



REVIEW PROCESS

EEOU MARINE REGION IMPACT REVIEW BOARD

Guide 3

REVIEW PROCESS

EEYOU MARINE REGION IMPACT REVIEW BOARD

Contents

THIS IS NOT A LEGAL DOCUMENT.

The explanations and definitions are not legal definitions. In case of a discrepancy, the text of the Eeyou Marine Region Land Claims Agreement prevails.

To order copies of the EMRIRB Guides, kindly send a request by email: info-irb@eeyoumarineregion.ca

Note: The abbreviations 'EMRIRB' and 'the Board' are used interchangeably throughout this document in reference to the Eeyou Marine Region Impact Review Board.

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1. INTRODUCTION

When the screening process described in Guide 2 shows that a proposed project in the Eeyou Marine Region (EMR) will cause significant public concern, may have significant adverse effects on the environment, or involves technology whose effects are unknown, the EMRIRB will suggest that a full review is required.

If the responsible Minister(s) accepts the Board's recommendation, the Minister(s) then has the choice between two types of review processes.

The first, under section 18.5 of the Eeyou Marine Region Land Claims Agreement (EMRCLA), is the review of project proposals by the EMRIRB.

The other, under section 18.6, is the review by a Federal Environmental Assessment Panel. This guide will describe the impact review process of the EMRIRB.

2. PURPOSE OF THE EMRIRB REVIEW PROCESS

The EMRIRB's review process is designed to carry out the functions assigned to the Board by the EMRCLA, which are:

- To gauge and define the extent of the regional impacts of a project;
- To review the ecosystemic and socio-economic impacts of project proposals;
- To determine, on the basis of its review, whether project proposals should proceed, and if so, under what terms and conditions, and then to report its determination to the Minister.



3. CONSIDERATIONS WHEN REVIEWING A PROJECT

When reviewing any project proposal, the EMRIRB takes into account all matters that are relevant to its mandate, including the following:

- Whether the project would enhance and protect the existing and future well-being of the persons and communities residing in or using the EMR, while taking into account the interests of other Canadians;

- Whether the project would unduly prejudice the ecosystemic integrity of the EMR;

- Whether the project proposal reflects the priorities and values of the persons residing in or using the EMR;

- Steps which the Proponent proposes to take to avoid and mitigate adverse impacts;

- Steps the Proponent proposes to take, or that should be taken, to compensate interests adversely affected by the project;

- Whether the Proponent needs to post performance bonds;

- The monitoring program that the Proponent proposes to establish, or that should be established, for ecosystemic and socio economic impacts;

