEAA 1992 and the CEAA 2012:
  - ✓ Reduction of the number of responsible authorities in the environmental assessment process (NEB, CCSN, CEAA)
  
  - ✓ More strict identification of which projects require an environmental assessment





# *Environmental Assessment process* (CEAA 2012)



## Consultation process

The components related to the federal environmental assessment process associated with the Canadian Environmental Assessment Act (2012) will be reviewed by an **expert panel** made up of 4 members.

- ✓ The expert panel's terms of reference describes its mandate, deadlines, and the panel's procedures
- ✓ The panel must submit a report to the Minister of the Environment **by the end of January 2017**
- ✓ **A plan for Aboriginal mobilization** has been developed and is available on the website of the expert panel.





# Environmental Assessment processes (CEAA 2012)



## Consultation process (cont.)

- ✓ Possibility of presenting to the expert panel (registration required)

### Aboriginal sessions:

October 25 in Quebec  
October 27 in Montreal

- Aboriginal presentations to the panel, from 9 a.m. to 5 p.m.
- Aboriginal open dialogue session, from 7 p.m. to 10 p.m.

### Public sessions:

October 24 in Quebec  
October 26 in Montreal

- Public presentations to the panel, between 1 p.m. and 5 p.m.
- Public workshops in the evening, from 7 p.m. to 10:30 p.m.

- ✓ Other consultation activities:

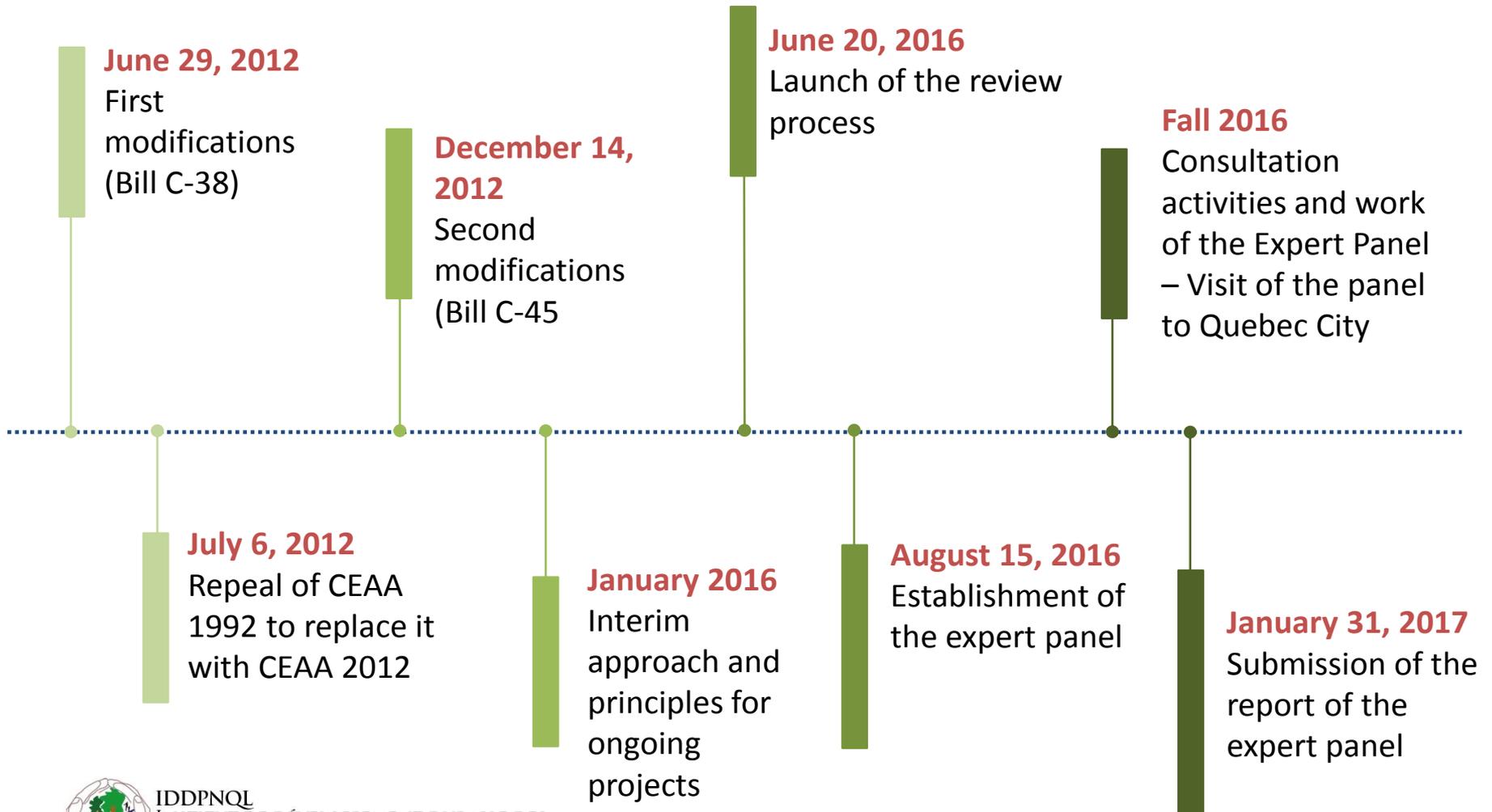
- Coordination and participation of the **FNQLSDI**
- Deadline for funding requests **September 9, 2016**
- Expert panel's website: participation in person and online (webinars, preference folders, brief – **December 18, 2016**)

