

Information Note**Department of Environment and Climate Change/Labrador and Aboriginal Affairs**

Title: Update on Discussions with the Nunatsiavut Government (NG) regarding Methylmercury

Issue: To provide information on current status and next steps regarding the agreed to action items following a September meeting between Premier and President Lampe.

Background and Current Status:

- A second scientific workshop was held in August 2016, attended by multiple federal and provincial departmental experts, scientific experts identified by the NG, as well as other representatives of the NG, Innu Nation and NCC, regarding the issue of methylmercury and the Muskrat Falls project. The workshop was independently facilitated.
- A draft workshop summary report, prepared by the facilitator, was sent to workshop participants for comment. While most were of a clarifying nature, NG wrote the facilitator on September 16, 2016, indicating the report was an “inaccurate summary of the discussion”, refusing to comment on it, providing their own transcript of the workshop.
- On September 26, 2016 Premier Ball, and Ministers Coady and Trimper, met with President Lampe and Minister Shiwak of the NG. At that meeting Government agreed to:
 - o Immediately establish a water quality monitoring program;
 - o A role for the NG in monitoring, with the potential for an Independent Expert Advisory Committee on which they would participate;
 - o Establish a “table” for further examine the feasibility of clearing the reservoir from the initial flooding of 25 metres to the full flooding 39 metre mark; and
 - o Hold further discussions on the other two asks of the NG – an Impact Management Agreement and joint decision-making authority over downstream monitoring.
- The above areas of agreement were noted in a statement by Minister Trimper, released on September 29. The NG also issued a news release, indicating that their position regarding the need for full soil removal had not changed. Their release was otherwise in general alignment with the Minister’s statement as to what was agreed to during the meeting.
- The Grand Chief of the Innu Nation wrote on September 30, referencing the province’s discussions with the NG and noting they expected to be involved in any structure being envisioned related to environmental monitoring associated with Muskrat Falls. In the October 7 reply from Minister Trimper, the actions agreed to with the NG were clarified and the Innu Nation was advised that any Expert Advisory Committee or other committees that may be established would include a role for the Innu Nation.
- Numerous protests have been held in areas of Labrador and in St. John’s over the last few weeks, noting concerns regarding methylmercury as well as the North Spur. Just last week we have seen the Cartwright town Council indicating they will not support the shipment of transformers for the project through their community, the town of Happy Valley-Goose Bay come forth in support of Make Muskrat Right campaign, citing concerns for resident safety in should the dam break, and a nationally-acclaimed Inuk artist, Billy Gauthier, initiate a hunger strike.
- The Grand Chief wrote again on October 13 requesting that flooding be held pending proper consultation with the Innu people of Labrador and establishment of an adequate plan to deal with the anticipated increase in methylmercury post flooding. The letter presents the view that nothing had occurred since the august expert workshop and no reassessment of options was undertaken. The letter also references their IBA and Nalcor’s obligations in that

regard to respond to their concerns regarding adverse environmental effects.

- On October 14 the NG issued a news release calling on the Premier to “halt construction of the Muskrat Falls project until concerns over methylmercury contamination are addressed”, further asking him “to direct Nalcor Energy to delay flooding of the Muskrat Falls reservoir until it is fully cleared of all trees, vegetation and topsoil”.
- On October 14, NunatuKavut Community Council (NCC) issued a press release stating that President Todd Russell will host a news conference at 11 am October 17 in Happy Valley-Goose Bay, to make an announcement related to the Lower Churchill Project.

Analysis:

Methylmercury Monitoring Plan

- Given the approaching date to begin the initial phase of flooding, work immediately began on a methylmercury monitoring plan (MMP) that would augment work done normally by ECC, as well as that being done by Nalcor via their Aquatic Effects Monitoring Plan (a requirement of their EA release which requires monitoring of methylmercury in the tissue of fish and seal).
- A draft plan was sent to the NG on Friday September 30. A call with Carl Mclean followed on Monday October 3rd, which led to an urgent conference call between ECC experts and the NG’s experts (Dr. Elsie Sunderland and Dr. Trevor Bell). The NG and their experts had been pressing for the use of flux chambers and a study-like experimental design, which differs from real-world monitoring.
- Comments were received from the NG the evening of October 4, despite discussions on the expert call which questioned the technical feasibility of the flux chamber technology, the NG’s comments persisted in that regard. A revised plan was sent to the NG on October 6, in which ECC offered to include the flux chamber technology if Harvard could advise on where to procure them and where they wish them installed. An edited version of the plan was received from the NG on October 11. The flux chambers were removed, noting the technical challenges, and a new approach inserted which was essentially a replication and expansion of Harvard’s prior research.
- Discussions held by ECC with two of Nalcor’s environmental consultants – AMEC, and Reed Harris Environmental Limited – indicated that the robustness of ECC’s water and sediment sampling exceeded the value of data that would arise from the study aspect proposed by Harvard. They agreed with ECC’s observations that the ability to simulate natural conditions (river flow, temperature variations) in a laboratory was questionable. It is also noted that Dr. Sunderland’s lab at Harvard is a research lab, and is not accredited, contrary to that of the lab Nalcor would use to test the samples ECC’s monitoring plan will require. Harvard’s proposed work also includes the use of undergrad and graduate students in conducting some of the sample testing.
- The monitoring plan sets out the creation of an Oversight Committee comprised on representatives from the NG, Innu Nation, and NCC, and would be chaired by ECC and include representation from HCS and relevant federal entities (ECCC, DFO, Health Canada).
- ECC feels that separating the study component from the real world monitoring is appropriate. Recognizing the NG will likely react negatively to any removal of the study element, offering to have Nalcor pay Harvard to conduct it as a separate and distinct study may mitigate negative reaction and achieve the NG’s support of the monitoring plan.

- Even without NG's support of the monitoring plan it is recommended the plan be finalized, as per the document prepared and discussed with Nalcor's consultants, and sent to all three Aboriginal Organizations. Of note, Nalcor's consultant is already implementing this plan, at ECC's request, as it was essential to begin the baseline data collection while we continued to discuss the plan with the NG.
- Any offer to fund research for the NG in this manner could give rise to a request from Innu Nation and NCC for similar research funding.

Thistle Report

- On September 27, 2016, the facilitator submitted his final report. It has not yet been released to participants. The report contains useful information for the informed reader, however its scientific nature will not be helpful for the broader public. ECC has committed to publically releasing this plan, consistent with the approach from the first workshop.
- The NG has suggested it be sent to all participants for further comment, noting that it is essential the report be an accurate depiction of the workshop discussions. While the facilitator indicated he reviewed the NG's transcript and revised the report as he felt appropriate, it is expected that the NG will persist in their view that it is an inaccurate summary.
- Offering a final opportunity for comment is appropriate, but a protracted period in which the NG may seek to "negotiate" the text of the report is not. The opportunity for final comment should be brief and participants should be advised that a decision to include, or not include, any of these comments in the report will be that of the facilitator.

Independent Expert Advisory Committee (IEAC)

- Similar to an approach used when low level flying gave rise to considerable opposition in Labrador, the establishment of an IEAC which has a clear role for the Aboriginal Organizations, may help mitigate continued criticism and dissemination of mis-information.
- The IEAC would have an independent chair, representatives from NG, Innu Nation, and NCC, scientific experts, and experts from relevant provincial and federal agencies with a direct or advisory role regarding monitoring activities and/or directing action arising from the monitoring results (e.g. consumption advisories).
- The Oversight Committee for the above noted methylmercury monitoring plan could be replaced by the IEAC once it is established.
- The IEAC would review the data arising from the methylmercury monitoring plan, the new study to be conducted by Harvard, and the other terrestrial and aquatic monitoring programs Nalcor is conducting. They could also be the "table" that would further examine the feasibility of clearing the reservoir from the initial flooding of 25 metres to the full flooding 39 metre mark.
- A framework for the IEAC is attached as Annex A.

Further Discussions re NG's other two asks

- As the September 26 meeting was concluding Minister Shiwak asked if further discussions could occur on the NG's other two asks - an Impact Management Agreement (IMA) and joint decision-making authority over downstream monitoring. The Premier agreed we could continue to discuss those items. Minister Trimper asked the NG if they could provide further clarity as to what they meant by the IMA, which they agreed to provide.