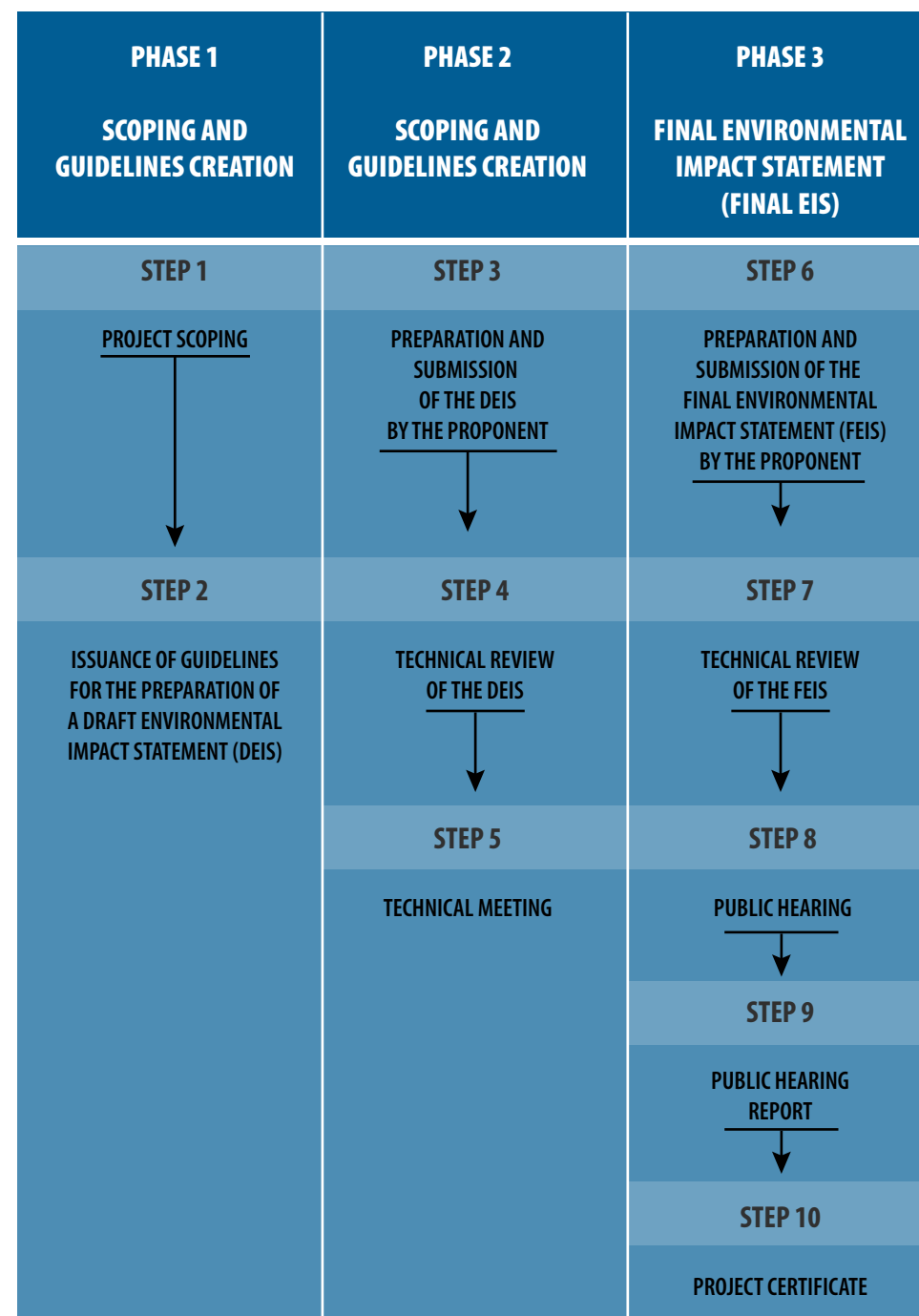
- Steps the Proponent proposes to take, or that should be taken, to restore ecosystemic integrity following project abandonment.

In addition, the Minister may identify particular issues or concerns that the EMRIRB must consider. However, this authority does not limit the EMRIRB from reviewing any matters within its mandate.

Although there is no official time frame for a review, the Minister may propose priorities and reasonable time frames for completion of the review.

The steps of the EMRIRB review process are described in the following sections in greater detail.

4. KEY STEPS OF THE EMRIRB REVIEW PROCESS



KEY STEPS OF THE EMRIRB REVIEW PROCESS

STEP 1

PROJECT SCOPING

The first step in the EMRIRB's review process is to scope the project proposal and the potential impacts associated with developing the project. Scoping is a process that pinpoints significant issues requiring study and analysis. This process aims to identify the components of the biophysical and socio-economic environment that may be impacted by the project and for which there is public concern.

The EMRIRB will begin by creating a draft Scope of the project proposal and distributing it for comment to the distribution list associated with the project. The EMRIRB will solicit input from the Proponent, interested Parties (comprising Government departments, members of the public, Cree communities), and various other Cree stakeholders, to evaluate what it considers appropriate in order to determine:

- Which components of the project to include in the review;
- The temporal and spatial boundaries of the project;
- The issues and concerns to be considered in the review;
- Any other requirements for the assessment of the project proposal.

