

SKEENA FISHERIES COMMISSION

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SKEENA FISHERIES COMMISSION (SFC) SUBMISSION TO THE BRITISH COLUMBIA GOVERNMENT'S REVIEW OF THE PROVINCE'S PROFESSIONAL RELIANCE MODEL

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January 19th 2018

The Skeena Fisheries Commission (SFC) is the Skeena Watershed aboriginal organization that focuses on fisheries management, science, and conservation. The SFC signatories are the First Nations with traditional territory in the Skeena drainage and the adjacent north coast of British Columbia, including the Tsimshian, Gitx̱san, Gitanyow, Wet'suwet'en, and Lake Babine Nations. The current SFC Member Nations are the Gitx̱san, the Gitanyow, and the Wet'suwet'en. The Commission, as directed by its Member Nations, responds to management and access priorities relating to the broad Aboriginal interest in the fisheries resource. As part of our mandate, we have been involved in a technical capacity with multiple environmental assessments (EAs) in northwest BC. Our experiences have informed this submission.

The paragraphs that follow will address the British Columbia Environmental Assessment Office's (BCEAO) questions regarding its current use of the professional reliance model:

1. Please tell us what you think is working well with the current professional reliance model in B.C., and what is not.
2. What changes, if any, are needed to maintain or improve public trust in the professional reliance model?
3. Do you have any other observations or recommendations you would like to make about this review?

Whether the current professional reliance model can be considered to be working well is a matter of perspective. In terms of serving the public good and being objectively transparent and scientifically defensible and credible, the current model is not working well at all. In SFC's experience, the BCEAO usually prioritizes a project proponent's objectives and concerns over those of other parties such as First Nations, concerned stakeholders and citizens. The current Environmental Assessment (EA) rubric utilized by the province particularly under the Liberal regime tended to be more aligned with an economic development and job creation perspective rather than taking a more holistic balanced approach. While economic development and job creation are important for both British Columbian and Canadian society at large, these factors should not come at the expense of degrading ecosystems and thus compromising the abilities of both current and future generations to have a good quality of life.

As one would logically expect, project proponents have a vested interest in promoting their projects and getting related approvals as soon as possible so that their projects are built as quickly as possible. In many instances, the ethics of quickly developing a project proposal into reality are not aligned with truly serving the public good and objectively analyzing the true costs (both financial and environmental) of approving and constructing a given project that is likely to have significant impacts. SFC has been involved in multiple EAs where significant technical information gaps existed at the start of the review process.

Many of these information gaps required significant time investments to be closed properly; time that project proponents (especially once immersed in the 180 day BCEAO review) were usually very unwilling to invest. Although there is the option for the BCEAO to stop the clock during their 180 day EA reviews, SFC has repeatedly found that if a given project proponent even slightly objects to 'stopping the clock' on their EA then the BCEAO is highly unlikely to do so. In our experience it often requires multiple strenuous objections from non-proponent related working group members to get the BCEAO to seriously entertain stopping the clock during the EA review process.

The conflict of interest that results from the professional reliance model undermines the credibility of EAs: specifically that project proponents hire and pay for the environmental consultants tasked with collecting and analyzing scientific data to inform the project proponent's environmental assessment. To operate in the public interest, the professional reliance model requires professionals' prime motivations to be producing high quality work and serving the environment and the public good; the reality is often quite the opposite. As a business, environmental consultants are obligated to serve the interests of their shareholders by maximizing revenue. Therefore, their most important relationship is with the proponents that hire them, not with the public, the environment, or their peers within the profession. The most financially successful environmental consulting companies are typically those which produce work that best facilitates their employers' goals, and this does not necessarily align with producing the best or most ethical work.

The current 'professional reliance model' encourages project proponents to shop around for environmental consulting companies likely to produce results and reports favourable to their desired outcome of receiving a positive Environmental Assessment Certificate (EAC) instead of being incentivized to choose environmental consultants with strong and ethical scientific track records. We have seen multiple occasions where environmental consultants, shortly after producing findings and reports that may have harmed the chances of a project receiving an EAC, who were then subsequently dismissed by the project proponent and replaced with another environmental consultant. The problem is further exacerbated by the current approach used to feed technical information into and through BC's EA process. Specifically, in the current arrangement technical information flows to the regulator and the technical working group with the project proponent as an intermediary. Allowing technical EA information to go through the proponent before the EA regulators provides an opportunity for an unscrupulous proponent to filter out technical information potentially unfavorable to their cause. In all these cases the provincial (BCEAO) and federal (CEAA – if applicable) regulators did not take the potential loss of data, lack of data quality and compromised scientific rigour into account when making their EAC issuance decisions. The problems that arise from: (i) allowing proponents to pick environmental consultants in a non-objective fashion and (ii) the way technical information is filtered through the EA process are glaring oversights that must be remedied if EA and the professional reliance model are to regain scientific credence and the trust of the Canadian public at large.

The practice of biased parties shopping around for the results that best suit their particular goals should not be applied to environmental assessments or objective science. In BC, the current practices for EAs combined with the professional reliance model gives project proponents too much power to withhold concrete scientific findings they don't like.

