

REGDOC-3.2.2, *Aboriginal Engagement / Mobilisation des Autochtones*

Comments received from public consultation / Commentaires reçus dans le cadre du processus de consultation

Comments received:

- during first round (Oct. 15, 2014 to Feb. 16, 2015): 162 comments from thirteen (13) reviewers
- during feedback period (Mar. 2 to 23, 2015): 6 comments from three (3) reviewers

Commentaires reçus :

- lors de la première période (du 15 octobre, 2014 au 16 février 2015) : 162 commentaires reçus de treize (13) examinateurs
- lors de la période des observations (du 2 au 23 mars 2015) : 6 commentaires reçus de trois (3) examinateurs

Comments received during first round / Commentaires reçus lors de la première période:

	Section	Organization	Comment	CNSC Response
1.	General	Cameco	In light of this background and experience in this area, Cameco has significant concerns with both the purpose and scope of REGDOC-3.2.2 Public and Aboriginal Engagement: Aboriginal Engagement (the REGDOC). Fundamentally, Cameco's concern stems from the view that it is unnecessary while adding uncertainty and regulatory burden.	<p>The objective of REGDOC-3.2.2 is to ensure that licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage, as appropriate.</p> <p>Many CNSC licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the required information exists. The REGDOC also provides flexibility with the timing of submitting the reports and the format. If much of the information required by REGDOC 3.2.2 exists in an existing report, the licensee can direct staff to the report – such as information provided within the Public Information and Disclosure Program report or if included in a chapter within an Environmental Assessment report.</p> <p>REGDOC-3.2.2 ensures consistency in the information provided to the CNSC by applicants and promotes greater coordination of licensee and CNSC Aboriginal engagement activities. It also supports the broader approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies.</p>

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2.	General	NB Power	<p>Stakeholder outreach is an important part of NB Power's overall presence in the communities where we operate and greatly serves in achieving our mission to proudly serve our customers. As such, NB Power has concerns with draft REGDOC 3.2.2 as currently written as it duplicates existing functions of our ongoing business activities and introduces confusion regarding duty to consult triggered by potential adverse impacts on aboriginal and treaty rights versus engagement activities as part of good business and community relations.</p> <p>It is the view of NB Power that activities associated with licensing fall into the engagement realm provided there are no new impacts and as such, there is no Duty triggered.</p>	<p>REGDOC-3.2.2 provides additional requirements to those set out in PIDP, requirements that apply when a proposed regulatory activity will likely trigger the duty to consult. The factors that will raise the duty to consult and additional guidance have been added to s.2 of the document for greater clarity. The document also includes examples of activities that do not raise the duty to consult.</p> <p>Should licensees be uncertain about whether their proposed activity will likely trigger the duty to consult, they should contact CNSC staff to discuss the matter. If it is agreed that the proposal does not raise the duty to consult, the licensee will not be required to complete the activities required in REGDOC 3.2.2 but will need to continue meeting the requirements of the RD 99.3 Public Information and Disclosure Program.</p>
3.	General	NB Power	<p>NB Power recognizes that aboriginal groups hold unique constitutional rights and NB Power makes every effort to keep them informed and appropriately engaged (i.e. licensing, operations, maintenance). NB Power strives to establish and maintain positive and productive relationships.</p> <p>NB Power does believe that the document needs to contain guidance for Aboriginal groups on how they can participate in the CNSC regulatory process. Currently the document provides no guidance for Aboriginal groups to help them in their engagement with the CNSC and licensees.</p>	<p>REGDOC 3.2.2 is focused on the requirements and expectations of licensees in assisting the CNSC meet its duty to consult obligations when raised by a licensee's proposed activity.</p> <p>Section 3.2.2 describes at a high level how CNSC will consult with Aboriginal groups and will identify the opportunities to participate in regulatory review process.</p> <p>Guidance for Aboriginal groups is also provided in the CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation and Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> which are both referenced within the REGDOC.</p>
4.	General	NB Power	<p>On the subject of CNSC and Licensee roles, the draft REGDOC 3.2.2 needs to clarify expectations placed on the Licensee, specifically in the sharing engagement activities and dialogue. Aboriginals are important group and the CNSC and Licensees must ensure that next steps in this initiative truly enhance, and improve ongoing Aboriginal engagements and meet the needs of Aboriginal groups involved. As such, we further submit, that only relevant required documentation supporting communication and engagement be submitted as some dialogue may be sensitive.</p>	<p>Agreed. As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled while respecting sensitive information.</p> <p>Section 3.2.2 of the document has been revised as follows: “Licensees are encouraged to provide relevant and necessary information on Aboriginal engagement activities to the CNSC, including elements of agreements with Aboriginal groups, as they relate to mitigation measures and other forms of accommodation to</p>

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				address adverse impacts to potential or established Aboriginal or treaty rights.”(
5.	General	Cameco	<p>To begin with, in <i>the Athabasca Regional Government v Canada</i> (Attorney General), 2010 FC 948, aff d 2012 FCA 73 (ARG) decision, the Court held that the process that had been followed by the CNSC and the licensee had been sufficient to meet any duty to consult that had been triggered. The Court stated at para. 229 as follows:</p> <p>[If a duty to consult did arise, the Crown's duty to consult was fulfilled by the public information and consultation activities carried out by AREVA in respect of the licensing application, by the regulatory process, and by the full participation of the Applicants in that process.</p> <p>ARG is thus an affirmation that the CNSC's current processes, in combination with licensees' engagement activities, are sufficient to meet the duty to consult.</p> <p>What is therefore needed (if anything), is further delineation of how the CNSC fulfills the Crown's duty to consult, and how certain specific aspects of this process are delegated to industry. This guidance should reflect the CNSC's current practice of consulting licensees while determining which groups to consult and the scope of consultation, as licensees are well placed to provide the CNSC with information relevant to this determination.</p> <p>We believe that this type of information could form the basis of a revision to the <i>Codification of Current Practice: Canadian Nuclear Safety Commission Commitment to Aboriginal Consultation</i> (Codification), under the "Assistance of Licensee to CNSC Aboriginal Consultation Activities" heading, which would eliminate the need for an additional regulatory document.</p> <p>Further, because fulfilling the duty to consult is discharged during the licensing process, a guidance document of this nature should then not form part of the licensing basis for a facility.</p>	<p>CNSC acknowledges that many of its licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the required information exists and engagement activities are practiced. In such situations, licensee's workload to meet the requirements of this REGDOC will be minimal.</p> <p>The objective of REGDOC-3.2.2 is to ensure that all licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage, as appropriate. Where a licensee does not have an existing relationship with Aboriginal groups whose rights may be adversely impacted by a proposed activity, it is important that they start a relationship as early as possible. Such practices can help build trust and respect by involving Aboriginal communities early and can reduce the risk of delays later in the review process.</p> <p>The REGDOC is intended to provide greater clarity on the CNSC's expectations of licensees as described in the <i>Supplementary Information for Licensees: Aboriginal Consultation</i> and includes new requirements of licensees when the duty to consult may be triggered. Staff will continue to seek approval of this REGDOC by the Commission.</p> <p>Sections 2 and 4 of REGDOC 3.2.2 have been revised to clarify that CNSC staff will concurrently conduct its Aboriginal consultation activities and are available to assist licensees to identify Aboriginal groups whose potential or established Aboriginal and/or treaty rights may be adversely affected by a proposed project.</p> <p>CNSC's approach to Aboriginal consultation is described in CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation which identifies that the CNSC's approach follows Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for</i></p>

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				<i>Federal Officials to Fulfill the Duty to Consult which is referenced in REGDOC 3.2.2.</i>
6.	General	Cameco	<p>1. Significantly, the REGDOC, as currently drafted, also does not incorporate several aspects of the federal government's <i>Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, 2011 (Updated Guidelines)</i>.</p> <p>Importantly, the REGDOC does not reflect the roles and responsibilities identified for federal departments and agencies, Aboriginal groups, and third parties.</p> <p>2. For example, section 3.2.2 of the REG DOC does not provide any timelines for the CNSC's review of a licensee's Aboriginal engagement plan, or for the CNSC's analysis of whether Aboriginal consultation activities are required by the Crown.</p>	<p>1. The REGDOC has been written to provide requirements and guidance for licensees. Guidance for Aboriginal groups and how the CNSC interacts with other government departments/agencies is provided in the CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation and Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult which are both referenced in REGDOC 3.2.2</i> rather than being repeated.</p> <p>2. Review times vary according to the nature of the project and will be determined on a case-by-case basis in consultation with the licensee.</p> <p>Section 4 of the REGDOC states that CNSC staff will conduct its own preliminary analysis to determine if the duty to consult has been raised by a proposed activity and will implement its own consultation activities. The purpose of the REGDOC is to articulate that CNSC can and may use the information provided by the licensee and engagement activities conducted by licensees to assist the CNSC in meeting its consultation obligations.</p>
7.	General	Cameco	<p>Further, as presently drafted, the REGDOC will create additional administrative burden on licensees, with little corresponding benefit. Cameco already informs the CNSC of our ongoing and project specific engagement activities through our annual reports and throughout any environmental assessment or licensing process. In Cameco's view, additional reporting requirements are both redundant and unnecessary.</p>	<p>CNSC acknowledges that many of its licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the required information exists and engagement activities are practiced. In such situations, licensee's workload to meet the requirements of this REGDOC will be minimal.</p> <p>The reporting requirements of the REGDOC are flexible and are not intended to add an additional regulatory or administrative burden to licensees. The requirements set out in REGDOC-3.2.2 may be fulfilled by submitting information via existing reporting mechanisms or reports, such as a project description, licence application, EIS, CMD etc. Sections 1 and 3 of the REGDOC have been updated to include greater clarity on its scope and reporting</p>

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				<p>requirements.</p> <p>Early in the review process, CSNC staff will work with licensees to determine how licensees can fulfill the REGDOC requirements. The REGDOC was revised in order to clarify this.</p>
8.	General	Cameco	<p>In addition, the REGDOC blends three related, but distinct concepts: industry-led and CNSC required public engagement activities (addressed in RD/GD-99.3, Public Information and Disclosure), industry-driven corporate responsibility activities, and the CNSC's constitutional obligation to ensure the Crown's duty to consult Aboriginal peoples is fulfilled when proposed projects may adversely affect Aboriginal and treaty rights. While all three of these types of activities are closely related, they are not all driven by the same considerations, and thus, they should each be treated distinctly. The blending of these three concepts in the REGDOC has resulted in a flawed and confusing document.</p>	<p>REGDOC-3.2.2 provides additional requirements to those set out in the Public Information and Disclosure Program (PIDP), requirements that apply when a proposed regulatory activity will likely trigger the duty to consult.</p> <p>When determining if the duty to consult has been met, all activities conducted will be taken into consideration, be it PIDP, industry-driven corporate responsibility activities and specific measures to mitigate or accommodate an adverse impact to a potential or established Aboriginal right.</p> <p>The intent of the REGDOC is to:</p> <ul style="list-style-type: none"> a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult.
9.	General	Cameco	<p>In summary, the REGDOC is not only unnecessary, confusing and potentially burdensome but also inconsistent with existing federal guidance and the jurisprudence. For these reasons, Cameco suggests that the CNSC withdraw this REGDOC and look to make some minor revisions to the Codification.</p>	<p>Comment noted.</p> <p>The intent of the REGDOC is to:</p> <ul style="list-style-type: none"> a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult. <p>This document will help ensure consistency in the information provided to the CNSC by applicants and will promote greater</p>

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				<p>coordination of licensee and CNSC Aboriginal engagement activities. It also supports the broader approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies.</p> <p>CNSC's approach to Aboriginal consultation is informed by Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> for public consultation. In May 2015, Aboriginal Affairs and Northern Development Canada posted on its website: Consultation and Accommodation Advice for Proponents which is being consulted on and may be included in the next version of the Guidelines.</p>
10.	General	Areva	<p>It is AREVA assertion that the REGDOC as drafted is fundamentally flawed as it creates confusion for the licencees, general public and for the Aboriginal communities by not clearly delineating between the principles of the Crown's duty to consult and general stakeholder engagement.</p> <p>The REGDOC does not adequately distinguish matters on the duty to consult spectrum or provide any guidance in this regard. Rather, as it is written the REGDOC appears to create a hybrid area where there may be Aboriginal groups who do not necessarily have an identified impact by a proposed project are elevated above the requirements to inform the general public. By blending these two concepts the REGDOC introduces uncertainty and additional legal risk.</p> <p>It is a well-established principle in law that the consultation requirement is on a spectrum and determined in the context of each circumstance. In <i>Haida Nation v. British Columbia (Minister of Finance)</i>, 2004 SCC 73, [2004] 3 S.C.R. 511, [2004] S.C.J. No. 70 (Haida), the Supreme Court of Canada states "Where an Aboriginal claim is relatively weak and the potential adverse effects are minor, the Crown's duties may be limited to giving notice, disclosing information and discussing the issues raised in response to the notice".</p> <p>In a court case directly on this point which involved the renewal of</p>	<p>REGDOC-3.2.2, Aboriginal Engagement was developed to identify and clarify CNSC's requirements and expectations of licensees related to Aboriginal engagement, when there is the potential for the duty to consult to be raised, and provide guidance to licensees on conducting Aboriginal engagement activities. The objective of REGDOC-3.2.2 is to ensure that licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage, as appropriate. The intent of REGDOC 3.2.2 is to ensure that the CNSC and licensees are approaching Aboriginal engagement in a coordinated and consistent fashion.</p> <p>REGDOC-3.2.2 provides additional requirements to those set out in the Public Information and Disclosure Program (PIDP), requirements that apply when a proposed regulatory activity will potentially raise the duty to consult, and in other exceptional situations.</p> <p>Sections 1 and 3 of the REGDOC have been updated to include greater clarity on its scope and reporting requirements.</p> <p>Table 1 was updated to include consideration of strength of claim as shown in Figure 3 of Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>.</p> <p>The Preface states:</p>