<http://eareview-examenee.ca/fr/>





# Environmental Assessment processes (CEAA 2012) Milestones





# Modernization of the National Energy Board (NEB)



## Objectives and modifications

- The objectives of this component of the review:
  - ✓ Modernization of the NEB “in a way that has the **confidence** of Canadians” to ensure that it will “continue to effectively regulate energy developments in Canada.”
  - ✓ Ensure that the NEB has “sufficient expertise in such fields as environmental science, community development, and **Aboriginal traditional knowledge.**”
- Scope of the review:
  - ✓ 6 areas including: governance and structure, **engagement with Aboriginal peoples** and decision making on major projects



# Modernization of the National Energy Board (NEB)

## Consultation process



The components relative to the modernization of the NEB will be reviewed by an **expert panel** which has not yet been appointed as the **terms of reference** to which it must conform is not yet final.

- ✓ Responsible department: Natural Resources Canada
- ✓ Information is not yet available about consultations of Aboriginal peoples and the public in relation to this component of the review



# Modernization of the National Energy Board (NEB)

## Milestones



**June 29, 2012**  
Modifications  
(Bill C-38)

**January 2016**  
Interim measures  
for the review of  
pipeline projects

**September 9, 2016**  
Deadline for funding  
requests

**January 31, 2017**  
Submission of the  
report of the expert  
panel

**July 6, 2012**  
Repeal of CEAA  
1992 to replace it  
with CEAA 2012

**June 20, 2016**  
Launch of the  
review process

**Fall 2016**  
Consultation  
activities and work  
of the expert panel



# Fisheries Act

## Objectives and modifications



- The objectives of this component of the review:
  - ✓ The **restoration** of eliminated protective measures;
  - ✓ The **integration** of modern safeguards.
- Examples of changes made to C-38 by C-45:

### Before

- Prohibition against **killing** fish by any means other than fishing.\*
- Prohibition against carrying on any work, undertaking or activity that results in the **harmful alteration or disruption**, or the destruction, of fish habitat.\*

### After

- Prohibition against carrying on any work, undertaking or activity that results in **serious harm** to fish that are part of a **commercial, recreational or Aboriginal fishery**, or to fish that support such a fishery.\*

*\* Except as provided by law*



# Fisheries Act

## Consultation process



The review of the *Fisheries Act* will be conducted by the Parliamentary Standing Committee on Fisheries and Oceans (**FOPO**), comprised of 10 members (Liberals, Conservatives, NDP) and defining itself as an independent public forum.

- ✓ Possibility of presenting a brief and requesting to testify as a witness (**funding**).
- ✓ FOPO will provide its recommendations with the report, at the latest by **January 30, 2017**.
- ✓ Other consultation activities:
  - Involvement of the regional offices of **Fisheries and Oceans Canada**;
  - Coordination and participation of the **FNQLSDI**;
  - Possibility of funding for consultation activities → **September 23, 2016**.