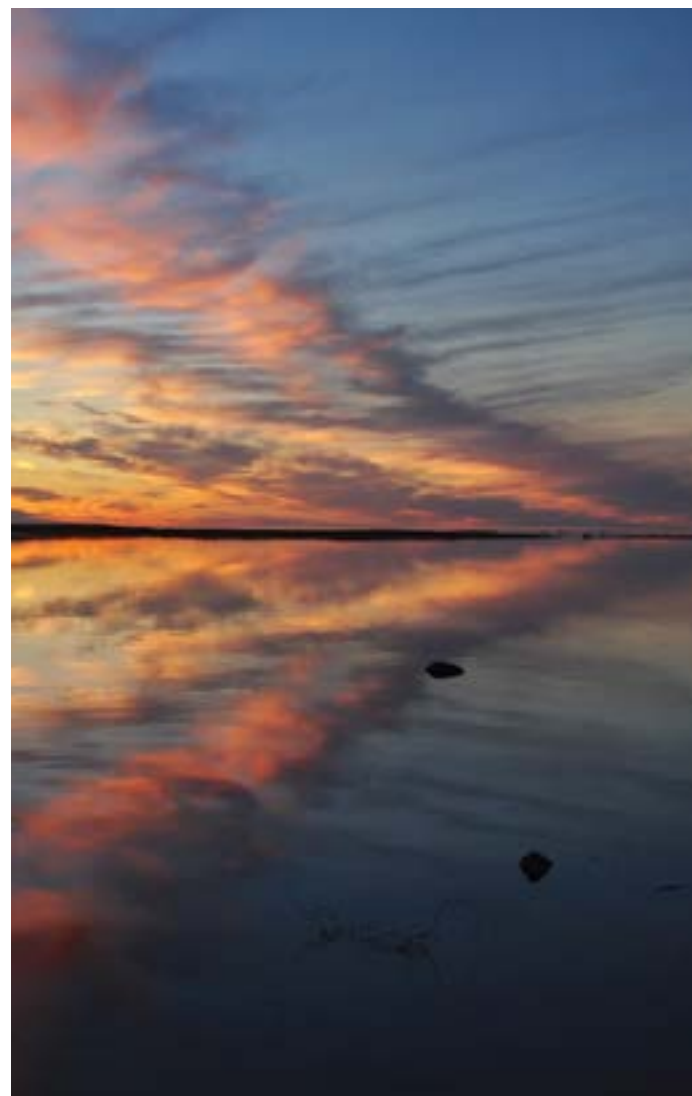
The EMRIRB may also consult with the public and interested Parties to identify Valued Ecosystem Components (VECs) and Valued Socio-Economic Components (VSECs) that should be addressed by the Proponent's Draft Environmental Impact Statement (DEIS).

All forms of communication related to project scoping will be posted on the Public Registry. After the Scope of the project proposal is finalized, the EMRIRB will proceed to the next step.

STEP 2

ISSUANCE OF GUIDELINES FOR THE PREPARATION OF A DRAFT OF ENVIRONMENTAL IMPACT STATEMENT (DEIS)

In the development of guidelines, the EMRIRB will draw on information obtained from the scoping stage and circulate draft guidelines to interested Parties, offering an opportunity for comment. The EMRIRB will integrate the recommendations it considers appropriate and will then finalize the guidelines and issue them to the Proponent for the preparation of a Draft Environmental Impact Statement (DEIS).



STEP 3

PREPARATION AND SUBMISSION OF THE DEIS BY THE PROJECT PROPONENT

A DEIS is a detailed document prepared by the Proponent that identifies, predicts, evaluates, and communicates information about the ecosystemic and socio-economic impacts of a project proposal. A DEIS includes the identification and development of mitigation measures and measures designed to control, reduce, or eliminate potentially adverse impacts of an activity or project. It is the responsibility of the Proponent to prepare a DEIS in accordance with any guidelines established by the EMRIRB.