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			<p>the CNSC McClean Lake operating licence, <i>Athabasca Regional Government v. Canada (AG)</i>, 2010 FC 948, affirmed 2012 FCA 73 (ARG). In ARG, the court recognized that the CNSC licensing action was used as leverage against the federal and provincial governments and stated at paragraph 211 that:</p> <p>"For the duty to consult to arise there must be some evidence presented to establish an adverse impact on Aboriginal rights. Further, evidence to support the finding of an interference with a specific or tangible interest must be linked to the project or decision under consideration and must constitute more than mere submissions or generalities."</p> <p>Furthermore, the court in ARG went on to hold that:</p> <p>"These mining and milling operations have been in existence for over ten years; renewal of an operating licence was being sought; and no evidence was provided that the granting of the licensing application by the Commission would result in a negative impact on specific Aboriginal or Treaty rights of the Applicants. In these circumstances, I think that AREVA is correct to say that the duty to consult was not even triggered. At the very most given the low threshold for triggering the duty to consult, any duty triggered was minimal in scope and at the lower end of the spectrum and it was discharged the process that took place in this instance" (para 218-219)</p> <p>Accordingly, it is AREVA's submission that should the CNSC proceed with the REGDOC it should be revised to clearly identify when the REGDOC is required to be followed (i.e. duty to consult trigger, what information is required by the CNSC from the Aboriginal group and licencees related to impacts; the factors the CNSC Staff and the CNSC Commission will use in making a determination on this issue; the level of engagement that is required commiserate with the potential to impact an Aboriginal right; and clearly identify where there is no trigger that engagement activities should be deferred then to RG/DG 99.3 <i>Public Information and Disclosure</i> (RG/DG 99.3).</p>	<p>The requirements in this document are in addition to those found in RD/GD-99.3, <i>Public Information and Disclosure</i>, and are meant to ensure that potential or established Aboriginal and/or treaty rights are considered, as appropriate.</p> <p>Should a licensee believe that its proposed activity will not cause adverse impacts to any potential or established Aboriginal or treaty rights, they can provide a rationale to CNSC staff and staff will review and make a determination. If staff agrees, the licensee will only need meet the requirements set out in RD/GD-99.3.</p> <p>As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled.</p> <p>Guidance for Aboriginal groups is provided in the CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation and Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult which are both referenced in REGDOC 3.2.2 therefore not repeated.</i></p>

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11.	General	Canadian Nuclear Laboratories	<p>1. The purpose of this letter is to submit CNL's comments in regards to the draft CNSC REG DOC 3.2.2 Aboriginal Engagement.</p> <p>Stakeholder outreach is an important part of CNL's overall presence in the communities where we operate. CNL would like to express our concerns with draft REGDOC 3.2.2 as currently written as it duplicates existing functions of our ongoing business activities and introduces confusion concerning the roles of the CNSC and the licensee with respect to the duty to consult with Aboriginals.</p> <p>Aboriginal groups are a key stakeholder in our public activities and CNL makes every effort to keep them informed and, when necessary, engaged (i.e. licensing, changes to the environment, and adverse impact). This is explicitly outlined in CNL's Public Information Program. CNL believes that relationships with Aboriginals are established and maintained, and that engagements are conducted as required.</p> <p>2. On the subject of CNSC and licensee roles, the draft REGDOC 3.2.2 needs to clarify expectations placed on the licensee, specifically in the area of duty to consult. Note that it is CNL's, and some of its Aboriginal stakeholders' understanding that the CNSC has responsibility for acting on behalf of the Crown which has the duty to consult in matters related to licensing.</p> <p>This requires further interpretation of the Supreme Court of Canada's decision concerning procedural delegation to third parties.</p> <p>This is an important stakeholder group and the CNSC and licensees must ensure that next steps in this initiative truly enhance and improve ongoing Aboriginal engagements and meet the needs of Aboriginal groups involved.</p> <p>3. As an important next step in the consideration of this REG DOC the CNSC must consider intersections of this initiative with existing programs, such as CNL's Public Information Program; and the</p>	<p>1. CNSC acknowledges that many of its licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the required information exists and engagement activities are practiced. In such situations, licensee's workload to meet the requirements of this REGDOC will be minimal.</p> <p>The objective of REGDOC-3.2.2 is to ensure that all licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage, as appropriate. Where a licensee does not have an existing relationship with Aboriginal groups whose rights may be adversely impacted by a proposed activity, it is important that they start a relationship as early as possible. Such practices can help build trust and respect by involving Aboriginal communities early and can reduce the risk of delays later in the review process.</p> <p>REGDOC-3.2.2 provides additional requirements to those set out in the Public Information and Disclosure Program (PIDP), requirements that apply when a proposed regulatory activity will likely trigger the duty to consult, and in other exceptional situations.</p> <p>The reporting requirements of the REGDOC are flexible and are not intended to add an additional regulatory or administrative burden to licensees. The requirements set out in REGDOC-3.2.2 may be fulfilled by submitting information via existing reporting mechanisms or reports, such as a project description, licence application, EIS, CMD etc. Early in the review process, CSNC staff will work with licensees to determine how licensees can fulfill the REGDOC requirements. Section 3 of the REGDOC was revised in order to clarify this.</p> <p>2. Sections 1 and 2 have been changed to clarify that CNSC is ultimately responsible for the duty to consult as an agent of the Crown.</p>

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			<p>appropriate delineation of "duty to consult" responsibilities, and the Aboriginal stakeholders' acceptance of the path forward.</p>	<p>Sections 1 and 3 of the REGDOC have been updated to provide greater clarity on the document's scope and reporting requirements.</p> <p>3. The reporting requirements of the REGDOC are flexible and are not intended to add an additional regulatory or administrative burden to licensees. The requirements set out in REGDOC-3.2.2 may be fulfilled by submitting information via existing reporting mechanisms or reports, such as a project description, licence application, EIS, CMD etc. Early in the review process, CSNC staff will work with licensees to determine how licensees can fulfill the REGDOC requirements. Section 3 of the REGDOC was revised in order to clarify this.</p>
12.	General	OPG	<p>1. There needs to be a clear purpose or statement up front as to what the document is intended to address. It should distinguish between Section 35 Consultation, which is the responsibility of the Crown, the procedural aspects of consultation which have been delegated to the licensee, and how the two activities should work in tandem.</p> <p>2. As a guidance document, it should clearly articulate the roles and responsibilities of each of the parties to the consultation process: the Crown, being responsible for section 35 Consultation, upholding the honour of the Crown and meeting its fiduciary obligations; the licensee, who is required to comply with regulatory requirements and the delegation of procedural aspects as contained in any directions from the CNSC, and finally, the Aboriginal communities, who are expected to participate in the regulatory processes established and provide the licensee or Crown with information with respect to potential impacts associated with the application on their Aboriginal and Treaty Rights.</p>	<p>1. Section 1 has been revised to include the following: "The Crown's unique relationship with Aboriginal peoples gives rise to the duty to consult, and where appropriate, accommodate Aboriginal peoples when the Crown contemplates conduct that might adversely impact potential or established Aboriginal and/or treaty rights.</p> <p>As an agent of the Crown, the CNSC has responsibility for fulfilling its legal duty to consult and, where appropriate accommodate Aboriginal peoples when its decisions may have an adverse impact on potential or established Aboriginal and/or treaty rights. While the CNSC cannot delegate its obligation, the information collected and measures proposed by licensees to avoid, mitigate or offset adverse impacts may be used by the CNSC in meeting its consultation obligations."</p> <p>Sections 1 and 2 have been changed to clarify that CNSC is ultimately responsible for the duty to consult as an agent of the Crown and that CNSC staff will work with licensees.</p> <p>The intent of the REGDOC is to:</p> <p>a) provide guidance to help licensees consider the potential and</p>

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				<p>established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage</p> <p>b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult.</p> <p>Sections 1 and 2 of the REGDOC have been revised to clarify CNSC's responsibilities as an agent of the Crown and provide examples of which situations trigger the duty to consult.</p> <p>2. The CNSC's approach to Aboriginal consultation is clearly defined in CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>.</p> <p>Guidance for Aboriginal groups and the CNSC's role as the Crown in the consultation process is provided in the CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation and Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, therefore has not been repeated</i></p> <p>Sections 1 and 3 of the REGDOC have been updated to provide greater clarity on the document's scope and reporting requirements.</p>
13.	General	OPG	<p>1. Consistent with the Crown's responsibility, the document should confirm which situations trigger the duty to consult, and which projects do not.</p> <p>2. If triggered, it should confirm that the Crown will provide a list of which Aboriginal communities should be consulted, a preliminary assessment of the nature of their Aboriginal And Treaty Rights and its rationale for including those communities and the scope of consultation required.</p>	<p>1. Section 2 provides guidance on the types of licensee activities that may raise the reporting requirements of the REGDOC. The guidance provided will also help licensees determine which types of activities may raise the duty to consult.</p> <p>2. REGDOC-3.2.2 requires the licensee to identify Aboriginal groups whose rights may be potentially affected by the proposed activity. Following review of the list, CNSC staff will provide feedback to the licensee as to whether the list is deemed acceptable or if additional groups should be added. The REGDOC</p>

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			<p>It should also include a process of feedback whereby the Crown can advise the licensee of any new issues which can arise during its consultation process that might assist with the licensee's engagement process, and what is required by the Crown to make a determination as to whether consultation is adequate.</p> <p>3.The timing of the request to submit detailed Aboriginal plans are not always appropriate.</p>	<p>provides guidance and resources to assist licensees in collecting this information and also notes that CNSC staff is available to answer questions.</p> <p>Sections 1 and 3 of the REGDOC have been updated to provide greater clarity on the document's scope and reporting requirements.</p> <p>Additionally, Section 4 states: The CNSC will inform licensees if, during the EA or licensing process, it becomes aware of previously unidentified issues or impacts to potential or established Aboriginal and/or treaty rights and related interests that could also be addressed through licensee Aboriginal engagement activities.</p> <p>3. The REGDOC provides flexibility with the timing of submitting the reports and the format. Licensees can determine when to submit the first 2 reports. Also, if much of the information required by REGDOC 3.2.2 exists in an existing report, the licensee can direct staff to the report – such as information provided within the Public Information and Disclosure Program report or if included in a chapter within an Environmental Assessment report.</p>
14.	General	OPG	<p>Consistent with the licensee's responsibilities, the document should expressly indicate what types of information must be submitted to the Crown to support and inform the Crown's obligation with respect to consultation. The document should recognize and distinguish between the information required to support this objective. In this respect, the current draft is at times inconsistent with the Supreme Court of Canada's principles on consultation.</p>	<p>The guidance part of Section 3.2 of the REGDOC expressly indicates what type of information must be submitted.</p> <p>Furthermore, s 3.2 provides licensees with further guidance and factors to consider with respect to obtaining information that should be included in the Aboriginal engagement plan and report.</p> <p>As stated in section 3 the information required from licensees helps the CNSC to ensure an adequate Aboriginal consultation process is conducted and is consistent with the principles of the Supreme Court of Canada on the duty to consult.</p>
15.	General	OPG	<p>There are some concerns with the current draft over the timing and level of information to be shared with the regulator in the future and the extent to which it may become public given the sensitivity of each unique relationship. The document should reflect when it is appropriate to share information to ensure that there are no unexpected delays with respect to consultation and approvals. Additionally, information exchanged or discussed between the</p>	<p>Section 3.2 of the REGDOC requires that licensees shall submit an Aboriginal engagement report, including a proposed schedule for interim reporting to the CNSC. As such, the licensee will advise the CNSC on the timing of the additional information to be submitted.</p> <p>The reporting requirements of the REGDOC are flexible and are not intended to add an additional regulatory or administrative</p>

