



ALBERTA WILDERNESS ASSOCIATION

"Defending Wild Alberta through Awareness and Action"

March 19, 2018

The Honourable Catherine McKenna
Minister of Environment and Climate Change
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Deborah Schulte
Chair of House Standing Committee on the Environment and Sustainable Development
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RE: Bill C-69 and the Impact Assessment Act

Dear Minister McKenna and MP Schulte,

Alberta Wilderness Association (AWA) is writing to express our concern and disappointment over proposed changes in Bill C-69 regarding the new Impact Assessment Act (IAA). We believe that the proposed changes to Canada's environmental laws are not credible and will likely continue to enable short-term economic gains over sustainability and health.

Over the past two years Alberta Wilderness Association (AWA) has contributed to the review of changes to Canada's environmental laws. In addition to written submissions, we have presented to the Expert Panel that reviewed Canada's federal assessment processes and had the opportunity to meet with you to discuss the government's plans for moving forward with reforms to environmental laws and regulatory processes.

AWA is disappointed with lack of transparency surrounding how these extensive public consultations were considered during the drafting of these laws. We share the sentiment with many of our colleagues that the last two years of consultations appear to have been nothing more than a make-work exercise, despite the exceptional expertise of the Expert Panel. Ignoring the vast pool of work conducted and commissioned by the Expert Panel is a waste of resources and makes a farce of the concept of public consultation.

Within the next generation, the impacts of climate change on our environment, economy, and society is expected to cause unprecedented environmental changes and potentially global upheaval. More so now than ever, Canadians need to be cognizant of the long term consequences of environmental impacts. We depend on a robust set of environmental laws that will protect us now and into the future. The Canadian public has a right to be involved. Bill C-69, as currently written, blatantly ignores these needs.

The following submission is a reflection of only some of the most pressing issues that we believe to be contained within this bill, and we point to volumes of work written by legal experts on this issue. AWA believes that Bill C-69, as written, must not be permitted to pass and we urge your serious consideration of our comments.

AWA Comments on Bill C-69

- 1. Decision Making:** AWA does not support the IAA's overreliance on Ministerial Discretion and lack of objective decision making criteria. Changes to our environmental laws must limit Ministerial discretion, have checks and balances in place, encourage proactive measures, and require the precautionary principle to be applied in decision making. Decision making should recognize and select the best option among a host of alternatives; alternatives must always include an option of not proceeding with the activity. AWA notes that the IAA currently does not contain the ability for the public to appeal decisions. We believe that all decisions must be open and available to public scrutiny, review and challenge. Improving transparency is necessary to regain public trust in the system.
- 2. Purpose:** AWA supports Sustainability Assessments as proposed by Gibson, Meinhard and Sinclair¹. AWA acknowledges that the IAA does propose a more holistic approach to impact assessments that requires the Minister and Cabinet to consider whether a given project contributes to sustainability, looking at the broader suite of both positive and negative social, health, economic and environmental implications of undertaking a proposed project.

However, the IAA is dangerously lacking structure as to how these decisions will be made and does not contain any method to appeal decisions. There are no requirements for decision makers to prove that a given project will provide net social and environmental benefits, nor are there explicit criteria for approving or denying a project. There is also no requirement for decision makers to reject projects with unacceptable environmental impacts. Without any objective analysis or decision making criteria, economic considerations will always be weighed as more important than any negative environmental impacts.

- 3. Jurisdictional Responsibilities:** AWA supports the removal of equivalency in the IAA and maintains that provincial substitution of environmental assessments is *not* appropriate because of important distinct federal responsibilities. As Arlene Kwasniak noted in her submission to the Expert Panel, "many submissions reflected serious issues with substitution. These were mainly from environmental or Indigenous sources, but not all. For example, the submission of the Mining Association of Canada reflects concern over the disconnect between a provincially substituted EA (British Columbia) and the subsequent federal regulatory decision making"².

AWA believes that harmonization of environmental assessments is the best approach and would improve cooperation across jurisdictions, leading to one comprehensive assessment process and providing the basis for responsible decision making at all levels of government.