In some cases, where the original project proposal submitted by the Proponent for screening contains the information required for a DEIS, the EMRIRB may accept the original project proposal document as a DEIS.

As per section 18.5.2 of the EMRLCA, an Environmental Impact Statement will contain the following:

- a) Project description, including the purpose and need for the project;
- b) Anticipated ecosystemic and socio-economic impacts of the project;
- c) Anticipated effects of the project on the environment and vice versa;
- d) Steps which the Proponent proposes to take, including any contingency plans, to avoid and mitigate adverse impacts;
- e) Steps which the Proponent proposes to take to optimize benefits of the project, with specific consideration given to expressed community and regional preferences as to benefits;
- f) Steps which the Proponent proposes to take to compensate interests adversely affected by the project;

g) The monitoring program that the Proponent proposes to establish with respect to ecosystemic and socio-economic impacts;

h) The interests in lands, water, or seawater which the Proponent has secured, or seeks to secure;

i) Options for implementing the project proposal;

j) Anticipated effects of the project on Wildlife and the use of Wildlife by Crees;

k) Report on discussions carried out and agreements reached with concerned Cree communities;

l) A summary of the provisions and the main conclusions of the impact statement;

m) Any other matters that the EMRIRB considers relevant.

Once the EMRIRB receives the DEIS, it will conduct an internal review of the material to determine whether the DEIS addresses the provisions of the guidelines mentioned in Step 2 above. Should any deficiencies be identified, the Proponent is responsible for submitting supplementary information or may be required to revise and resubmit the DEIS.

If the DEIS is deemed by the EMRIRB to be satisfactory, it will be posted on the Public Registry and the Proponent will be instructed to provide copies to interested Parties. Once Parties have received their DEIS copies, the EMRIRB will proceed to the next step in the process.

STEP 4

TECHNICAL REVIEW OF THE DEIS

A technical review is intended to analyze the quality of the information presented by the Proponent. All interested Parties are encouraged to submit comments on the quality and completeness of the information provided by the Proponent in the DEIS. The EMRIRB also invites Parties to submit Information Requests (IRs) to the Proponent and/or other Parties in order to identify gaps or clarify items in the Draft DEIS the Proponent needs to address.

All interested Parties are asked to take part in the technical review of a DEIS by submitting:

- Determination of whether Parties agree or disagree with the conclusions in the DEIS regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures, as well as reasons to support the determination;
- Determination of whether conclusions in the DEIS are supported by the analysis, and reasons to support such a determination;
- Determination of whether appropriate methodology was utilised in the DEIS to develop conclusions, reasons to support the determination, and any proposed alternative methodologies which may be more appropriate (if applicable);
- Assessment of the quality and presentation of the information in the DEIS;
- Any comments regarding additional information which would be useful in assessing impacts, and reasons to support any comments made.

The EMRIRB may also advise interested Parties of additional requirements to be included in the technical review phase of the DEIS. All comments received during the technical review of the DEIS will be posted on the Public Registry.

STEP 5

TECHNICAL MEETINGS

The EMRIRB may decide to hold a technical meeting involving discussions on technical matters related to the DEIS, if deemed it necessary. The technical meeting is kept as informal as possible. As such, the Board in its formal capacity is not present, although interested Board members may attend. The meeting is facilitated by the EMRIRB staff. The Proponent and interested Parties are invited to attend the technical meeting, which usually takes place over the course of a few days, depending on the scope of the project and concerns submitted by Parties.

The purpose of the technical meeting is to resolve any technical issues and to identify any outstanding issues that the Final EIS should address. During the technical meeting, the EMRIRB staff will compile a list of commitments made by the Proponent regarding items that they will update or address further in the Final EIS.

Following the technical meeting, the Board will issue guidelines to the Proponent regarding what is required in the Final Environmental Impact Statement (FEIS). In some instances, if the DEIS is determined to contain quality information and analyses and requires only minor additions and modifications, the Board may elect to accept the DEIS as the FEIS.