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			licensee and the Aboriginal communities may be commercial in nature or otherwise confidential.	<p>burden to licensees. The requirements set out in REGDOC-3.2.2 may be fulfilled by submitting information via existing reporting mechanisms or reports such as a project description, licence application, EIS, CMD etc. Early in the review process, CNSC staff will work with licensees to determine how licensees can fulfill the REGDOC requirements.</p> <p>Sections 1 and 3 of REGDOC have been updated to provide greater clarity on the document's scope and reporting requirements.</p> <p>As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled while respecting sensitive information and project timelines.</p> <p>Section 3.2.2 of the document has been revised as follows: “Licensees are encouraged to provide relevant and necessary information on Aboriginal engagement activities to the CNSC, including elements of agreements with Aboriginal groups, as they relate to mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights.”(</p>
16.	General	OPG	The document should also clearly articulate for the Aboriginal communities that will be consulted, which processes are available for them to participate in, and distinguish between the role of the Crown and the licensee in conducting the consultation and engagement activities during the regulatory process. The communities should be expected to participate and share their concerns with either the licensee or the Crown.	<p>REGDOC 3.2.2 is focussed on requirements and guidance for licensees. Guidance for Aboriginal groups is provided in the <i>CNSC's Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation and Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>, therefore has not been repeated.</p> <p>Section 3.2.2 of the REGDOC identifies CNSC's process in determining the appropriate level and scope of Aboriginal consultation activities and what information is provided to identified groups including information on:</p> <ul style="list-style-type: none"> • the regulated facility or activity • the regulatory review process to be followed • the proposed scope of Aboriginal consultation activities

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				<ul style="list-style-type: none"> CNSC contact information <p>The specific consultation activities to be conducted by the CNSC for each proposed licensee activity will be determined on a case-by-case basis.</p>
17.	General	Bruce Power	<p>1. Supreme Court of Canada decisions have held that it is the duty of the crown to consult. Requiring certain proponents to carry out consultations does not relieve the Crown of its duty to consult with aboriginal peoples of Canada.</p> <p>2. REGDOC 3.2.2 needs to fully recognize the duty of the Crown to consult and clearly describe the process to be implemented by the Crown when carrying out consultation.</p> <p>3. The role of industry needs to be a supporting role with respect to Aboriginal Engagement. Fostering strong, healthy relationships with Aboriginal communities in the area of a proponent's potential operation is good for both the proponent and the aboriginal communities.</p> <p>4. The roles and responsibilities of proponents need to be defined such that the duty of the Crown to consult with aboriginal peoples is carried out.</p>	<p>1. Agreed. This is set out in Section 2 of the REGDOC.</p> <p>2. REGDOC 3.2.2 is focussed on requirements and guidance for licensees. Guidance for Aboriginal groups and the CNSC's role as the Crown in the consultation process is provided in the CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation and Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, therefore has not been repeated.</i></p> <p>Section 4 of the REGDOC identifies CNSC's process in determining the appropriate level and scope of Aboriginal consultation activities and what information is provided to identified groups including information on:</p> <ul style="list-style-type: none"> the regulated facility or activity the regulatory review process to be followed the proposed scope of Aboriginal consultation activities CNSC contact information <p>The specific consultation activities to be conducted by the CNSC for each proposed licensee activity will be determined on a case-by-case basis based on the consultation activity spectrum outlined in Table 1 of the REGDOC.</p> <p>3. Agreed. This is set out in Section 2 of the REGDOC.</p> <p>4. Agreed. This is set out in Section 2 of the REGDOC.</p>
18.	General	Hiawatha First Nation	Is there an avenue that is Aboriginal specific that we can comment on whether we feel meaningful engagement has taken place -often we see reports of engagement listed and it hasn't taken place with us, we don't consider a phone call engagement.	Yes. The CNSC will offer identified Aboriginal groups the opportunity to participate through the review process and if there's a public hearing, this is another opportunity to voice your opinion to the Commission. The CNSC is always available to receive feedback from Aboriginal groups and will consider opportunities to

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				meet when requested, on a case-by-case basis.
19.	General	Hiawatha First Nation	Have First Nation people been a part of this draft and had input?	First Nations input is being sought via the Public Consultation process and will be used in revising REGDOC-3.2.2. Letters were sent to a number of Aboriginal groups informing them of the opportunity to comment on REGDOC 3.2.2 in which the CNSC has an on-going relationship with, including Hiawatha First Nation.
20.	General	Hiawatha First Nation	There should be mention of the proponent covering costs for First Nation to participate.	<p>Comment noted. Proponent covering costs are at the discretion of the proponent. However, consistent with Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>, the provision of capacity will be encouraged as a best practice. CNSC may be able to assist Aboriginal groups' participation through its Participant Funding Program.</p> <p>Capacity is defined as the ability of Aboriginal groups to understand the nature of the activity the Crown or proponent is contemplating and how that activity might adversely impact their potential or established Aboriginal or Treaty rights and can include things such as in-kind assistance, assuming costs for translation, travel, Honoraria etc.</p> <p>Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.</p>
21.	General	Metis Nation of Ontario (MNO)	<p>The MNO is concerned that the outcomes, as a result of the Regulatory Document as currently drafted, will jeopardize CNSC/the Crown's ability to identify when the duty to consult the MNO has been triggered and to perform accurate and correct evaluations of the potential for project impacts on MNO citizens' rights, interests and way of life during its determinations on the adequacy of its duty to consult the MNO for future CNSC authorizations.</p> <p>Ultimately, MNO wishes to work with CNSC to address its concerns in an expeditious and reasonable manner. MNO kindly requests that CNSC provide a response to the concerns, questions and recommendations set out herein.</p>	<p>Comment noted. The CNSC is committed to meeting its duty to consult obligations and continuing its relationship with the MNO.</p> <p>The intent of the REGDOC is to:</p> <p>a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage. Sections 1 and 2 of the REGDOC have been revised to clarify CNSC's responsibilities as an agent of the Crown and provide examples of which situations trigger the duty to consult.</p> <p>b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help</p>

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				<p>the CNSC in fulfilling its duty to consult.</p> <p>Sections 1 and 2 have been revised to indicate that while the CNSC may delegate certain procedural aspects of the consultation process to licensees, as an agent of the Crown, it is ultimately the CNSC's responsibility to ensure the duty to consult is fulfilled.</p> <p>The CNSC is committed to continuing to meet with the MNO to discuss their comments and concerns regarding the REGDOC.</p>
22.	General	Fond Du Lac Denesuline First Nation And Black Lake Denesuline First Nation	<p>1. On October 15, 2015, the CNSC issued a call for public comment on a draft version of <i>Aboriginal Engagement: Regulatory Document REGDOC 3.2.2</i> ("REGDOC 3.2.2"). If referenced in a licence either directly or indirectly (such as through licensee-referenced documents), REGDOC 3.2.2 becomes part of the licensing basis for a regulated facility or activity. It appears that through this mechanism the CNSC seeks to delegate certain procedural aspects of the Crown's duty to consult and accommodate to license applicants or licensees ("Licensees").</p> <p><i>Overview</i></p> <p>2. We note that the stated purpose of REGDOC 3.2.2 is to identify CNSC's "requirements of licensees related to Aboriginal engagement," provide "guidance and information to licensees on conducting Aboriginal engagement activities," and "to help ensure consistency in the information provided to the CNSC by applicants." Further, it is noted that the CSNC does not intend to use REGDOC 3.2.2 to replace Crown consultation efforts with Aboriginal peoples, but rather to support "the broader approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies." As noted previously, REGDOC 3.2.2 appears to have been drafted with the intent purpose of enabling the CNSC to delegate certain procedural aspects of the Crown's legal duty to consult to license applicants or licensees ("Licensees").</p> <p>3. REGDOC 3.2.2 primarily focuses on delegating four aspects of Aboriginal consultation to an industry proponent (company). REGDOC 3.2.2 makes the fulfillment of these aspects of</p>	<p>1. Yes. Sections 1 and 2 of the REGDOC identify that the Crown can take into consideration licensee Aboriginal engagement activities when determining if the Crown's duty to consult has been met.</p> <p>2. Comment noted.</p> <p>Sections 1 and 2 have been revised to indicate that while the CNSC may delegate certain procedural aspects of the consultation process to licensees, as an agent of the Crown, it is ultimately the CNSC's responsibility to ensure the duty to consult is fulfilled.</p> <p>Section 3.2.2 of the REGDOC identifies CNSC's process in determining the appropriate level and scope of Aboriginal consultation activities and what information is provided to identified groups including information on:</p> <ul style="list-style-type: none"> • the regulated facility or activity • the regulatory review process to be followed • the proposed scope of Aboriginal consultation activities • CNSC contact information <p>The specific consultation activities to be conducted by the CNSC for each proposed licensee activity will be determined on a case-by-case basis based on the consultation activity spectrum outlined in Table 1 of the REGDOC.</p> <p>The intent of the REGDOC is to:</p> <p>a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially</p>

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			<p>consultation by the Licensee a legal requirement only if and when it is included in the licencing basis of project, facility or activity authorized by the CNSC. These aspects include the responsibility to:</p> <ul style="list-style-type: none"> • Develop an Aboriginal engagement plan ("Plan") • Develop a proposed schedule for interim reporting on Aboriginal engagement activities to the CNSC • Provide updates to the CNSC on any material changes to the Plan • Include an Aboriginal engagement section with the Licensee's Commission Member Document (CMD) <p>4. Timing of Delegated Consultation Activities</p> <ul style="list-style-type: none"> • The preface to REGDOC 3.2.2 indicates that it is intended to serve as a delegation mechanism for procedural aspects of consultation, i.e., "...REGDOC-3.2.2 provides procedural direction for licensees, in support of the broader approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies...." • In this regard, REGDOC 3.2.2 includes provisions related to the early stages of consultation, such as identifying Aboriginal groups to be consulted and Aboriginal Engagement planning. The inclusion of such provisions indicates the intention to use REGDOC 3.2.2 to delegate to Licensees certain consultation activities during the <i>pre-licencing decision phase</i>. • Further, in REGDOC 3.2.2 it is noted, "The licensing basis sets the boundary conditions for acceptable performance at a regulated facility or activity and establishes the basis for the CNSC's compliance program for that regulated facility or activity." • The preface of REGDOC 3.2.2 clearly states that it would form part of the licensing basis for a facility or activity regulated by the CNSC. It is from being part of the "licensing basis" - which sets the boundary conditions for acceptable performance and the forms the basis of CNSC's compliance program – that it would appear the directive provisions in REGDOC 3.2.2 derive their force and effect. • However, it is apparent that the terms of the licensing basis for a 	<p>affected groups early in the project development stage</p> <p>b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult.</p> <p>3. Comment noted.</p> <p>4. The CNSC's regulatory review process includes reviewing and assessing activities and documentation conducted by the licensee once an application has been received. The CNSC has the ability to require licensees to correct, change or update their activities in preparation for a licence decision by the Commission.</p> <p>CNSC staff ultimately make a recommendation to the Commission whether to grant the licence or not and if CNSC staff are not satisfied with the level of engagement conducted by licensees CNSC staff can make a range of recommendations including for the Commission to not grant a licence. Therefore lack of proper engagement/consultation may delay the regulatory review process.</p> <p>The approach of this REGDOC is to ensure that licensees will commence appropriate Aboriginal engagement activities early-on with Aboriginal groups whose potential or established Aboriginal rights may be adversely impacted by the proposed activity prior to submitting their license application or project description.</p>

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			<p>facility or activity would not come into effect before the licence has been issued.</p> <ul style="list-style-type: none"> • The Supreme Court of Canada (<i>Haida/Taku/Mikisew</i>) has indicated that consultation must occur early in the planning process, long before the Crown makes a decision on a project. Further, the courts have been clear that consultation must occur before the Crown's decision (in this case, the issuance of the Licence) has been made. • Therefore, the timing of when the licence is issued appears to constrain its utility as a delegation instrument. Simply put, all consultation/engagement related to a project or activity should be either completed or well advanced by the time the licensing basis for a facility or activity would come into effect. • Therefore, it is unclear how REGDOC 3.2.2, in its current form, can function beyond simply providing guidance and advice as the licence that it relies upon to compel the Licensee to undertake specific actions does not gain force and effect until after the licensing decision has been. <p><i>Recommendation</i></p> <ul style="list-style-type: none"> • If the CNSC intends to delegate procedural aspects of consultation to third parties, the CNSC needs to develop an additional regulatory mechanism, other than the Licence, one that comes into effect <i>at the beginning</i> of the licencing/EA process. For example, in British Columbia, Section 11 of the BC Environmental Assessment Act that sets out the scope, procedures and methods of an EA, enables the British Columbia Environmental Assessment Office, <i>at the beginning</i> of an Environmental Assessment ("EA"), to set out legally-binding direction to industry proponents to undertake certain delegated aspects of consultation on behalf of the provincial Crown. 	
23.	General	Fond Du Lac Denesuline First Nation And Black Lake	Notwithstanding the above noted question of timing that constrains REGDOC 3.2.2 from functioning as a delegation instrument for the main portion of Crown consultation that is legally required to occur prior to the licence being issued, Black Lake and Fond du Lac have additional comments regarding the intended content of REGDOC	Comment noted. The REGDOC is intended to be a high-level process document, which includes both requirements and guidance for licensees. However, it does include the a list of information that CNSC expects to receive from proponents which includes list of issues raised by Aboriginal groups and for the