- 4. Triggers:** The provisions for triggering an environmental assessment are weak. AWA does not support the continued use of a designated list of projects to trigger assessments. While we understand that the use of a project list is intended to provide clarity to proponents, AWA is concerned that this may result in some unintended omissions and may not consider the impacts of smaller projects. Projects, regardless of size, have directly or indirectly contributed to the

¹ Gibson, R.B., Meinhard, D., and A.J. Sinclair. 2015. Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment. *Journal of Environmental Law & Practice*, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=2670009>

² Kwasniak, A. 2016. Submission to the Expert Panel on the Review of Environmental Assessment Processes. Available at: http://eareview-examenee.ca/wp-content/uploads/uploaded_files/submission-of-arlene-kwasniak.pdf

cumulative degradation of the environment. AWA maintains that a “credible federal impact assessment process must be designed to ensure that those projects with consequential impacts for present and future generations trigger the impact assessment process,” supporting Sharon Mascher’s proposal³ for what projects should trigger federal assessment. Environmental assessments should include activities, projects, and programs such as budgets and policies.

Adding to our concerns is that even with projects on the designated list, the Agency will have discretionary power to decide whether an assessment is required. We believe that this is an unnecessary and dangerous use of discretionary powers. Discretionary measures must be limited and decisions on whether an assessment is required must meet explicit criteria and be open to public review and appeal.

Finally, how the triggering approach for individual projects is implemented in conjunction with the implementation and compliance of regional assessments is critical. AWA does not support reliance on Ministerial discretion to initiate strategic or regional assessment; any criteria for initiating these assessments are notably absent. For both regional and strategic assessments, AWA recommends that targets should be set below natural environmental carrying capacities, which when exceeded would trigger regional assessments.

- 5. Strategic and Regional Assessments** The IAA appears to rely heavily on the continued consideration of cumulative effects largely using a project-by-project approach, with a single project proponent carrying out cumulative effects assessments. This often leads to projects erroneously being "measured against" the effects of other projects, instead of focusing on total environmental effects. Although project-by-project environmental assessments remain important to target site specific environmental impacts, a regional and strategic approach to assess cumulative effects is also essential.⁴ Without specific criteria triggering these assessments, AWA is concerned that many important assessments will not be conducted.

Unfortunately, there are no details provided in Bill C-69 on how regional or strategic assessments will be conducted. We refer to our previous submission⁵ regarding our recommendations for regional and strategic assessments and note that the IAA falls far short of the recommendations from the Expert Panel. We emphasize that the purpose of regional and strategic assessments must go beyond simply providing a report to the Minister; there must be a legislated and regulated requirement for proponents to conform to regional plans, with incentives for proponents to cooperate to achieve objectives and penalties for those refusing to comply.

- 6. Public Participation:** AWA is supportive of the recommendation to eliminate the “standing” test previously used for those wishing to participate. However, it appears that in all other aspects the IAA appears to perpetuate the currently insufficient opportunities for the public to meaningfully

³ Sharon Mascher “What Should Require Federal Impact Assessment? Proposed Triggers for a Credible Federal Impact Assessment Regime” (23 August, 2017), online: ABlawg, http://ablawg.ca/wp-content/uploads/2017/08/Blog_SM_Federal_Impact_Assessment.pdf

⁴ Harriman, J.A. and B.F. Noble. 2008. Characterizing project and strategic approaches to regional cumulative effects assessment in Canada. *Journal of Environmental Assessment Policy and Management* 10(1): 25-50

⁵ Alberta Wilderness Association. 2017. Letter to Minister McKenna RE Canadian Environmental Assessment Act Review. Available online at <https://albertawilderness.ca/awa-letter-expert-panel-report-canadian-environmental-assessment-act-review/>

participate in the assessment process. This is completely contrary to the Expert Panel's opinion that the current consultation process is not meaningful. This law can and must do better.

In addition, the IAA does not provide participant funding to substituted impact assessments. AWA believes that this provision in the Act is unacceptable and further constrains the ability of the public to participate meaningfully in the assessment process.

7. Enforcement and accountability: AWA is supportive of the increase in maximum fines.

We note that lacking in the IAA are any mechanisms to track information to inform whether the system works - has net sustainability been achieved, are mitigation measures working? There must be an adaptive feedback loop to improve future environmental assessment processes and decisions.

Thank you for your consideration of our comments.

With regards,



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