# Fisheries Act Milestones



**June 29, 2012**

First modifications  
(Bill C-38)

**November 25, 2013**

Entry into force of  
certain provisions  
(decree)

**September 23, 2016**

Deadline for funding  
requests (consultation  
activities)

**January 30, 2017**

Submission of the  
FOPO report

**14 décembre 2012**

Second  
modifications  
(Bill C-45)

**20 juin 2016**

Launch of the  
review process

**Automne 2016**

Consultation  
activities and work  
of the  
Parliamentary  
Committee on  
Fisheries and  
Oceans (FOPO)





# *Navigation Protection Act*

## Objectives and modifications



- The objectives of this component of the review:
  - ✓ The **restoration** of lost protections;
  - ✓ The **integration** of modern safeguards.
- Examples of changes made to C-38 by C-45:
  - ✓ *Navigable **Waters** Protection Act* → ***Navigation** Protection Act*;
  - ✓ Transfers to the National Energy Board federal jurisdiction over navigation in respect of **pipelines** and **power lines** that cross navigable waters;
  - ✓ Application of the Act limited to 162 of Canada's busiest commercial and recreational navigable waterways, listed in the Appendix of the legislation.

**The Appendix to the *Navigation Protection Act* includes:  
3 oceans, 97 lakes and 62 rivers\***

*\* In the process of adding 2 other rivers*





# Navigation Protection Act

## Consultation process



The review of the *Navigation Protection Act* will be conducted by the Parliamentary Standing Committee on Transport, Infrastructure and Communities (**TRAN**), comprised of 10 members (Liberals, Conservatives, NDP) and defining itself as an independent public forum.

- ✓ Possibility of presenting a brief and requesting to testify as a witness (**funding**).
- ✓ The TRAN will provide its recommendations in a report, no later than **January 30, 2017**.
- ✓ Other consultation activities:
  - Involvement of the regional offices of **Transport Canada**?
  - Coordination and participation of the FNQLSDI
  - Possibility of funding for consultation activities: **deadline September 23, 2016**



# Navigation Protection Act Milestones



**June 29, 2012**

First modifications  
(Bill C-38)

**April 1, 2014**

Entry into force of  
the new version of  
the Act

**September 23, 2016**

Deadline for funding  
requests (consultation  
activities)

**January 30, 2017**

Submission of report  
by TRAN

**December 14,  
2012**

Second  
modifications  
(Bill C-45)

**June 20, 2016**

Launch of the  
review process

**Fall 2016**

Consultation activities  
and work of the Standing  
Committee on Transport,  
Infrastructure and  
Communities (TRAN)





# Support offered by the FNQLSDI



## FNQLSDI activities

## Objectives of the activities

### Technical support (documentation and analysis)

- **Analysis** of changes in C-38 and C-45 .

- Perform an initial “clearing” of available **information**.

- Preparation and distribution of **summary documents**.

- Provide tools that contribute to a better **understanding** of the components and enrich the **thought process**.

- Drafting of **typical briefs**

- Offer documents that provide an adaptable **framework**
- Highlight **issues** of FN in connection with the environmental and regulatory processes under review
- Discuss how to **modernize the process**.



# Support offered by the FNQLSDI



## FNQLSDI activities

## Objectives of the activities

### Discussions with FN experts

- Creation and facilitation of **working groups**.\*
- ✓ Ten experts per subject;
- ✓ Organization of teleconferences (and meetings in person?) between September and January;
- ✓ Possibility of other meetings after January.

- Stimulate the participants' **thinking**.
- Highlight **issues** of FN in connection with the environmental and regulatory processes under review.
- Raise questions about the process and get expert advice on these subjects.
- Discuss how to modernize the process.

*\* We invite you to start thinking now about the value of participating in one of our working groups, as we will come back to this subject this afternoon.*



# Support offered by the FNQLSDI



	FNQLSDI activities	Objectives of the activities
<b>Mobilization and networking</b>	<ul style="list-style-type: none"><li>▪ Organization of a provincial event <b>in the Fall</b> bringing together:<ul style="list-style-type: none"><li>✓ Interested FN;</li><li>✓ Representatives of the federal government / expert panel(s);</li><li>✓ Other stakeholders (e.g., Environmental law).</li></ul></li></ul>	<ul style="list-style-type: none"><li>▪ Facilitate information <b>sharing</b>.</li><li>▪ Initiate a reflection on the <b>general issues</b> of FN in connection with the environmental and regulatory processes under review.</li><li>▪ Begin discussions about possible ways of <b>modernizing</b> the process.</li></ul>
	<ul style="list-style-type: none"><li>▪ Organization of a <b>spring</b> provincial event.</li></ul>	<ul style="list-style-type: none"><li>▪ Follow-up on the <b>integration</b> of the comments and recommendations of FN in the reports of expert panels and standing committees</li></ul>



**Thank you!**  
**Questions?**