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		Denesuline First Nation	<p>3.2.2 as a <i>guidance document</i>.</p> <p>Generally REGDOC 3.2.2 is process focused, without a clear vision of how substantive issues raised will be tracked, how they result in material change to the Plan, how traditional knowledge and land use has emerged and likewise contributed to project changes or required mitigation, and how the CNSC's oversight of the Licensee's activities will occur.</p>	<p>licensee to provide a response on how the concern may be addressed. The CNSC will work with licensees on a case-by-case basis as each project is unique.</p> <p>The specific issues raised in this comment are individually addressed in the responses to the subsequent comments.</p>
24.	General	Fond Du Lac Denesuline First Nation And Black Lake Denesuline First Nation	<p>Exclusion of Consultation Related to Environmental Assessment</p> <ul style="list-style-type: none"> • The purposeful exclusion of any reference to the <i>Canadian Environmental Assessment Act, 2012</i> ("CEAA 2012") and environmental assessment (EA) processes in REGDOC 3.2.2 is a serious weakness. This creates the false impression that Aboriginal consultation and engagement related to an EA might possibly occur in a process that is different and separate from the consultation that occurs during a concurrent licence application. However, in reality, given that many of the CNSC's licensing processes are either integrated into, or run concurrently with, federal environmental assessment processes that are in fact led by the CNSC as the responsible authority, it is clear that consultation processes for the Licence and EA of a project would be largely, if not completely, integrated. • Unless REGDOC 3.2.2 includes reference to environmental assessment processes, it is unclear how the CNSC will direct the Licensee to consider linkages between consultation processes and EA requirements under CEAA 2012 that relate to effects on Aboriginal peoples (e.g., assessment of effects on "socioeconomic and health conditions", "current use of lands and resources for traditional purposes", "cultural heritage" and the incorporation of traditional knowledge into the EA). • Further, without reference to environmental assessment in REGDOC 3.2.2 it is unclear how the CNSC intends to direct a Licensee to consult with Aboriginal groups during the course of an EA. For example, will the CNSC develop a separate form of Aboriginal engagement regulatory guidance for Licensees specific to EAs? It is noted that current CNSC regulatory guidance related to EA is very limited in its reference to Aboriginal Consultation, and 	<p>REGDOC-3.2.2 requires licensees to conduct engagement activities early in the project development stage, as appropriate with Aboriginal groups if the proposed activity is likely to cause an adverse impact to a potential or established Aboriginal or treaty right. CNSC integrates Aboriginal consultation activities into existing review processes such as an environmental assessment review. Once the appropriate regulatory review process is identified by the CNSC, it will be shared with the licensee and the identified Aboriginal groups.</p> <p>For further information on the CNSC's environmental assessment process, please see the CNSC's website.</p> <p>CNSC's approach to Aboriginal consultation, as outlined in CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>, integrates engagement/consultation activities into all regulatory reviews be it an EA and/or licensing. CNSC is a decision-making regulator under CEAA 2012.</p>

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			<p>no CNSC regulatory documents (other than REGDOC 3.2.2) appear to address how procedural aspects of consultation would be delegated to a Licensee during the conduct of an EA.</p> <p><i>Request for Clarification</i></p> <ul style="list-style-type: none"> • We seek clarification on whether the CNSC's intends to develop Aboriginal engagement regulatory guidance for Licensees specific to EAs. <p><i>Recommendation</i></p> <ul style="list-style-type: none"> • If this is not planned, we recommend that the CNSC revise REGDOC 3.2.2 to include an approach to Aboriginal consultation and engagement that integrates the Crown's expectations for both EA and Licencing processes. This will ensure clarity and reduce likelihood of unnecessary confusion and duplication. 	
25.	General	Fond Du Lac Denesuline First Nation And Black Lake Denesuline First Nation	<p><i>Oversight and Verification of Consultation on Substantive Issues</i></p> <p>1. REGDOC 3.2.2 proposes that Licensees should collect information to help the CNSC assess both the "breadth" (e.g., identification of which First Nations to consult) and the "depth" (i.e., the seriousness of impacts on rights, extent of consult activities) of the legal duty to consult. Although REGDOC 3.2.2 indicates that these assessments would be also conducted by the CNSC, this requirement in itself suggests that the CNSC could be potentially be relying upon the Licensee to undertake not only procedural, but substantive decision-making regarding the scope of consultation on behalf of the Crown.</p> <p>Although the courts have indicated that procedural aspects of the Crown's duty to consult can be delegated to third parties, ultimate responsibility for consultation on substantive matters rests with the Crown. Arguably, the determination of the <i>scope of consultation</i> sits outside of the procedural realm and therefore any attempt to delegate this responsibility to a Licensee risks blurring the line between the Crown and third parties in the conduct of substantive aspects of consultation.</p> <p><i>Requests for Clarification</i></p> <p>2. REGDOC 3.2.2 does not clearly define the nature and extent of CNSC's oversight and verification of the Licensee's</p>	<p>1. Section 3.2.2 of the REGDOC outlines the CNSC's generic process upon receipt of a licensee's Aboriginal engagement plan and report. As guided by its approach to Aboriginal consultation as outlined in CNSC's Codification of Current Practice: CNSC Commitment to Aboriginal Consultation, the CNSC establishes project specific consultation processes that are flexible and may be adapted to respond to specific requests from identified Aboriginal groups. Although licensees may conduct certain procedural aspects of the consultation process, CNSC staff will ultimately make a decision of the required scope of Aboriginal consultation activities. Upon receipt of a licensee's proposed engagement plan, CNSC will provide feedback to the licensee on such matters and will also develop its own Aboriginal consultation plans.</p> <p>REGDOC 3.2.2 in no way absolves the CNSC of the ultimate responsibility as an Agent of the Crown to fulfill the legal duty to consult.</p> <p>2. Sections 1 and 2 were updated to clarify that the CNSC as an agent of the Crown has the ultimate responsibility to fulfill the legal duty to consult and that REGDOC 3.2.2 in no way absolves the CNSC of this responsibility.</p> <p>The intent of the REGDOC is to:</p>

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			<p>consultation/engagement activities that would be required and carried out. We request clarification regarding how the CNSC will address this gap.</p> <p>Specifically, we require clarification from the CNSC regarding its role in providing oversight and verification of information provided by the Licensee (related to rights and potential impacts on rights) when making its determination of the <i>scope of consultation</i>.</p> <p>3. In addition, our communities require additional information regarding the CNSC's oversight role in tracking information related to <i>impacts to our treaty rights</i>, in particular those that result in material changes that surface through the Licensee's engagement with our communities during either or both EA and licensing processes.</p>	<p>a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage</p> <p>b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult.</p> <p>3. In regard to adverse impacts on Aboriginal or treaty rights, CNSC staff would conduct its own consultation activities directly with the potentially affected rights holders to discuss the potential adverse impact and the proposed mitigation measures. The CNSC has the authority to impose licence conditions which will be tracked and followed to ensure the licensee meets its obligations during the licensing period.</p>
26.	General	Fond Du Lac Denesuline First Nation And Black Lake Denesuline First Nation	<p><i>Treaty Rights Analysis</i></p> <ul style="list-style-type: none"> Although REGDOC 3.2.2 sets out requirements for the Licensee to identify potentially affected Aboriginal groups, it does not include any requirement for the Licensee to undertake a treaty-rights analysis (or where treaties don't exist, a strength-of-claim analysis). Since REGDOC 3.2.2 has explicitly stated that the CNSC will be relying upon the Licensee's information for "a list of Aboriginal groups identified for engagement, and the methodology and rationale for identification" and "a description of planned future engagement activities" based upon the relative severity of potential impacts, the absence of treaty rights analysis is a serious gap. Identification, avoidance, reduction or accommodation for potential infringements of treaty rights is one of the main drivers of consultation; without more explicit guidance and a requirement for inclusion of treaty rights considerations in the scope of consultation, the delegated consultation may not be considered meaningful. <p><i>Recommendation</i></p> <ul style="list-style-type: none"> For our communities, it is essential that the CNSC and the Licensee being delegated procedural aspects of consultation by the Crown, both fully comprehend the scope of Athabasca communities' treaty rights and how they may be affected by a 	<p>The guidance included in REGDOC 3.2.2 includes lists of factors to consider when identifying Aboriginal groups such as signatories to a treaty and traditional use and to consider the level of adverse impact the proposed activity may have on the environment and any identified Aboriginal or treaty rights. Appendices A and B provide guidance and resources for licensees when conducting their analysis to determine which Aboriginal groups may need to be consulted.</p> <p>The Treaty and Aboriginal rights analysis conducted to help identify potentially affected Aboriginal groups will help inform the CNSC's own analysis. As stated in section 4, the CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).</p> <p>This analysis includes a treaty-rights analysis and a preliminary strength-of-claim.</p>

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			<p>project or activity. If the CNSC plans to rely upon the Licensee to identify impacts to treaty rights, REGDOC 3.2.2 should require a Licensee to undertake a proper treaty-rights impact analysis with any potentially affected Aboriginal group and provide guidance – developed in concert with Aboriginal groups – as to what constitutes an adequate level and scope of effort toward this end.</p>	
27.	General/Preface	Canadian Nuclear Association (CNA)	<p>The Crown's Duty to Consult</p> <p>1. Our members have significant issue with this Regulatory Document as it is currently written. The document makes repeated reference to the CNSC delegating its duty to consult to the licensee. This comment speaks to an underlying assumption within the document and necessitates that the draft Regulatory Document be withdrawn and reworked. The preface to the document states that "REGDOC-3.2.2 is intended to form part of the licensing basis for a regulated facility or activity within the scope of the document." The CNA is unsure how a duty of the Crown can become part of the licensing basis for an individual licensee. The document needs to clearly identify that it is the CNSC, which is acting for the Crown, who has the duty to consult with Aboriginal groups.</p> <p>2. This RegDoc should also provide guidance to Aboriginal groups on how they can participate in CNSC processes. Currently the document provides no guidance to Aboriginal groups to help them in their engagement with either the CNSC or the licensee.</p>	<p>1. Section 1 has been revised to include the following: "The Crown's unique relationship with Aboriginal peoples gives rise to the duty to consult, and where appropriate, accommodate Aboriginal peoples when the Crown contemplates conduct that might adversely impact potential or established Aboriginal and/or treaty rights.</p> <p>As an agent of the Crown, the CNSC has responsibility for fulfilling its legal duty to consult and, where appropriate accommodate Aboriginal peoples when its decisions may have an adverse impact on potential or established Aboriginal and/or treaty rights. While the CNSC cannot delegate its obligation, the information collected and measures proposed by licensees to avoid, mitigate or offset adverse impacts may be used by the CNSC in meeting its consultation obligations."</p> <p>Section 2 of the REGDOC states that the Supreme Court of Canada has determined that the Crown may delegate procedural aspects of the consultation process to third parties, such as licensees. The CNSC may rely on licensees for proposed measures to avoid, mitigate or offset adverse impacts to potential or established Aboriginal and/or treaty rights and related interests, and to accommodate these rights where appropriate.</p> <p>Although licensees may conduct certain procedural aspects of the consultation process, REGDOC 3.2.2 in no way absolves the CNSC of the ultimate responsibility as an agent of the Crown to fulfill the legal duty to consult.</p> <p>Sections 1 and 2 have been updated to clarify that the CNSC, as an agent of the Crown, has the ultimate responsibility to fulfill the legal duty to consult and that REGDOC 3.2.2 in no way absolves</p>

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				<p>the CNSC of this responsibility.</p> <p>This document provides procedural direction for CNSC licensees in support of the broader approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies.</p> <p>Section 1.3 of REGDOC 3.2.2 outlines the relevant legislation and regulations which form the basis of the authority to include licensees' Aboriginal engagement activities and plans as part of the licensing basis. Having licensee Aboriginal engagement activities and plans as part of the licensing basis will ensure the CNSC receives relevant information from licensees in a timely and consistent manner in order to inform the CNSC's consultation activities and help in fulfilling its duty to consult. The statement is standard for all REGDOCS and will not be deleted.</p> <p>2. Information on CNSC's approach to Aboriginal Consultation and guidance for Aboriginal groups is provided in the <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation and Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> which were referenced in REGDOC-3.2.2 and therefore there was no need to repeat it.</p>
28.	General/Preface	Canadian Nuclear Association (CNA)	<p>Regulatory Requirements Versus Guidance</p> <p>1. In the preface, the document states "Licensees are expected to review and consider guidance; should they choose not to follow it, they should explain how their chosen alternate approach meets regulatory requirements." If the guidance is in fact a 'regulatory requirement' such that the licensee needs to explain how it meets the guidance, then it is not guidance at all. This does not align with the explanation contained in the document of 'should'.</p> <p>2. The document requires a clear understanding of the differences between 'engagement' versus 'consultation'. 'Engagement' deals with relationships and is best dealt with through internal company policy and programs. The document needs to provide a clear</p>	<p>1. As stated in the Preface, licensees are not required to follow the guidance provided, however, an explanation for why certain guidance was not followed and why other methodologies were used in place of what is recommended by the CNSC should be explained. This will help the CNSC in understanding the licensees' decision-making process when identifying Aboriginal groups to engage as well as their engagement plan.</p> <p>2. The Preface has been revised to state as follows: "The term "engagement" refers to the licensee's activities with Aboriginal groups and the term "consultation" refers to the activities undertaken by the CNSC to fulfill its duty to consult. "</p>