STEP 6

PREPARATION AND SUBMISSION OF THE FEIS BY THE PROJECT PROPONENT

It is the responsibility of the Proponent to prepare the FEIS in accordance with the directions of the Board and the list of commitments formulated at the technical meeting and approved by the Board. Once complete, the Proponent is responsible for circulating copies of the FEIS to all Parties involved in the review and the EMRIRB will post the FEIS on the Public Registry.

Following receipt of a FEIS submission, the EMRIRB may point out significant deficiencies encountered. Should any omissions be identified, the Proponent is responsible for submitting supplementary information and if the FEIS is found to be significantly noncompliant with the directions of the Board, the FEIS may be returned to the Proponent.

STEP 7

TECHNICAL REVIEW OF THE FEIS

Like the DEIS technical review, the FEIS technical review is a detailed analysis of the FEIS. Its purpose is to review the quality of the new and/or revised information presented by the Proponent and to reconsider the pre-existing information and the overall project in light of the information contained in the FEIS. A technical review of a FEIS by interested Parties comprises the following:

- Determination of whether Parties agree or disagree with the conclusions regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures, and all evidence supporting the Parties' position
- Determination of whether conclusions are supported by the analysis, and all evidence supporting the Parties' position
- Determination of whether appropriate methodology was utilised to develop conclusions, and all evidence supporting the Parties' position
- An assessment of the quality of the information presented
- Determination regarding the appropriateness of proposed monitoring measures, and evidence to support the determination, along with any proposed alternative monitoring measures which may be more appropriate (if applicable)

Interested Parties are to submit their comments in advance of the Final Hearing in which the above issues are addressed. All technical reviews are project-specific, and the EMRIRB may advise interested Parties of additional requirements to be included in the technical review phase of the FEIS.



STEP 8

PUBLIC HEARING

The EMRIRB Final Hearing provides a public forum for the discussion of the proposed project. Interested Parties, including members of the public affected by the project proposal, are given the chance to voice their comments and present information to the Board. The venue(s) for the Final Hearing are decided upon by the Board.

Significantly, the Final Hearing gives due regard and weight to the opinions of Elders and community members, and to the tradition of Cree oral communication and decision-making. With respect to Parties, Grand Council of the Crees (Eeyou Istchee) Designated Organization (GDO) are allowed full standing, which means they have the right to participate as a party in any proceedings before the EMRIRB.

Note: The EMRIRB may conduct its review by means of correspondence, public hearings, or such other procedures as it deems appropriate to the nature of the project and range of impacts, as outlined in Section 18.5.3 of the EMRLCA.

STEP 9

PUBLIC HEARING REPORT

Following the Final Hearing, the EMRIRB will issue a report on the project proposal to the Minister of Indigenous and Northern Affairs Canada (INAC), or its successor. The report contains the Board's assessment of the project and its impacts, and based on this assessment, a determination of whether or not the project should proceed.

Where the EMRIRB concludes that the project should proceed, terms and conditions will be included to ensure the integrity of the development process. Any terms and conditions added by the EMRIRB will reflect the Board's primary objectives: to protect and promote the existing and future well-being of the persons and communities resident in or using the EMR, and to protect the ecosystemic integrity of the EMR, while also taking into account the well-being of residents of Canada outside the EMR.

All government departments and agencies in accordance with their authorities and jurisdictional responsibilities are required to implement the terms and conditions of EMRIRB project certificates. This general requirement is subject to EMRLCA Section 18.9.3, which deals with situations where an independent decision of a regulatory board contains terms and conditions at variance with the terms and conditions of an EMRIRB project certificate. EMRIRB terms and conditions are to be incorporated in relevant permits, certificates, licenses, or other government approvals that the Proponent may require. This, however, does not preclude any regulatory or government agency from reviewing a project and imposing additional or more stringent terms and conditions, or from refusing to issue a license or approval that would be required in order to allow a proposed project to proceed.

The Board's determination will be forwarded to the Minister, the Proponent, and all interested Parties and is usually issued within 45 days following the closing of the Final Hearing record.

