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**NASKAPI NATION OF
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Commission des transports et de
l'environnement

Déposé le : 27-10-2020

N° : CTE-059

Secrétaire : L.C.

BY EMAIL

Committee on Transportation and the Environment
a/s Marc-Olivier Bédard, Secrétaire de la Commission de l'administration publique
Édifice Pamphile-Le May
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September 24, 2020

Subject: Bill 46, *An Act to amend the Natural Heritage Conservation Act and other provisions*

Dear Committee,

Please find attached the comments and concerns of the Naskapi Nation of Kawawachikamach (the "NNK") on Bill 46, *An Act to amend the natural Heritage Conservation Act and other provisions*.

Please note that the position adopted by the NNK may be modified where any other relevant information is brought to the attention of its representatives.

We appreciate the opportunity to provide comments and welcome any effort for further consultation. Should you require any additional information, please do not hesitate to contact myself, or Ms. Nathalie Charland at (514) 212-8733 or charland@atmacinta.com.

Best regards,



Gordon Dominique
Councillor, Environment and Economic Development Portfolios
Naskapi Nation of Kawawachikamach

c.c. Mr. Francis Bouchard, Director, Protected Areas, MELCC
Hadrien Paquet, Coordinator for the review of the *Natural Heritage Conservation Act*, Protected Areas, MELCC
Ms. Nathalie Charland, Special Projects Coordinator, Naskapi Nation of Kawawachikamach



NASKAPI NATION OF KAWAWACHIKAMACH

Bill 46, *An Act to amend the Natural Heritage Conservation Act – Comments*

Submitted to the Committee on Transport and the Environment

September 24, 2020

1. Naskapi Nation of Kawawachikamach

For generations, the Naskapis were nomadic and followed the caribou herds from the Hudson Bay in the west to the Labrador Coast in the east, and from the southern coast of Ungava Bay in the north to the vicinity of Labrador City in the south.

The Naskapis relocated from Fort Chimo to Fort McKenzie to the Schefferville area, and eventually to Kawawachikamach in the early 1980s. Located 12 km northeast of the town of Schefferville, near the Québec-Labrador border, Kawawachikamach is the only Naskapi community. The Naskapis have a population of approximately 1,400 registered members.

In 1978, the Naskapi Nation of Kawawachikamach (the “NNK”) entered into the *Northeastern Québec Agreement* (“NEQA”) with the Governments of Québec and Canada. The NEQA is a modern treaty, within the meaning of s. 35 of the *Constitution Act, 1982*. As such, its provisions are mandatory and binding on Québec and Canada, and the rights granted therein to the Naskapis attract constitutional protection. The NEQA was entered into in the same historical and political context as the *James Bay and Northern Québec Agreement* (the “JBNQA”), and effectively puts the Naskapis on the same footing as Québec’s treaty partners, as the Cree and the Inuit under the JBNQA.

Both the NEQA and JBNQA establish the land regime for the Territory used to be known as Rupert’s Land. Section 24 of the JBNQA and Section 15 of the NEQA also establish “areas of interest” with respect to the regime governing hunting, fishing and trapping activities. Namely, the NEQA establishes the “Naskapi Area of Primary Interest” which covers more than 100,000 km². This area includes an important part of the mineral-rich area known as the Labrador Trough, where important mining development has taken place since the 1950’s.

Protection and Conservation

The NNK has long been involved in the protection and conservation of the Naskapi traditional territory. In recent years, its participation in the Advisory Committee on Nunavik’s Protected Areas – 20% protection target (the “Advisory Committee”), as well as in the Plan Nord Working Group on the Priority Allocation of 30% of the Plan Nord Territory for the Protection of the Environment, the Safeguarding of Biodiversity and the Promotion of Various Types of Development Dedicated to Non-Industrial Purposes (the “Working Group”) has led to significant progress with regard to the protection of the environment in Northern Québec.