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			<p>definition of each term and within the context of 'should' versus 'shall'. Failure to clearly delineate the requirements could lead to the expenditure of resources with no benefit; and delay projects through a requirement for consultation for projects that do not require it.</p>	<p>Additionally, <i>Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> provides examples engagement activities such as discussion groups and formal dialogue, sharing knowledge and seeking input on activities. The Crown's duty to consult is raised when it contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights.</p> <p>Section 2 was updated to provide clarity on the duty to consult. When determining if the duty to consult has been met, all activities conducted will be taken into consideration, be it PIDP, industry-driven corporate responsibility activities and specific measures to mitigate or accommodate an adverse impact to a potential or established Aboriginal right.</p> <p>The comment is noted and Sections 1 and 3 of REGDOC were updated to include greater clarity on its scope and reporting requirements.</p>
29.	Cover page/Preface	OPG	<p>1. Use the word and associated definition of "Engagement" versus "consultation". Need to clarify/ provide a definition of both consultation and engagement and in the context of "shall" verses "should".</p> <p>2. Engagement generally deals with relationships, best addressed by licensee through its internal company policy and program for First Nations and Métis. The document may be specific in relation to aspects of consultation that are delegated to the licensee, which may be in addition to the company's engagement policy.</p> <p>Provide explanation in the document to describe and distinguish expectations of "Engagement" verses "Consultation".</p> <p>The Preface should describe what role the CNSC plays in consulting with Aboriginal peoples and what role the licensee is expected to fulfill, i.e., engagement with Aboriginal peoples that will serve to inform the CNSC consultation process as to whether consultation was reasonable and adequate.</p>	<p>1. As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to clarify which activities might constitute engagement as opposed to consultation, in the context of a particular situation.</p> <p>The Preface has been revised to state as follows: "The term "engagement" refers to the licensee's activities with Aboriginal groups and the term "consultation" refers to the activities undertaken by the CNSC to fulfill its duty to consult. "</p> <p>Additionally, <i>Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> provides examples Engagement activities such as discussion groups and formal dialogue, sharing knowledge and seeking input on activities. The Crown's duty to consult is raised when it contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights.</p> <p>2. REGDOC-3.2.2 provides additional requirements to those set out in the Public Information and Disclosure Program (PIDP), requirements that apply when a proposed regulatory activity will</p>

	Section	Organization	Comment	CNSC Response
			<p>Leads to unnecessary expenditure of resources with no benefit and may result in delay to projects. May lead to unnecessary use of consultation for projects which do not require consultation.</p>	<p>likely trigger the duty to consult, and in other exceptional situations.</p> <p>Section 2 was updated to provide clarity on the duty to consult. When determining if the duty to consult has been met, all activities conducted will be taken into consideration, be it PIDP, industry-driven corporate responsibility activities and specific measures to mitigate or accommodate an adverse impact to a potential or established Aboriginal right.</p> <p>Sections 1 and 2 of the REGDOC have been updated to clarify that the CNSC, as an agent of the Crown, has the ultimate responsibility to fulfill the legal duty to consult and that REGDOC 3.2.2 in no way absolves the CNSC of this responsibility.</p> <p>CNSC's approach to Aboriginal consultation is clearly defined in <i>CNSC's Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>. The REGDOC is intended to provide greater clarity on the CNSC's expectations and requirements of licensees when the duty to consult may be raised.</p> <p>Sections 1 and 3 of REGDOC were updated to include greater clarity on its scope and reporting requirements.</p> <p>Many of CNSC licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the information exists and should not require additional resources in order to meet the requirements set out in REGDOC 3.2.2.</p>
30.	Preface	OPG	<p>The Preface states "REGDOC-3.2.2 is intended to form part of the licensing basis for a regulated facility or activity within the scope of the document."</p> <p>Industry questions whether a duty of the Crown can become a part of the licensing basis. The delegation of procedural aspects are best left to the Guidelines and more appropriately, any mitigation of impacts that are identified as part of the environmental assessment process may form part of the licensing conditions.</p>	<p>Section 1.3 of REGDOC 3.2.2 outlines the relevant legislation and regulations which form the basis of the authority to include licensees' Aboriginal engagement activities and plans as part of the licensing basis. Having licensee Aboriginal engagement activities and plans as part of the licensing basis will ensure the CNSC receives relevant information from licensees in a timely and consistent manner in order to inform the CNSC's consultation activities and help in fulfilling its duty to consult. The statement is standard for all REGDOCS and will not be deleted.</p>

	Section	Organization	Comment	CNSC Response
			<p>Delete this statement.</p> <p>This is an example of increased burden on the licensees with no resultant safety benefit. It should be up to the licensee to determine its stakeholder interaction requirements, not have them forced upon them by the regulator.</p>	<p>CNSC staff is of the opinion that REGDOCS are appropriate instruments for the delegation of procedural aspects.</p> <p>Many of CNSC licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the information exists and should not require additional resources in order to meet the requirements set out in REGDOC 3.2.2.</p> <p>The objective of REGDOC-3.2.2 is to ensure that all licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage, as appropriate. This approach can help reduce potential delays in the regulatory review process.</p>
31.	Preface	OPG	<p>The Preface states “Licensees are expected to review and consider guidance; should they choose not to follow it, they should explain how their chosen alternate approach meets regulatory requirements.”</p> <p>If the guidance is a “regulatory requirement” and the licensee needs to explain how it meets the guidance, then it is not guidance at all.</p> <p>Delete this statement.</p> <p>Requiring the licensee to provide an explanation adds unnecessary regulatory burden to the licensee. This does not align with the explanation of “Should” in the document (i.e. “Should” is used to express guidance or that which is advised). By definition, guidance is not a regulatory requirement.</p>	<p>As stated in the Preface, licensees are not required to follow the guidance provided; however, an explanation for why certain guidance was not followed and why other methodologies were used in place of what is recommended by the CNSC should be explained. This will help the CNSC in understanding the licensees’ decision-making process when identifying Aboriginal groups to engage as well as their engagement plan.</p>
32.	Preface Section 2 page 3 Section 3 page 4 Section 3 page 4	OPG	<p>Mitigation is appropriate for impacts for established rights or interests but not for potential future practices or rights. Need to deal with facts only and current determination of any impacts. Unnecessary requirement and unrealistic request made of licensee.</p> <p>“...its potential or established Aboriginal and/or treaty rights and</p>	<p><i>Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> defines Existing Aboriginal and Treaty rights as: “Existing” includes potential or established Aboriginal or Treaty rights.</p> <p>Section 35 of the <i>Constitution Act, 1982</i> provides that:</p> <p>(3) For greater certainty, in subsection (1) “treaty rights” includes</p>

	Section	Organization	Comment	CNSC Response
	<p>"Guidance " Section 3.2.1 "Summary of aboriginal engagement t" Section 3.4 Sect 3.5 (Page 9) Second and third paragraph Section 3.6.1 Appendix B (Second and third bullet) Appendix B Under "Other resources "</p>		<p>related interests, including Aboriginal title..."</p> <p>Unnecessary requirement and unrealistic request made of licensee. For practical application, licensee cannot be required to speculate.</p>	<p>rights that now exist by way of land claims or may be so acquired.</p> <p>Potential or established Aboriginal or Treaty rights and related interests is the standard phrase used throughout Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>.</p>
33.	Preface	AANDC	<p>1. The preface appears to be a bit confusing – not so much the content, but the flow of information. For example, it makes reference to 8 other documents, including acts, regulations, and policies and guidelines, but doesn't necessarily put them into context (for example does the CNSC codification state the agency's commitment, while the document itself provides the "how to"?). It also mentions in at least 3 separate places who the intended audience is (licensees). Overall it seems a bit disjointed and difficult to follow.</p> <p>2. Another minor point: should it refer to licensees and proponents? And should the title of the document be more descriptive, along the line of MPMO's "guide to proponents"?</p>	<p>1. Comment noted. The preface has been simplified. It is not intended to go into specifics and a number of paragraphs in the preface are standard in all REGDOCS and are not specific to Aboriginal Engagement.</p> <p>2. As stated in the Preface, for the purposes of REGDOC 3.2.2., the term "licensees" refers to new licence applicants and existing licensees. This would include project proponents.</p> <p>3. This is standard information included in REGDOCS.</p>

	Section	Organization	Comment	CNSC Response
			3. The second last paragraph seems to say much the same thing as the "Important Note" at the end of the Preface, i.e. this document is "part of the licensing basis for a regulated facility or activity." Also, what is meant by that phrase: does it need more explanation, or will it be clear to licensees?	
34.	Preface	AANDC	Canada's ... Guidelines...: They are Canada's Guidelines and should not be presented as simply AANDC's Guidelines	Agreed. Change made.
35.	1 Introduction	Environment Canada	<p>1. EC recommends that the environmental effects that should be taken into account with respect to aboriginal peoples, as established in subsection 5(1)(c) of CEAA (2012), be included in the introduction to ensure that the environmental effects requiring aboriginal engagement are clear.</p> <p>2. The draft REGDOC states in the preface that REGDOC will not "...replicate information provided in the Canadian Environmental Assessment Act, 2012 (CEAA 2012) or other environmental statutes or guidelines." However, it may be useful to highlight in section 1.3, the environmental effects that are to be taken into account with respect to aboriginal peoples as established in subsection 5(1)(c) of CEAA (2012). Subsection 5(1)(c) states: (c) with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on</p> <ul style="list-style-type: none"> <input type="checkbox"/> (i) health and socio-economic conditions, <input type="checkbox"/> (ii) physical and cultural heritage, <input type="checkbox"/> (iii) the current use of lands and resources for traditional purposes, or <input type="checkbox"/> (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance. 	<p>1. As CNSC is a decision-making regulator under CEAA 2012, it will ensure all requirements under the Act are met prior to making a decision. CNSC's approach to conducting environmental assessment is available on its website.</p> <p>2. This information can be found already on the CNSC's web-site so there is no need to replicate it. Furthermore, the CNSC is in the process of developing a REGDOC regarding environmental assessments that will include further details.</p>
36.	Purpose	AANDC	Is 'engagement' defined as engagement prior to decision-making only or engagement throughout the lifecycle of the licence?	The Preface has been revised to state as follows: "The term "engagement" refers to the licensee's activities with Aboriginal groups and the term "consultation" refers to the activities undertaken by the CNSC to fulfill its duty to consult. "

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37.	1.2	Bruce Power	<p>The statement, “[t]his document applies to regulated facilities and activities described in the Class I Nuclear Facilities Regulations and the Uranium Mines and Mills Regulations” may imply that the only activities requiring consultation are those in the scope of the referenced regulations.</p> <p>It is recommended that the purpose of the document be clarified.</p> <p>If the purpose of the document is to prescribe the support activities to be completed by proponents such that the CNSC can fulfill the duty of the Crown to consult then it is possible that no change is required.</p> <p>If the purpose of the document is different the scope of the REGDOC needs to be expanded accordingly.</p>	Sections 1 and 3 have been updated to include greater clarity on purpose, scope and reporting requirements.
38.	1.3	Bruce Power	<p>This section references subsection 3(1.1) of the General Nuclear Safety and Control Regulations regarding the submission of “any other information that is necessary” for the CNSC to determine that the proponent is qualified. The scope of the REGDOC, however, outlines the process to be used by a proponent for aboriginal consultations.</p> <p>Require proponents to submit a copy of their Aboriginal Consultation program or process for review by the Commission as part of the licensing process.</p> <p>The behaviours and processes of the proponent following issuance of a licence are at least as important as the process used to obtain that licence – possibly more important.</p> <p>Having a strong, effective aboriginal program will assist licensees in developing and maintaining relations with aboriginal communities. This will be a benefit to the proponent in future applications.</p>	<p>Comment noted. The CNSC supports licensees in maintaining an effective Aboriginal engagement program and the REGDOC is intended to clarify CNSC’s expectations of licensees in establishing flexible reporting requirements for their programs.</p> <p>Sections 3.1 and 3.2 outline the reporting requirements for licensees. Licensees are encouraged to include all relevant information regarding their Aboriginal engagement activities (including details of their Aboriginal engagement program) in their submissions to CNSC staff and the Commission (i.e. the licensees CMD).</p>
39.	1.3	Bruce Power	<p>1. This section references section 35 of the Constitution Act. As it is the duty of the Crown to consult, it is not clear how this legislation is relevant given the focus of the REGDOC on the</p>	<p>1. Reference to section 35 does not place a duty to consult on the proponent, but solely on the Crown. As such the reference shall be</p>