Although the EMRIRB makes a determination on projects under review, it is the Minister who makes the final decision. Upon receipt of the EMRIRB's report, the Minister takes one of the five following courses of action:

OPTION 1

Accepts the report of the EMRIRB as to whether or not the project should proceed, including any attached terms and conditions.

OPTION 2

Rejects the determination of the EMRIRB that a project should proceed on the basis that the proposal is not in the national or regional interest.

OPTION 3

Rejects the determination of the EMRIRB that a project should proceed on the grounds that:

- Any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level the ecosystemic and socio-economic impacts; or
- The terms and conditions are so onerous that they would undermine the viability of a project that is in the national or regional interest.

In this situation, the EMRIRB must reconsider the terms and conditions in light of the reasons put forth by the Minister.

OPTION 4

Rejects the determination of the EMRIRB that a project should not proceed on the grounds that the project should have been approved because of its importance to the national or regional interest. In this situation, the Minister will refer the report back to the EMRIRB to determine terms and conditions which should be attached to any project approval.

OPTION 5

Refers the report back to the EMRIRB for further review or public hearings where the Minister determines that the report is deficient with respect to ecosystemic and socio-economic issues. After additional review or hearings, the EMRIRB will submit another report to the Minister, which shall be accepted or rejected in accordance with the above reasons.

STEP 10

PROJECT CERTIFICATE

Upon completion of this process, where it has been determined a Project should proceed, the EMRIRB issues a Project Certificate, including any terms and conditions accepted or varied by the Minister.

5. WHAT TO EXPECT AFTER THE REVIEW

I. ISSUANCE OF THE PROJECT CERTIFICATE

In situations where it has been determined that a project should proceed, the EMRIRB will issue a project certificate to the Proponent, including any terms and conditions which have been accepted or varied by the Minister.



At any time after the issuance of a project certificate, the EMRIRB may, on its own account or upon application by a Government Designated Organization (GDO), the Proponent, or other interests, reconsider the terms and conditions contained in the EMRIRB project certificate if it is established that:

1. The terms and conditions are not achieving their purpose;
2. The circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the project certificate was issued; or
3. There are technological developments or new information which provide a more efficient method of accomplishing the purpose of the terms and conditions.

II. MONITORING AND ENFORCEMENT

Terms and conditions contained in an EMRIRB project certificate may require the establishment of a monitoring program for a project which may specify responsibilities for the Proponent, the EMRIRB, or government agencies. Permits, certificates, licenses, or other government approvals which implement or incorporate the terms and conditions of an EMRIRB project certificate should be enforced by the responsible government department or agency.

PLEASE SEE GUIDE 4: PROJECT MONITORING FOR MORE INFORMATION REGARDING PROJECT-SPECIFIC MONITORING.



6. ADDITIONAL EMRIRB INFORMATION

Several guides have been produced to provide information about the EMRIRB and the EMRIRB processes.

- Guide 1– INTRODUCTION TO THE IMPACT REVIEW BOARD
- Guide 2– PROJECT PROPOSAL SUBMISSION AND SCREENING PROCESS
- Guide 3– REVIEW PROCESS
- Guide 4– PROJECT MONITORING
- Guide 5– TERMINOLOGY AND DEFINITIONS GLOSSARY
- Guide 6– PARTICIPATING IN EMRIRB SCREENINGS (available in English and Cree)
- Guide 7– GUIDE FOR GOVERNMENT AGENCIES

Guides are all available at:
www.emrirb.ca/resources/

Proponents should also review the Eeyou Marine Region Land Claims Agreement, especially Chapter 18, found on the EMR website.



7. CONTACT THE EMRIRB

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NOTES

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EYYOU MARINE REGION IMPACT REVIEW BOARD

COMMISSION DE LA RÉGION MARINE D'EYYOU
CHARGÉE DE L'EXAMEN DES RÉPERCUSSIONS

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