- Minister Trimper applied a condition to the acceptance of the Health Human Risk Assessment Plan in June 2016 which obligated Nalcor to consult stakeholders in the event of consumption advisories and provide reasonable and appropriate compensation. This condition was in response to the NG's requests for an IMA, whose written request in that regard referenced a recommendation of the Joint Review Panel which discussed the need for compensation should consumption advisories be required. The NG reacted negatively to this condition, noting they did not ask for compensation. As such, it is unclear what they are seeking when they speak of an IMA.
- As these points of discussion are likely to be more challenging than the Monitoring Plan and IEAC, deferring those until the other issues are concluded would be appropriate. Additionally, we may be able to argue that aspects of the IMA are addressed via the other measures and/or that the need for joint decision making has been adequately addressed by creating a significant role for the NG in monitoring and the creation of an independently chaired advisory body.

Communications

- Communication approaches that attempt to address the fear felt by stakeholders are vitally important. This requires simple explanations of complex issues such as: the potential effects of methylmercury downstream, the monitoring activities underway and their role in protecting human health, the nature of consumption advisories and the engineering assessments conducted of the North Spur.
- A communications team which includes representation from the departments involved (HCS, ECC, LAA, NR) as well as the communications and public engagement branch, and Nalcor is necessary to ensure connected and comprehensive messaging and approach.
- It is noted that a number of the communications elements involve areas of federal jurisdiction. Attempts to seek federal support in public communications on this issue have thus far been unsuccessful.

Action being taken:

The following actions will be taken beginning October 17, 2016:

1. Finalize the Methylmercury Monitoring plan, having consulted the NG and incorporating their comments to the extent possible and appropriate, and send it to the NG, Innu Nation, and NCC, advising the implementation of this plan has begun;
2. Direct Nalcor to fund a further study to be conducted by Dr. Sunderland's research laboratory at Harvard University, and communicate same to all three Aboriginal organizations;
3. Release the Thistle report from the recent scientific workshop to the participants as a final report, noting that further edits prior to the report's public release would be at the full discretion of the independent facilitator and that comments in that regard are required by close of business Wednesday October 19, 2016;
4. Release a description and framework for an Independent Expert Advisory Committee (IEAC) to the NG, Innu Nation and NCC, inviting them to submit nominations for representatives from their organizations, as well as nominations for scientific expert representation and for the independent chair;
5. Invite Environment and Climate Change Canada, Fisheries and Oceans Canada, and Health Canada to participate on the Oversight Committee for the Methylmercury Monitoring Plan and on the IEAC;
6. Advise the NG that further discussions can begin on the other two asks (Impact

Management Agreement and Joint Decision making on downstream environmental monitoring) once the work to formulate the IEAC has concluded, reminding the NG that they committed to providing further information on the nature of their request for an IMA; and

7. Establish a multi-departmental/Nalcor communications team to develop a strategic communications approach regarding the above actions.

Prepared/approved by: C. Janes and A. Gover; in consultation with NR
Ministerial Approval: **Received from the Honourable Perry Trimper**

October 16, 2016

Annex A**Mission:**

To oversee monitoring activities regarding the protection of the health of the aboriginal and local population who harvest and consume country foods in the Churchill River near Muskrat Falls and downstream into Lake Melville

Structure:

Committee to have an independent Chair, scientific experts, representation from the three Aboriginal organizations, as well as key provincial and federal regulatory agencies including Environment and Climate Change, Health and Community Services Environment and Climate Change Canada, Department of Fisheries and Oceans, and Health Canada,

Objectives:

Review the monitoring results arising from:

- the methylmercury monitoring program,
- the new Harvard study program,
- the terrestrial and aquatic effects monitoring programs; and
- outcomes and activities associated with or flowing from the final Human Health Risk Assessment.

Provide advice to regulatory authorities in terms of actions needed to protect human health, arising from analysis of the above results.

Discuss the feasibility of clearing the reservoir from the initial flooding of 25 metres to the full flooding 39 metre mark; explore the nature of the types of information necessary to ensure the technical, environmental and economic feasibility of further clearing is fully understood; and discuss the regulatory obligations in terms of assessment required if any changes of this nature were to be applied to the current project.