	Section	Organization	Comment	CNSC Response
			<p>activities of the proponent.</p> <p>Delete the reference to section 35 of the Constitution Act.</p> <p>Including reference to section 35 of the Constitution Act – either by implication or otherwise – that proponents have a duty to consult with Aboriginal peoples. Proponents are required to “inform persons living in the vicinity of the site” in accordance with the Class I Nuclear Facilities Regulations. Referencing the Constitution Act appears to place a duty on proponents that actually rests with the Crown.</p> <p>2. Additionally, there is no provision in the REGDOC to give proponents the authority to make agreements on behalf of the Crown.</p>	<p>maintained in the REGDOC.</p> <p>However, as set out in section 2 of the REGDOC and Canada’s <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>, the Supreme Court of Canada has also stated that the Crown may delegate procedural aspects of the consultation process to third parties, such as licensees. The CNSC may rely on licensees for proposed measures to avoid, mitigate or offset adverse impacts to potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, and to accommodate these rights where appropriate.</p> <p>Proponents are best placed to identify which Aboriginal groups may be adversely impacted by a proposed activity. The courts have been supportive of this approach and have allowed a consultation process to be carried out by a third party proponent when the Crown is approving the proponent’s project. The proponent knows their project better than anyone and it is not unreasonable for them to take a lead in explaining their project to the Aboriginal group(s) and discuss ways in which any potential adverse impacts may be avoided.</p> <p>2. Comment noted. The purpose of the REGDOC is to establish reporting requirements for licensees regarding their Aboriginal engagement activities and not to provide the authority to licensees to enter in agreements on behalf of the Crown. Private agreements between licensees and Aboriginal groups are encouraged; however the Crown does not have a role to play in their negotiation or implementation. Licensees are encouraged to contact the CNSC should they require further clarification.</p>
40.	2	AANDC	We refer to the duty to consult, and where appropriate, accommodate. To remain consistent with other documentation it’s best that these two concepts are not de-linked.	Noted. Change made throughout the document.
41.	2, Table 1	Cameco	1. While the REGDOC discusses these concepts generally, it also states that the duty to accommodate, “where appropriate”, arises when Crown conduct might adversely impact	1. Potential or established Aboriginal or Treaty rights and related interests is the standard phrase used throughout Canada’s <i>Aboriginal Consultation and Accommodation – Updated Guidelines</i>

	Section	Organization	Comment	CNSC Response
			<p>Aboriginal and/or treaty rights and "related interests". As discussed above, the phrase "related interests" should not be referred to.</p> <p>2. Further, the REGDOC should be revised to reflect the SCC's statements on when a duty to accommodate may arise, which is when the proposed Crown conduct may adversely affect the claimed right in a significant way.</p> <p>3. In addition, Table I: <i>Consultation Activity Spectrum</i>, refers only to the potential for adverse impacts to Aboriginal and/or treaty rights, and does not refer to any preliminary assessment of the strength of the claimed right by the Crown.</p>	<p><i>for Federal Officials to Fulfill the Duty to Consult.</i></p> <p>2. Comment noted. Clarification on when accommodation measures may be appropriate is provided in Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult.</i></p> <p>3. Table 1 was updated to include consideration of strength of claim as shown in Figure 3 of Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult.</i></p>
42.	2	Bruce Power	<p>This section refers to "commitments to uphold the honour of the Crown, through relationship building and information sharing..." The REGDOC contains little or no substantive information regarding how the CNSC will be involved in Aboriginal Consultation. This could actually hinder the stated objective of upholding the honour of the Crown since the proponent is put in a position having all of the responsibility of consultation, but none of the authority to make commitments to accommodate.</p> <p>The CNSC needs to be an active participant in Aboriginal Consultations rather than passing responsibilities on to proponents.</p> <p>Proponents could potentially find that relationships with Aboriginal communities are in decline due to unclear roles and responsibilities in the proposed REGDOC. For some aboriginal people, it will be another example of the Crown's failure to recognize aboriginal and treaty rights by attempting to delegate their responsibility to a third party.</p>	<p>Although licensees may conduct certain procedural aspects of the consultation process, REGDOC 3.2.2 in no way absolves the CNSC of the ultimate responsibility as an agent of the Crown to fulfill the legal duty to consult. Section 1 has been updated to clarify that the CNSC may rely on licensees for proposed measures to avoid, mitigate or offset adverse impacts to potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, and to accommodate these rights where appropriate.</p> <p>Furthermore, Section 3.2.2 states that CNSC will conduct its own Aboriginal consultation processes when a proposed activity is likely to raise the Duty to consult. CNSC staff is available to work with proponents throughout the development of their planning and implementation of their engagement plans.</p> <p>The intent of the REGDOC is to:</p> <p>a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage</p> <p>b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help</p>

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				<p>the CNSC in fulfilling its duty to consult.</p> <p>Section 3.2.2 of the REGDOC describes at a high level how the CNSC will act following receipt of an Aboriginal engagement plan and report.</p>
43.	2	OPG	<p>1. Table 1 does not adequately identify scale. What is missing is the “strength” of the Right and/or the trigger, i.e. Right against potential impact.</p> <p>2. Need to deal with “Assertions” within areas where known Aboriginal /Treaty Rights are known to exist for First Nations. CNSC needs to apply the applicable federal guidelines.</p> <p>An issue exists where there are strong (confirmed) Aboriginal /Treaty Rights and where other groups “Assert” Aboriginal Rights. This grows in complexity where more than one Aboriginal group “Asserts” Aboriginal Rights and Aboriginal Rights exist for another group within the same geographic area. The responsibility to identify impact on existing Rights is not simply a licensee responsibility.</p>	<p>1. Table 1 was updated to include consideration of strength of claim as shown in Figure 3 of Canada’s <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>.</p> <p>2. Agreed. CNSC staff will work with the licensees and appropriate Aboriginal groups when such situations arise.</p>
44.	2	OPG	<p>1. Crown may “procedurally delegate aspects of the consultation process” to third parties.</p> <p>This does not reflect the words of the Supreme Court of Canada (SCC) which states the Crown can delegate procedural aspects of consultation. The duty to consult cannot be delegated nor are licensees conducting consultation.</p> <p>2. This section should reflect what is expected of the licensee with respect to the procedural aspects. Where activities may impact Aboriginal or Treaty Rights, the licensee may be required to mitigate or accommodate these impacts, as identified through the environmental assessment process. Paragraph one should be clear that the CNSC has the duty to consult and where appropriate accommodate Aboriginal and Treaty Rights.</p> <p>Provide clarity for aspects to be delegated.</p>	<p>1. Comment noted. Sections 1 and 2 have been revised to state that the “Crown may delegate procedural aspects...” but that “The duty to consult cannot be delegated to third parties; however, the SCC has also stated that the Crown may delegate procedural aspects of the consultation process to third parties, such as licensees.”</p> <p>The CNSC may rely on licensees for proposed measures to avoid, mitigate or offset, or accommodate where appropriate, adverse impacts to potential or established Aboriginal and/or treaty rights.</p> <p>2. Sections 1-3 have been revised to clarify that although licensees may conduct certain procedural aspects of the consultation process, REGDOC 3.2.2 in no way absolves the CNSC of the ultimate responsibility as an agent of the Crown to fulfill the legal duty to consult). REGDOC identifies that the activities conducted by a licensee will be used to assist the CNSC conducting its</p>

	Section	Organization	Comment	CNSC Response
			The impact of Provinces (i.e. Ontario) and the Federal governments not providing an upfront policy that clearly sets out what exactly what in the process is delegated causes undue project delay and costs.	consultation obligations and also identifies that CNSC will conduct its own consultation activities as appropriate. As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled.
45.	2 3 rd para	OPG	It is not the Aboriginal engagement activities that determine impacts – it is through the CNSC consultation process related to the proposed undertaking. CNSC should provide direction to licensee on roles and responsibilities early on in the planning stage, who are the appropriate parties with which to engage and the kind of information being sought. Clarity on roles and activities of licensee and timing of process to identify Aboriginal interests needed.	The earlier in the project planning process Aboriginal groups are informed about a project, the earlier they can start identifying potential adverse impacts to their potential or established rights. This process can help a licensee include such information in the development of the proposed activity, which may include mitigation measures where appropriate. CNSC is willing to work with licensees prior to submitting an application to address these concerns. As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled.
46.	Section 2, page 2 – 1st paragraph	Environment Canada	EC recommends in 1st paragraph on page 2, the addition of the word “reconciliation” after “relationship building”. The AANDC justifies the Crown’s duty to consult as follows: “The purpose of Section 35 [of the <i>Constitution Act 1982</i>] based Crown consultation is the reconciliation of Aboriginal rights with the exercise of Crown sovereignty. Practically, it is the process of ensuring that Aboriginal peoples’ rights are fairly considered in government conduct that could potentially affect those rights, particularly in the approval of developments involving land and resources.” Source: www.aadnc-aandc.gc.ca/eng/1100100023526/1100100023528	Agreed. The word “reconciliation” was added to S. 2: Background.
47.	Section 2, page 3 – 1st paragraph	Environment Canada	For clarity, EC also recommends the addition of the phrase “aboriginal engagement” for the 1st paragraph on page 3 as follows: “...CSNC may rely on the aboriginal engagement conducted by licensees...”	This sentence was removed from the REGDOC, so the comment no longer applies.
48.	2 2 nd para.	AANDC	Makes it sound like specific criteria for duty to accommodate and that duty to consult is something different. Suggest to rework the two sentences of the paragraph into one that says 'Crown has a duty to consult and, where appropriate, accommodate, when it	Agreed. Change made.

	Section	Organization	Comment	CNSC Response
			contemplates...'	
49.	2 2 nd para.	AANDC	'Related interests', should be discussed further and would suggest that it be kept consistent with what will end up in the revised edition of Canada's Guidelines. Same elsewhere in document.	REGDOC 3.2.2 refers to Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> where 'related interests' are described. The CNSC regularly updates all of its REGDOCs and will make the necessary changes to this REGDOC to ensure consistency with the revised edition of Canada's Guidelines.
50.	2 2 nd para.	AANDC	Would need to discuss what Canada's overall approach should be on a mention such as 'including Aboriginal title'. Technically, it would be covered by 'Aboriginal rights'. By highlighting it, CNSC may prompt groups to ask how the CNSC plans to address Aboriginal title claims in the context of its activities. Should be discussed further. Same elsewhere in document.	The reference to Aboriginal title has been moved to s.2. The CNSC will update the REGDOC as necessary to reflect future revisions to Canada's Federal Guidelines.
51.	2 4 th para.	AANDC	Replace 'procedurally delegate' by 'delegate procedural aspects'. Does not mean the same thing.	Agreed. Change made.
52.	2 4 th para.	AANDC	Makes it sound like 'measures to avoid, mitigate or offset adverse impacts...' and (measures) 'to accommodate' are somewhat different things. Would suggest to rephrase to say something like 'CNSC may rely on licencees to accommodate these rights, where appropriate, with measures to avoid, mitigate or offset...'	The REGDOC was revised and this sentence was removed from section 2. Section 1 now reads "...the information collected and measures proposed by licencees to avoid, mitigate or offset adverse impacts may be used by the CNSC in meeting its consultation obligations".
53.	2 6 th para.	AANDC	Suggest adding 'adversely' impact...	Agreed. Change made.
54.	2	AANDC	The Crown may delegate procedural aspects, not procedurally delegate	Agreed. Change made.
55.	2	AANDC	In the Guideline for Federal Officials it indicates that "...the Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights." The CNSC document goes further and refers to title, i.e.: "...activities that could adversely impact potential or established Aboriginal and/or treaty rights and related interests, including <i>Aboriginal title</i> ." I assume this reflects the decision in the Roger William case. Just wondering if this will be consistent with the revised AANDC guidelines for federal officials as well.	The reference to Aboriginal title has been moved to s.2. The CNSC will update the REGDOC as necessary to reflect future revisions to Canada's Federal Guidelines.

	Section	Organization	Comment	CNSC Response
56.	2 Table 1	AANDC	table 1 – this table makes it appear as though there are only two types of scenarios, more of a spectrum should be evident	Table 1 emphasizes that there is a spectrum (both in the title and by inserting the image of the arrow), and has been adapted from Figure 3 of Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> .
57.	2 Table 1	AANDC	Where is the second part of the analysis, the strength of claim analysis? A 'consultation activity spectrum' has to take into account both aspects, the strength of the claim and the severity of the adverse effect. Figure 3, on page 44 of the Updated Guidelines makes reference to 'Weak' and 'Strong' claim.	Table 1 was updated to include consideration of strength of claim as shown in Figure 3 of Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> .
58.	2 Table 1	AANDC	Same as earlier comment. Canada's Updated Guidelines.	Table 1 was updated to include consideration of strength of claim as shown in Figure 3 of Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> .
59.	Section 2, Table 1 Section 3.2.1, Key Facts to consider	Bruce Power	<p>1. No methodology is presented in the REGDOC as to how the potential for adverse impacts is to be assessed. There is a high likelihood that the potential for adverse impacts from the perspective of aboriginal peoples will be very different than from the perspective of proponents.</p> <p>2. Pre-consultation activities need to include information exchange regarding the values, beliefs, and evaluation of impacts from the perspective of aboriginal peoples in the specific land area where licensed activities are proposed to occur.</p> <p>3. This will require proponents to identify and meet with aboriginal peoples prior to consultations. Adequate time needs to be allotted to effectively complete pre-consultation activities.</p>	<p>1. Comment noted. A number of additional factors to assist licensees in determining the potential for adverse impacts were incorporated into Appendix A of the REGDOC.</p> <p>2. Agreed. Such activities are part of building positive relationships and are encouraged by the CNSC.</p> <p>3. Agreed. This is one reason CNSC encourages licensees to start engagement activities as early as possible in the project development stage.</p> <p>Appendix A and B of REGDOC 3.2.2 provides guidance and resources for licensees when conducting their analysis to determine which Aboriginal groups may need to be consulted, including the consideration of historic and modern treaties.</p>
60.	Section 3, page 3 – Determination of significance	Environment Canada	EC recommends that the REGDOC 3.2.2 include guidance or a reference to guidance on the determination of significance of potential impacts on Aboriginal rights and related interests including Aboriginal title. The draft REGDOC states in section 3 on page 3 that "...they [licensees] shall engage with potentially impacted Aboriginal groups at a level commensurate with the significance of the potential impact on those rights ..." but there is	<p>Agreed. The information on how federal officials may differentiate between high, medium and low impacts, with reference to the Canadian Environmental Assessment Agency's web-site, was added to Appendix B of the REGDOC under "Other resources".</p> <p>Some of the factors listed by Environment Canada were already present in Appendix A of the REGDOC. However, Appendix A has</p>