One key thing that could be done to regain public trust of EA in BC and the associated professional reliance model is to remove the aspect of project proponents funding environmental consultants directly, thus getting away from the dangerous process of environmental consultants tailoring results and reports to a project proponent's wants and desires. Obviously, there should still be avenues to dismiss environmental consultants found to be technically incompetent or unprofessional, but that decision should not rest solely with a given project proponent.

In our experience, the EA process suffers from a lack of local knowledge and scientific expertise within both environmental consultants and provincial representatives. All of the EAs that SFC has been involved with since 2010 have been for projects proposed in the Skeena Watershed region. In almost all cases the environmental consultants hired and utilized by project proponents were not local to the Skeena region; and often did not have extensive experience and knowledge of the ecosystems of the area. This was also often the case for representatives of the BCEAO. Also at technical working group meetings often there was little to no representation of provincial and federal government science and environmental experts. I have probably attended close to 100 technical working group meetings over the last 8 years and in only a handful were the relevant technical experts from both provincial and federal departments present. Again, to operate in the public interest, the professional reliance model requires regulatory bodies to provide in-depth technical oversight and quality control to ensure that the work produced by professionals is of sufficient quality to support an EA.

We have little confidence that this is currently the case when experts do not even attend the meetings in which the work is presented.

We have heard from multiple contacts within the BC government on multiple occasions that departments are short-staffed and under-resourced, hindering them from meaningfully participating in EAs for project proposals that would affect the Skeena region. This is an entirely unacceptable situation and one that further exacerbates the problems of BC using the professional reliance model in their EA decision-making processes. More resources must be allocated to provincial science departments to ensure that the best science is used for a truly objective decision-making process.

SFC would also like to comment on how qualified professionals are utilized and certified within the province of British Columbia by the College of Applied Biology, particularly Registered Professional Biologists – R.P. Bios. On the one hand the province of BC is to be applauded for being one of only two Canadian provinces to have such a system (with Alberta being the other); on the other hand the way RP Bios are registered, certified and regulated in BC is far from consistent and this is a cause for concern. BC's College of Applied Biology has advocated for a harmonization between BC's and Alberta's Environmental Professional certification processes but stops short of suggesting a Canada-wide approach being needed.

Our critique of this area is mostly focused on Environmental Professionals such as Scientists and Biologists although this critique could also be applied to other scientific and technical disciplines (e.g. geology and engineering). The process of using certified professionals within the Environmental Sciences would have more credence if there were at a minimum a Canada-wide certification process and ideally a North American-wide certification process. If the government of British Columbia is indeed earnest in rectifying its environmental assessment processes and particularly those related to the use of the professional reliance model, then reforming environmental professional certification and regulation processes could be considered a golden opportunity for BC to be a Canada-wide leader in this area. There are obviously terrestrial and aquatic ecosystem differences within Canada, but the application of the scientific method and interpretation of data and results should be the same Canada-wide if not worldwide.

Related to this point are the interactions between the government of British Columbia and the government of Canada particularly on science and environmental issues. If a Canada-wide environmental professional certification process existed two likely results would be: the BCEAO's and CEAA's EA processes would be scientifically harmonized held to identical high standards of technical and scientific rigour, and the public interest would be truly well served and protected.

As mentioned previously in this document SFC has found that the BCEAO tends to unduly favour project proponents in their EAs and if it is a co-lead EA (an EA with both BCEAO and CEAA taking an active role), BCEAO tends to reach its EAC decision much sooner than its federal counterpart. In SFC's opinion and experience the BCEAO tends to issue its EAC faster because of the presumption that since the professional advice they relied upon in making the EAC decision came from a Qualified Professional with a given proponent's hired environmental consultant, then further assuming that the advice must be scientifically defensible and credible; without having conducted sufficient scrutiny to insure this is indeed the case. If there was a rigorous Canada wide environmental professional certification program with appropriate incentives and disincentives to practice using good scientific methods and use the corresponding results objectively and accurately, then one could have faith in the BCEAO's EA related decisions serving the best public interest. The current system tends to favour the best interests of certain groups versus the public at large.

Additionally, harmonizing of the BCEAO's and CEAA's EA processes should not follow the proponent-driven substitution approach that is currently used for substituted EAs, in which the BCEAO process replaces the CEAA process. Although both BCEAO and CEAA EA approaches have scientific shortcomings; EA substitution should not occur until the aforementioned problems with the application of EA and the professional reliance model in BC are resolved. Once scientific credibility, objectivity and high ethics are restored to both BC and federal EA processes the public interest will be transparently well-served.

To summarize, the Skeena Fisheries Commission encourages British Columbia to adopt the following six recommendations:

- (1) The public interest should be given the highest priority by British Columbia in its use of the professional reliance model and in Environmental Assessments.
- (2) The BCEAO and CEAA need to harmonize their approaches on issues of scientific objectivity and integrity to a much higher ethical standard.
- (3) Remove financial incentives that encourage environmental consultants to compromise professional ethics and tailor scientific findings and reports for project proponents.
- (4) Allow non-project proponent EA Working Group member's unfettered access to unfiltered technical and scientific information essential to sound environmental decision making.
- (5) Restore funding and increase the amount of resources available to provincial environmental science employees in their respective BC regions to allow them to do the best and most comprehensive job possible on all environmental matters.
- (6) Encourage and foster the development of a meaningful Canada wide environmental professional certification process.

