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Dear Ministers:

The Canadian Nuclear Association (CNA) is pleased to provide our comments on the Government of Canada's Discussion Paper "Environmental and Regulatory Reviews". The CNA has approximately 100 members representing over 60,000 Canadians employed directly or indirectly in uranium mining and exploration, fuel processing, electricity generation and the production and advancement of nuclear medicine.

The nuclear industry is one of the most well-regulated industries in the country and its regulator the Canadian Nuclear Safety Commission (CNSC) is globally recognized and respected. Our members believe in and support a strong, open and transparent regulatory regime. We support the government's goal of maintaining Canada's superior regulatory standards while enabling "good projects go ahead and resources get to market".

Canada's nuclear industry makes a substantial contribution to our climate, health and science and technology policies as well as creates thousands of well-paid, highly skilled jobs. However, like all industries, Canada's nuclear sector faces intense competition. With that in mind, the CNA's view is that it is critical that changes to the regulatory framework consider investor confidence, timely decisions and Canadian competitiveness.

The CNA is concerned that the Discussion Paper does not set out a pragmatic and integrated framework for vast number of federal regulatory processes needed for a project to proceed. It is our view that the Discussion Paper does not sufficiently consider existing regulatory procedures and is fraught with duplication and inconsistency. The CNA would urge the government to develop a pragmatic, systematic and unified regulatory process that provides a clear path to ensuring “good projects go ahead and resources get to market”.

## Impact Assessment

The proposed new Impact Assessment process involves major changes to the assessment process and will have significant implications for projects. The CNA would like to highlight the following issues:

### Single Agency

- The Discussion Paper proposes that a single government agency be responsible for impact assessment reviews. In the case of the nuclear industry, the paper proposes that assessments be conducted jointly between the new agency and the CNSC. While this is not a new concept (we have had joint panels in the past), the CNA does not believe this will be an improvement over the current process.
- Many of the potential impacts that must be considered in relation to nuclear projects are related to radiation protection. This work must be overseen by an agency with significant and specialized scientific expertise. The CNSC is the only place in government with the required nuclear expertise. The Discussion Paper implicitly recognizes this by acknowledging the need for joint panels. The CNA does not believe moving assessments from the CNSC to a joint panel is the most effective or efficient way of conducting assessments.
- As a full life-cycle regulator, the CNSC licensing regime and regulatory framework covers the entire life-cycle of the project and is subject to the Nuclear Safety and Control Act (NSCA) and its regulations. This allows the CNSC to not only conduct the IA in the planning phase of the project but also to ensure that monitoring programs and follow-up conditions required by IA are directly integrated into the licensing process throughout the various stages of the project.

## Project List

- The Discussion Paper proposes revisions to the Project List. The CNSC governs all nuclear facilities, projects and activities in a graded risk-informed approach. The CNA would expect this approach be applied to revising the Project List.
- It is the CNA's view that the Project List should focus on major new projects such as new large-scale nuclear power plants (CNA suggests a 200MW threshold like Hydro), new uranium mines or mills, new uranium-processing facilities and new high-level waste facilities. All other projects can be dealt with through the CNSC's existing regulatory framework.
- All nuclear activities are subject to the CNSC's existing comprehensive environmental protection framework and licensing process. The NSCA gives the CNSC the ability to deal with environmental issues beyond the scope of EA and the regulatory framework provides the authority to adopt environmental measures to reflect changes in the environment. Projects at existing facilities can therefore be effectively dealt with through the existing regulatory framework and EA.

## Early Planning and Engagement

- The Discussion Paper proposes a new early planning phase. While not opposing this proposal at this time, the CNA has concerns that, if the process is not clearly outlined, it could result in significant cascading delays.
- While the Agency and other government departments can provide advice and guidance on approach, responsibility must remain in the hands of the proponent. The early planning phase can only commence after the proponent has completed adequate planning to ensure there is a business case and has some degree of confidence that issues can be mitigated.
- The new phase will allow for the early engagement of Indigenous peoples and communities likely to be directly affected, as well as allowing for undertaking specific scientific or environmental analysis. In addition, this early planning period should be used to clarify regulatory agency responsibilities, minimize overlap and focus the IA process.

## Decision-Making Process

- Given the stated goals of the reviews included getting “good projects to market” and noting the challenging economic conditions faced by Canadian resource and energy projects (including nuclear), the CNA would hope that the new regulatory process would facilitate/co-ordinate the completion of additional licences and permits.
- The diagram on Page 8 of the Discussion Paper seems to indicate that a lengthy regulatory process involving other agencies (i.e. Fisheries Act, NSCA, etc.) would take place after the IA decision has been made on the project. While it might make sense for the decision to take place after the IA decision, there needs to be a way to provide adequate information through the IA process so proponents are not subjected to needlessly long additional regulatory processes afterward.