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			<p>no guidance provided in the REGDOC on how to make a determination of significance. Such guidance would be helpful in assisting licensees (as well as the regulator) in determining the level of engagement appropriate to any potential impacts. When the federal Crown assesses the significance of potential adverse impacts on the exercise of Aboriginal and Treaty rights, the following factors may be considered in the initial assessment:</p> <ul style="list-style-type: none"> a) Certainty of adverse impacts – what is the likelihood that the impact will occur? b) Magnitude of the adverse impacts - what is the nature and degree of the impact? c) Duration and frequency of the adverse impacts – how often will the impact occur? Will these occurrences be short or long term? d) Reversibility – is the adverse impact reversible? e) Spatial extent of the adverse impacts – will these be localized in nature or broader? How does the geographic extent of the adverse impact relate to the geographic extent of the right, as practiced? f) Context – What is the Aboriginal perspective on the importance, uniqueness or value of a particular use, area, activity or species? g) Historical context – have there been impacts to Aboriginal rights in the past? h) Accommodation – are there any accommodation measures proposed that would reduce the seriousness of the impact on the exercise of rights? <p>In addition, federal officials may differentiate between high, medium and low impacts as follows (source: www.ceaa-acee.gc.ca/050/documents/p80054/100180E.pdf):</p> <ul style="list-style-type: none"> a) High impact – ability to exercise that right has been significantly diminished b) Moderate impact – ability to exercise that right has been diminished or disrupted c) Low impact – ability to exercise the right is minimally disrupted 	<p>been updated to incorporate the factors suggested here.</p>
61.	Section 3, page 4 – Guidance	Environment Canada	<p>EC recommends that CNSC consider identifying the benefits to all parties when the licensee supports the Crown's whole of government approach to aboriginal engagement. In addition to the need to determine the appropriate level of Aboriginal engagement for an EA or licensing process under the NSCA, Aboriginal</p>	<p>Whole-of-Government approach now referenced in Preface: REGDOC 3.2.2 also provides procedural direction for licensees in support of the whole-of-government approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies.</p>

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			engagement for other Crown authorizations should be coordinated con-currently or in parallel as part of a "whole of government" approach as directed under the MPMO initiative for natural resource projects. The licensee should be encouraged to engage potentially affected Aboriginal groups on all related Crown authorizations (e.g. MMER Schedule 2 amendments) to ensure that all potential impacts on aboriginal rights and related interests including aboriginal title are appropriately addressed.	The Whole-of-government approach is referred to in the CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>
62.	3	Cameco	<p>Cameco also fundamentally takes issue with the REG DOC' s "encouragement" of licensees to provide to the CNSC with all potentially useful information on Aboriginal engagement, including agreements with Aboriginal groups. Based on the commercial decisions of the parties involved, the terms of these agreements may be confidential, and thus Cameco will not share such agreements. In addition, Cameco's agreements with Aboriginal groups are not relevant to the CNSC's assessment of whether it has met the duty to consult; this is an example of the blending in the REGDOC between a licensee's corporate responsibility activities and the Crown's duty to consult activities. While this statement in the REGDOC is described as a guidance statement, Cameco is concerned that these types of statements have been interpreted as being requirements.</p> <p>This concern is heightened given the statement in the preface to the REGDOC asserting that licensees are expected to review and consider guidance, and if they decide not to follow it, should explain how their chosen alternate approach meets regulatory requirements.</p>	<p>The document has been revised as follows: "Licensees are encouraged to provide relevant and necessary information on Aboriginal engagement activities to the CNSC, including elements of agreements with Aboriginal groups, as they relate to mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights."(S 3.2.2)</p> <p>CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC requirements are fulfilled while respecting sensitive information.</p>
63.	3	OPG	<p>The first sentence does not reflect the language of the SCC. It should refer to activities that could potentially impact Aboriginal or Treaty Rights. It is not "potential rights" (also used in other sections of the document).</p> <p>Again, there is some confusion as to the consultation obligations of the CNSC and the Licensee's responsibilities. The level of consultation is proportionate to the strength of Right and degree of impact. This is based on a preliminary assessment by the Crown.</p>	<p>Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> defines Existing Aboriginal and Treaty rights as: "Existing" includes potential or established Aboriginal or Treaty rights.</p> <p>Section 35 of the <i>Constitution Act, 1982</i> provides that:</p> <p>(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims or may be so acquired.</p>

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			<p>The CNSC should advise the licensee as to what is expected in terms of procedural aspects.</p> <p>The document refers to a draft document. The contents of the draft document are subject to change, this document should not be issued with reference to a draft of another document.</p> <p>Revise language and delete reference to the draft REGDOC.</p>	<p>As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled.</p> <p>Section 4 outlines the CNSC's generic process upon receipt of a licensee's Aboriginal engagement plan and report. As guided by its approach to Aboriginal consultation, outlined in the <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>, the CNSC establishes project specific consultation processes that are flexible and may be adapted to respond to specific requests to identified Aboriginal groups. Although licensees may conduct certain procedural aspects of the consultation process, REGDOC 3.2.2 in no way absolves the CNSC of the ultimate responsibility as an agent of the Crown to fulfill the legal duty to consult.</p> <p>Deleted reference to draft REGDOC for Environmental Assessments.</p>
64.	3	AANDC	- in the first paragraph under the heading Guidance, the acronym EA is used for the first time, but the term Environmental Assessment is not included. It's probably obvious to licensees what EA means, but the full term should probably be included.	Agreed. Change made.
65.	3	AANDC	Where is the reference to the strength of the claim? Would suggest to say '... at a level commensurate with the scope of the consultation, which is proportionate to the strength of the claim and the severity of the adverse effect.'	Agreed. Change made.
66.	3	AANDC	As this document is presented as being about 'Aboriginal engagement' and, one would therefore understand, as not just about consultation with Aboriginal groups for legal duty to consult purposes, what could be 'Aboriginal engagement activities outside of the scope of this document'?	The Preface has been revised to state as follows: "The term "engagement" refers to the licensee's activities with Aboriginal groups and the term "consultation" refers to the activities undertaken by the CNSC to fulfill its duty to consult.
67.	3	Metis Nation of Ontario (MNO)	Concern #1: Inappropriate Preconditions for Aboriginal Consultation, Disregard of the Metis Nation of Ontario's Established Consultation System, and Inaccurate Duty to Consult Trigger for the Metis Nation of Ontario per se	REGDOC-3.2.2 requires licensees to conduct engagement activities early in the project development stage, as appropriate with Aboriginal groups if the proposed activity is likely to cause an adverse impact to a potential or established Aboriginal or treaty

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			<p><u>Inappropriate Preconditions for Aboriginal Consultation</u> The Regulatory Document states that an Aboriginal engagement plan and report (AEPR) are required, "[f]or any regulated facility or activity that could adversely impact potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title" (page 4, Regulatory Document). MNO interprets this to mean that the requirement for a proponent developing an AEPR and consulting the MNO, per se, is conditional upon the potential for adverse impacts from the proponent's project on MNO citizens being identified <i>prior to</i> the proponent in fact consulting the MNO. Therefore, as it currently stands, a proponent who inaccurately, and consequently, incorrectly derives an impact determination that its project could <i>not</i> adversely impact MNO citizens' rights, interests and way of life, will be able to deny the development of an MNO-relevant AEPR and deny consultation that is owed to MNO citizens.</p> <p>With respect to the MNO, the proponent/CNSC have the same consultation obligations that they have to all other Aboriginal peoples - they must take steps to inform the MNO about the proposed project and contemplated Crown action; and, they must inform themselves about MNO in order to understand <i>if and how</i> the project might affect MNO citizens.</p> <p>With respect to the latter obligation, <i>consultation</i> with the MNO is, <i>in itself</i>, the precondition necessary for a proponent to <i>accurately</i> and therefore <i>correctly</i> determine the seriousness of impacts of its project on MNO citizens' rights, interests and way of life. The value of this consultation is inescapable because potential effects to MNO citizens uniquely involve the biological, ecological, economic, social, cultural, spiritual, harvesting, and other traditional knowledge areas of the Metis Nation people.</p> <p>Consequently, MNO-effects identification is a robust and culturally-sensitive process that requires the involvement of Metis in multiple areas of Metis society, and involves the disclosure of traditional knowledge by Metis people. Furthermore, this traditional</p>	<p>right.</p> <p>As outlined in section 3.1, licensees are encouraged to conduct an analysis of potential or established Aboriginal or treaty rights that may be impacted by the proposed activity early on in the project planning process. This will help determine which Aboriginal groups should be engaged. A list of key factors is provided to consider in determining which groups to engage. Additional resources are also provided in Appendix A and B.</p> <p>As stated in section 3, in situations where a licensee is struggling to identify Aboriginal groups that may be impacted by its proposed activity, licensees are encouraged to contact the CNSC for additional information about the licensees' approach towards and scope of Aboriginal engagement activities.</p> <p>Sections 1 and 2 have been revised to indicate that while the CNSC may delegate certain procedural aspects of the consultation process to licensees, as an agent of the Crown, it is ultimately the CNSC's responsibility to ensure the duty to consult is fulfilled.</p> <p>After the CNSC receives the Aboriginal engagement plan, it will provide feedback and may request further information or seek clarification. The CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).</p> <p>Section 3.1 encourages licensees to ask Aboriginal groups how they would like to be engaged and supports the development of an engagement work plan that is reasonable to both parties.</p> <p>Appendix A was updated to include recommendation to seek input from Aboriginal groups early on regarding the potential for the project to impact their rights.</p>

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			knowledge is held in the highest regard by Metis people and, when and where available, is entrusted to MNO officials - officials of the Metis Nation people's elected representative government in Ontario.	
68.	3	Metis Nation of Ontario (MNO)	<p><u>Disregard of the Metis Nation of Ontario's Established Consultation System</u></p> <p>1. MNO has dedicated many resources to developing and establishing its consultation system that provides accurate project- and MNO- relevant information to proponents to aid them in determining if and how MNO citizens may be affected by a proposed project.</p> <p>At the core of this established system are MNO consultation protocols - for each Metis Nation Region in Ontario - that have defined boundaries according to MNO citizens' rights, interests and way of life.</p> <p>If a proponent's project is proposed within these protocol boundaries, or if transboundary effects from a project outside these boundaries are suspected to affect the biophysical or socio-economic environments within these boundaries, then the duty to consult the MNO is <i>triggered</i>. Upon triggering, the proponent must consult the MNO and develop an MNO-relevant AEPR.</p> <p>Recommendation #1: If a regulated facility or activity is proposed within any of the boundaries defined by MNO Regional Consultation Protocols, or if transboundary effects from a project outside these boundaries are suspected to affect the biophysical or socio-economic environment within any of these boundaries, licensees must be required to consult the MNO and develop an MNO-relevant AEPR that must be included within its project description or licence application.</p> <p>2. Recommendation #2: Following from the circumstances under Recommendation #1 being in the affirmative, MNO recommends licensees also consult the MNO early (i.e., prior to project description or application-submission phases) and frequently in order to provide adequate</p>	<p>1. Recommendation #1 is addressed in section 2 which states: The following examples can help determine if the proposed regulated activity may adversely impact a potential or established Aboriginal and/or treaty right or related interests, should they be present in the affected region, and thus raise the duty to consult and, where appropriate, accommodate:</p> <ul style="list-style-type: none"> • the proposal falls outside of the present licensing basis, such as changes to the size of the footprint of a facility • the proposal can result in changes to the environment • the proposal may adversely impact an Aboriginal group's potential or established Aboriginal and/or treaty rights and related interests, such as the ability to hunt, trap, fish, gather or conduct cultural ceremonies <p>Early engagement provides Aboriginal groups with an opportunity to share information on local and Aboriginal traditional knowledge that helps to identify potential impacts from the regulated facility or activity on traditional land use, treaty rights, Aboriginal rights, and culturally important sites, including archeological sites.</p> <p>As stated in section. 3.1, licensees are encouraged to consider the engagement protocols and agreements of potentially affected Aboriginal groups when determining which Aboriginal groups to engage and when developing their engagement work plans. In their Aboriginal engagement plan and report licensees are required to report on Aboriginal engagement activities that may have already taken place as well as a description of planned future activities.</p> <p>2. Section 3.1 encourages licensees to conduct Aboriginal engagement activities with identified groups as early as possible and the development of engagement work plan that is reasonable</p>