Following the introduction of Bill 46, *An Act to amend the Natural Heritage Conservation Act and other provisions* (“Bill 46”) to the National Assembly on November 14, 2019, the NNK attended the information meetings of March 5 and July 21, 2020 organized by the Ministère de l’Environnement et de la Lutte contre les changements climatiques (the “MELCC”), and reviewed the proposed bill. The following are its main comments and concerns. Please note that the sections and subsections referred to are those of the amended *Natural Heritage Conservation Act*.

2. General Comments and Concerns

2.1. Prior Consultation

Because of the NNK's involvement in the protection of the environment in Northern Québec, it was utterly disappointing to realize that in drafting Bill 46, the MELCC undertook no consultation with local stakeholders, including the NNK, the Advisory Committee and the Working Group, before its introduction to the National Assembly. The information meetings of March 5 and July 21, 2020 were strictly informative and comments could not be adequately taken into account since Bill 46 was already in the hands of Parliament.

Prior consultation should be carried out at the onset of the elaboration of legislative tools that are likely to affect the Naskapis and their traditional territory, and as part of Québec's duties to defend the Honour of the Crown and to consult Indigenous people.

2.2. Objectives

According to the MELCC, Bill 46 aims at accelerating the creation process for protected areas, broadening the range of protection tools, and more actively involving citizens in the creation and management of protected areas. The NNK supports these objectives. The involvement of local stakeholders at the onset of the creation process ensures that their concerns and interests are taken into account and integrated at the planning stage, and facilitates the subsequent implementation of co-management mechanisms and the delegation of powers.

2.3. Delegation of Powers Assigned by the Minister

The term "Aboriginal community" under Section 12. and Subsection 12.2. should be replaced by "Aboriginal Nation or community". The addition of "Nation" will portray the importance of the Nation-to-Nation relationship between the Indigenous and government parties involved in the planning of environmental protection tools in Québec, and will allow greater flexibility for the delegation of powers based on, among other things, the location of the area to be protected, its size and its protection status.

Furthermore, the dispositions related to the delegation of powers should provide for the preferred delegation of powers to the NNK for the management of areas under the Minister's authority that are located within the Naskapi Area of Primary Interest.

2.4. Northern Conservation Areas

Considering its involvement in the Working Group, the NNK is favourable to the addition of northern conservation areas. However, a disposition should be added whereas co-management committees will oversee and be directly involved in the designation process and management of northern conservation areas according to the mechanisms being developed by the Working Group.

From the perspective of the NNK, it is primordial that northern conservation areas have a permanent protection status, just like, for example, biodiversity reserves. Therefore, the NNK does not understand why the register of northern conservation areas should indicate the term of a designation (Subsection 26.2.(3)). The reference to its term should be removed.

As discussed within the Working Group, the NNK understands that under some exceptional circumstances, modifying or withdrawing a northern conservation area could be beneficial for the common good. If these circumstances arise, the co-management committees should be directly involved, and the approval of concerned Indigenous Nations should be required.

2.5. Registers

The NNK is concerned about the multiplication of registers. By scattering the information, we fear that the consultation of several registers reduces transparency and accessibility. The NNK therefore recommends to include all designations and recognitions stemming from Bill 46 in a single register. The register should be simple, clear, accessible, yet comprehensive.

2.6. Temporary Protection

With Bill 46, the Government of Québec eliminates the procedure for granting temporary protection as a preliminary step for the designation of protected areas, without proposing mandatory timelines for the designation process. It is therefore unclear how long the designation process will last and how the targeted areas will be protected during that process.

It is the NNK's hope that Québec will ensure the protection of targeted areas during the whole designation process, and that this process will be shortened since it is currently excessively long. In addition, Québec should quickly initiate the required procedure to assign a permanent status to each proposed biodiversity reserve, proposed aquatic reserve and territory reserved for protected area purposes in Nunavik, as well as the nine territories agreed upon by the Advisory Committee.

2.7. Conservation Plans

According to the MELCC's presentations of March 5 and July 21, 2020 and to Section 43., an activity framework by protected area status will be adopted by regulation (a "common core"), and conservation plans specific to each designated territory will become management tools that will not be built into legislation. It is unclear how the specificities of each territory will be taken into account and how additional or adapted conservation measures can be adopted. It is essential that bodies responsible for the management of each territory retain the capacity to adopt specific measures suitable to their very own situation, and not merely address "the conservation objectives applicable to the protected area" (Section 30.).