## Peer Reviews

- The CNA is a strong proponent of science-based decision making and supports the use of government experts to conduct the peer review of science and evidence in the regulatory review of the impact statement. The CNA believes that, in the nuclear industry, the CNSC has the necessary expertise to review the impact statement.
- The CNA believes third-party peer reviews should be limited to those areas where the government lacks expertise and should be agreed upon in the guidelines of the IA planning phase.
- The CNA would also express caution about the overuse of third party consultants who tend to add substantial costs and delays to projects.

## Transition

- Transition from the existing EA regime into the new IA regime is an important issue for the nuclear industry. The discussion paper proposes major amendments to the assessment process. This will require significant time to amend legislation, promulgate new regulations, guidelines and procedures, setup, staff and train a new agency.
- The CNA recommends that any projects already in the EA/regulatory process prior to the amended legislation's implementation date be "grandfathered" under existing legislation and processes.

## Navigation Protection Act

- The CNA believes that the Navigation Protection Act is working well and does not require significant amendments.
- The Act sets out clear criteria for adding waterways to the schedule through the existing criteria. The CNA agrees that a more accessible and transparent system could be developed to provide input from Indigenous peoples, public and other stakeholders either through an amendment or by implementing a new process.
- The CNA believes that there needs to be a clear recognition within the Act and by Transport Canada personnel that any compliance mechanisms, requirements for notice and consultation for works on unscheduled waterways apply only after the waterway has been determined to be legally navigable.
- Finally, the CNA believes that there is substantial case law on navigation that clearly outlines the criteria for navigable waters and that there is no need to amend the aqueous highway test.

## Fisheries Act

### HADD

- The CNA has serious concern over the proposed return to HADD. Historically the HADD definition has been applied too broadly and inconsistently. We are concerned that this may reoccur without clear criteria and definitions. If there is to be a return to HADD, CNA strongly recommends clear and consistent criteria as well as a transparent process for determining if a project will result in HADD. CNA believes HADD should be applied as affecting fisheries as a resource or fish at the population level.
- If the Department insists on returning to HADD, it should consider a return to the previous wording to ensure past case law and experience can be used to inform decisions. In addition, the CNA encourages early engagement with the Department which would allow project proponents to develop measures that can be implemented to minimize HADD. In the past, such input has been provided through departmental Letters of Advice.

## Operational Statements

- The CNA would support the return of Operational Statements which would provide clarity for both proponents and DFO staff around routine undertakings. Provisions identified in the Operational Statements to avoid and mitigate harm to fish would enhance regulatory certainty and allow DFO to achieve positive outcomes on low-risk projects.

## Habitat Banking and Offsets

- CNA members are strong supporters of the use of habitat banking and offsets, but believe the process could be significantly improved with some guidance and consistency regarding implementation. Greater understanding of how offsets would be calculated would be helpful. For example, facilities that have been operating for many years and have been voluntarily funding offset programs have found that they need to cancel spending on those programs, because the department would not allow any pre-existing projects to be considered as offsets.
- CNA would encourage the government to expand the habitat banking and offset provisions to include aggregate proponent-led and third-party-led opportunities. This would significantly increase the opportunities for more large-scale offsets.
- CNA would also recommend that offsets be based on residual impacts (after mitigation) compared to the existing footprint and operating conditions rather than the original pristine condition of the site for expansions or refurbishments.
- In some cases, like-for-like mitigation of habitats is not feasible and “out of kind” offsets should be considered.

## Guidance, Training and Transition

- In the case of the 2012 amendments, there were significant challenges with implementation and transition, primarily due to the lack of adequate explanatory guidance and training for both proponents and regulatory staff. The CNA strongly recommends that the government allow the necessary time and resources to allow both proponents and regulators to fully understand the implications of the amendments.
- The CNA believes that any amendment should be accompanied by clear and comprehensive guidance developed in consultation with the proponents and that such guidance be in place before the Act comes into effect.

## Interaction with Impact Assessment

- The CNA would recommend that the government look at how the Impact Assessment and the Fisheries Act could best be aligned. The CNA would encourage implementation that would allow the timing of approvals under the Fisheries Act to coincide with the timing of IA approval. Such co-ordination would provide proponents with a more timely and certain process and should be possible without impacting the effectiveness of either process.

## Conclusion

In closing, the CNA appreciates the opportunity to provide feedback on the government's Discussion Paper. We look forward to additional opportunities to provide input as the government moves forward with its regulatory initiatives.

If you have any questions or would like additional information, please contact Steve Coupland, Director of Regulatory and Environmental Affairs, Canadian Nuclear Association at [couplands@cna.ca](mailto:couplands@cna.ca).

Sincerely



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