2.8. Administrative Measures and Penal Provisions

The NNK is pleased to note the strengthening of administrative measures and penal provisions, and further notes that control measures must be effectively implemented to ensure compliance. Given the remoteness of the Naskapi Sector, it is not regularly subject to monitoring by the authorities.

Section 8 of the *Act respecting the Conservation and Development of Wildlife* states that “the Minister shall determine the provisions of the Acts and regulations referred to in section 5 that are to be enforced by wildlife protection assistants”, which includes the *Natural Heritage Conservation Act*. The NNK therefore recommends, for clarity and coherence purposes, to add to Bill 46 provisions for the delegation of powers to Naskapi Wildlife Protection Assistants in the surveillance and monitoring of the Naskapi Sector. Their knowledge and presence in the territory would be great assets for the region’s monitoring and control. More precisely, Section 66. should provide for the Minister to authorize Naskapi Wildlife Protection Assistants to conduct an inspection and to hold the same powers and responsibilities as an authorized public servant.

3. Specific Comments and Concerns

The following are the NNK’s more specific comments and concerns pertaining to Bill 46:

- “Aboriginal Nation or community” and “Aboriginal Nations and communities” should be used throughout Bill 46, in replacement of “Aboriginal community” and “Aboriginal communities”. Québec should also consider defining those terms under Section 2.
- Where “local population” or “the public” is mentioned throughout Bill 46, “including concerned Aboriginal Nations and communities” should be added.
- Section 2.1. states that the new *Natural Heritage Conservation Act* will be applied “to encourage a concerted approach by the government departments and bodies concerned and the participation of municipalities, citizens and citizens’ groups by, in particular, taking into consideration their activities, rights and interests”. The concerted approach and participation should also include concerned Aboriginal Nations and communities.
- Subsections 5.(1) and 26.2.(1) (dealing with registries) should include the category of land the protected area or northern conservation area falls onto pursuant to the *James Bay and Northern Québec Agreement* and the *Northeastern Québec Agreement*. Subsections 5.(2) and 26.2.(2) should read “the name of the minister, government body, Aboriginal Nation, Aboriginal community, Co-management committee or person who manages it and, if it includes private lands, the name of their owner”.
- Section 15.: A copy of the notice should also be forwarded to concerned Aboriginal Nations and communities.
- Section 29.: Again, concerned Aboriginal Nations and communities should also be consulted.

- Sections 41. and 42.: In order to avoid duplicating the consultation efforts and ensure effective engagement, any assignment of another protection status to a protected area, application of another conservation measure, amendment of its boundaries or termination of its designation, and its associated proposed compensation should be subject to a joint consultation process. For territories located in the Naskapi Area of Primary Interest, the NNK's approval of the proposed modifications and compensation should be required.
- Sections 48.(1)(b) and 48.(2): The NNK does not support the construction or repair of multi-purposes roads, nor the mining of surface mineral substances in a biodiversity reserve. If such authorisations apply to the sole purpose of conservation, it should be clearly stated to prevent carrying out these activities for any other purpose. The adverse effects of road construction on wildlife and biodiversity have been documented and must be taken into account in the decision-making.

Final Note

The NNK is currently moving towards its self-governance with the aim of gaining authority and decision-making powers in a variety of sectors, including the protection and conservation of its traditional territory. Bill 46 proposes improvements to the current situation, but extra steps are required for the NNK, and Indigenous people in general, to play a decision-making role in the protection and conservation of its traditional territory, whether it be for the planning, designation, recognition, elaboration of conservation measures and plan, or management. The discussion should therefore continue.

The NNK wishes to thank the Committee on Transport and the Environment for this opportunity to share its comments and concerns, and welcomes any effort for further consultation.

Please note that the position adopted by the NNK may be modified where any other relevant information is brought to our attention. All comments provided herewith are submitted without prejudice and with full reserve as to the rights of the NNK.