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			<p>time for the MNO to consult its citizens in order to collect accurate project and MNO-relevant traditional knowledge and land use information.</p> <p>Following this duty being raised, the proponent and/or Crown are to notify MNO of the proposed project. Upon receiving this notice, MNO's Lands, Resources, and Consultations Branch will work with the appropriate MNO Regional Consultation Committee to determine if there are any concerns regarding the project. In scenario one, where the Consultation Committee has no concerns, the proponent will receive a letter notifying it that the committee does not believe that the project will have a significant effect on MNO citizens' rights, interests and way of life.</p> <p>In the alternative scenario, scenario two, where the Committee has a concern regarding the project, the proponent will receive a letter notifying it that the Committee has decided to partake in consultation with the proponent on its proposed project. The purpose of this consultation will be for the Committee to identify its concerns and establish a process for providing the proponent as much project- and MNO-relevant information as possible in order for the proponent to execute an accurate and correct effects assessment vis-à-vis MNO citizens' rights, interests and way of life. Both these scenarios, whether resulting in affirmative or negative identification of concerns, necessitate consultation and an MNO-relevant AEPR, but each scenario will involve different degrees of consultation - i.e., each scenario will be observably different in the <i>content</i> of the duty to consult the MNO based on the potential seriousness of project impacts to MNO citizens' rights, interests and way of life.</p> <p>3. Recommendation #3: In conjunction with Recommendation #1, an MNO-relevant AEPR must detail the agreed-upon <i>process</i> for determining the <i>content</i> of consultation between the proponent and MNO that is required for, and appropriate to, ascertaining the seriousness of the particular project's potential impacts on MNO citizens' rights, interests and way of life.</p>	<p>to both parties.</p> <p>Section 4 outlines the CNSC's generic process upon receipt of a licensee's Aboriginal engagement plan and report. As guided by its approach to Aboriginal consultation, outlined in the <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>, the CNSC establishes project specific consultation processes that are flexible and may be adapted to respond to specific requests to identified Aboriginal groups. This process includes notifying identified groups and providing project specific information.</p> <p>3. Recommendation #3 is addressed in section 3.1 of the REGDOC which states: Once contact is established with Aboriginal groups, licensees should ask each group how they would like to be engaged, as preferences may vary by community.</p> <p>There may also be a need to address different linguistic, cultural, geographic, capacity or informational needs and to allow for a flexible approach to engagement. The CNSC encourages the development of an engagement plan that is reasonable to both parties.</p>

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69.	3	Areva	<p>Lastly, AREVA takes issue with the reference to the CNSC's REGDOC 2.9.1, Environmental Protection: Environmental Assessments in this REGDOC 3.2.2. The CNSC commits to an inclusive and transparent process for establishing regulation and guidance for its licencees or the public but this is difficult to reconcile with reference to draft documents being included in subsequent new proposed regulatory documents. In light of this, AREVA requests that should the CNSC, as a matter of process, establish a more enhanced and transparent process to allow interested parties, including licencees, on REGDOC 2.9.1 and REGDOC 3.3.2 to provide a more expansive and transparent process to be used to inform the CNSC Commission on the need for this document within the context the CNSC's mandate of protecting national security, the health and safety of persons while balancing the potential utilization of monetary and non-monetary resources of licencees, interested parties and Aboriginal groups.</p>	<p>Agreed. Reference to draft REGDOC-2.9.1 has been removed.</p>
70.	3	Metis Nation of Ontario (MNO)	<p><u>Inaccurate Duty to Consult Trigger for the Metis Nation of Ontario</u></p> <p>1. In light of Recommendation #1 and Recommendation #3, the precondition for an AEPR, as is currently drafted in the Regulatory Document, fails to draw a distinction between what <i>triggers</i> the Crown's duty to consult the MNO and the <i>content</i> of the duty itself vis-a-vis the MNO. As previously noted, knowledge of a project potentially affecting MNO consultation-protocol areas - areas based on MNO citizens' rights, interests and way of life - is sufficient in itself to <i>trigger</i> the duty; the <i>content</i> of this duty will be based on the potential seriousness of project impacts to MNO citizens' rights, interests and way of life. However, Crown/proponent assessment of the seriousness of this impact is determined on a standard of <i>correctness</i>. This therefore begs the following questions:</p> <p>2. Question #1: Without the explicit implementation of Recommendation #1 and Recommendation #3, how can the seriousness of adverse impacts on MNO citizens' rights, interests and way of life in scenarios one and two, described previously, be <i>accurately</i> and <i>correctly</i></p>	<p>1. Section 2 states: The common law duty to consult and, where appropriate, accommodate is raised when the following three factors are present:</p> <ul style="list-style-type: none"> • contemplated Crown conduct • potential adverse impact; and • potential or established Aboriginal or treaty rights. <p>The SCC has emphasized that the duty to consult and, where appropriate accommodate, is raised at a low threshold: knowledge of a credible but unproven claim suffices to raise this duty.</p> <p>2. REGDOC-3.2.2 requires licensees to conduct engagement activities early in the project development stage, as appropriate with Aboriginal groups if the proposed activity is likely to cause an adverse impact to a potential or established Aboriginal or treaty right.</p> <p>Section. 3.1 encourages licensees to ask Aboriginal groups how</p>

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			<p>determined by a proponent/CNSC without the MNO <i>first</i> being consulted on its citizens' rights, interests and way of life?</p> <p>3. Question #2: Following from the previous question and referenced scenarios, how can the MNO be consulted without its inclusion in an AEPR?</p>	<p>they would like to be engaged and encourages the development of an engagement work plan that is reasonable to both parties.</p> <p>Appendix A was updated to include recommendation to seek input from Aboriginal groups early on regarding the potential for the project to impact their rights.</p> <p>3. Both the licensee and CNSC will conduct its own initial analysis to determine if Aboriginal consultation activities are required and the scope of those activities.</p> <p>As guided by its approach to Aboriginal consultation as outlined in CNSC's Codification of Current Practice: CNSC Commitment to Aboriginal Consultation, the CNSC establishes project specific consultation processes that are flexible and may be adapted to respond to specific requests by identified Aboriginal groups. This is done by seeking input from identified Aboriginal groups on their concerns and being responsive to their needs.</p>
71.	3 Guidance 1st paragraph	OPG	<p>Information shared should pertain to those Aboriginal concerns with respect to potential impacts and recommended mitigation measures identified throughout the Licensee's engagement efforts.</p> <p>Information provided to CNSC should be framed around any necessary and relevant information to aid in determination of effectiveness of adherence to guidance and pertaining to licence decisions and fulfilling the procedural aspects, if delegated.</p> <p>Replace "accurate, complete information" with: "all necessary and relevant information gathered pursuant to the engagement plan".</p> <p>Significant level of detail required. The requirement of submitting "all information" is ambiguous, wide-ranging and an unreasonable burden and requirement. "All information" relating to Aboriginal engagement would require submitting information which may be confidential and sensitive and provide an unnecessary level of information pertaining to status and nature of relationship and agreements formed.</p>	Agreed. Change made.

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72.	3.1	OPG	None of the required submissions have suggested timings attached indicated. Are the requirements to submit related to the applications being made?	Each project is unique and the timing for reviews varies. Section 3 identifies that the licensee can determine the timing for submitting the material change updates to the Aboriginal Engagement Report. The summary of Aboriginal engagement activities is to be included in the licensee's Commission Member Document. CNSC staff will work with licensees to develop timelines on a case-by-case basis. The reporting requirements of the REGDOC are flexible and are not intended to add an additional regulatory or administrative burden to licensees. Section 3 of the REGDOC was revised to emphasize this.
73.	3.1, 3.2	Historic Saugeen Metis (HSM)	HSM supports the requirement for an Aboriginal Engagement Plan and report to be provided within a project description or licence application.	Comment noted.
74.	3.2	Canadian Nuclear Association (CSA)	Submission of Aboriginal Engagement Plan and Report 1. The draft RegDoc states that an Aboriginal engagement plan shall be submitted as part of a project description if an Environmental Assessment decision is sought separately from a licensing decision. This requirement should be removed as the submission of an Aboriginal engagement plan, as part of a project description, is premature in the process. Submitting a plan at this stage is too early in the process and it would preclude any meaningful discussion with Aboriginal communities on an agreed upon consultation process. 2. As well, a detailed consultation plan should not be submitted as part of the public record as is the project description. 3. The draft RegDoc states that the Aboriginal engagement plan should include a list of Aboriginal groups identified for engagement. This is not an appropriate condition to place on the licensee and is best undertaken by the Crown. Industry neither affirms nor denies the existence of Aboriginal or Treaty right; this is done by the Minister of Aboriginal Affairs on behalf of Canada.	1. Comment noted. Section 3 has been updated to provide greater clarity on the flexibility of reporting requirements. The submission of the Aboriginal engagement plan prior to or with a project description is necessary as it requires licensees to conduct engagement activities early in the project development stage, as appropriate with Aboriginal groups if the proposed activity is likely to cause an adverse impact to a potential or established Aboriginal or treaty right. This approach is a recognized best practice and can help reduce potential delays in the regulatory review process. 2. Section 3 has been updated to provide greater clarity on the flexibility of reporting requirements. However, all documents submitted to the CNSC are subject to requests under the <i>Access to Information and Privacy Act</i> . Licensees are encouraged to contact CNSC staff for further guidance. 3. Many of CNSC licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the required information exists. Proponents are often best placed to identify which Aboriginal

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				<p>groups may be adversely impacted by a proposed activity.</p> <p>The courts have been supportive of this approach and have allowed a consultation process to be carried out by a third party proponent when the Crown is approving the proponent's project. The proponent knows their project better than anyone and it is not unreasonable for them to take a lead in explaining their project to the Aboriginal group(s) and discuss ways in which any potential adverse impacts may be avoided.</p> <p>In situations where a licensee is struggling to identify Aboriginal groups that may be impacted by its proposed activity, CNSC can offer assistance. Resources for such information have also been included in Appendix B.</p>
75.	3.2	AANDC	Is there some back and forth between the CNSC and the proponent before or after this list is provided to the CNSC by the proponent? As more guidance on whom should be engaged with, etc., is offered later, would suggest to indicate it here 'more guidance provided to licensees later in document' or something similar.	<p>As stated in section 3, licensees are encouraged to contact CNSC staff for guidance. CNSC staff is available to work with proponents throughout the development of their planning and implementation of their engagement plans.</p> <p>Also, after the CNSC receives the Aboriginal engagement plan with a project description and/or licence application, it will provide feedback and may request further information or seek clarification. The CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).</p>
76.	3.2	AANDC	Would suggest to add 'notably related to adverse effects on the established or potential Aboriginal or Treaty rights of the Aboriginal groups'.	This text has been revised and incorporated into section 3.2.2.
77.	3.2	AANDC	'Proposed' by the Aboriginal groups? Mitigation measures discussed between the Aboriginal groups and the licensee? Would be important to know what accommodation measures, if any, have been proposed by the potentially affected Aboriginal groups.	This text has been revised and incorporated into section 3.2.2.
78.	Sect 3.2 and 3.2.1	OPG	<p>List of groups, methodology and rationale for selection of Aboriginal Groups needs to be provided to licensee.</p> <p>The Crown should be responsible for identifying the list of Aboriginal communities that the licensee should engage with, and</p>	<p>Many of CNSC licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the required information exists.</p> <p>Proponents are often best placed to identify which Aboriginal</p>

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			<p>should provide this information as well as the rationale for identification to the licensee.</p> <p>The Crown should be undertaking this activity.</p> <p>This point has been a consistent challenge for industry for a number of reasons. Industry neither affirms nor denies the existence of Aboriginal or Treaty Right – the Minister of Aboriginal Affairs does that on behalf of Canada. There may be an issue of overlapping “claims of Rights” in same geographic location. Challenge on industry is that the incorrect group may or may not be engaged in the federal review process.</p>	<p>groups may be adversely impacted by a proposed activity.</p> <p>The courts have been supportive of this approach and have allowed a consultation process to be carried out by a third party proponent when the Crown is approving the proponent’s project. The proponent knows their project better than anyone and it is not unreasonable for them to take a lead in explaining their project to the Aboriginal group(s) and discuss ways in which any potential adverse impacts may be avoided.</p> <p>In situations where a licensee is struggling to identify Aboriginal groups that may be impacted by its proposed activity, CNSC can offer assistance. Resources for such information have also been included in Appendix B.</p> <p>Section 4 states that after the CNSC receives the Aboriginal engagement plan with a project description and/or licence application, it will provide feedback and may request further information or seek clarification. The CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate). This analysis includes identifying Aboriginal groups that may have interest in the proposed activity. Should the list of Aboriginal groups identified by the licensee and CNSC not match, a discussion will follow.</p> <p><i>As outlined in Canada’s Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, the Crown may delegate to the proponent such aspects of consultation as the gathering of information about the impact of the proposed project on the potential or established Aboriginal or Treaty rights and that the information collected during these processes, for example, can be used by the federal government and its officials in its decision making process.</i></p>
79.	Sect 3.2 and 3.2.2	OPG	<ol style="list-style-type: none"> Submitting an Aboriginal plan as part of a project description is premature in the process and should not be disclosed as a public document as part of the public project description submission. For each of these sections the following word change is 	<ol style="list-style-type: none"> Section 3 has been updated to provide greater clarity on the flexibility of reporting requirements. However, documents submitted to the CNSC are subject to requests under the <i>Access to Information and Privacy Act</i>. Licensees are encouraged to contact

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			<p>required. Remove first bullet – “as part of a project description if an EA decision is sought separately from a licensing decision”.</p> <p>3. The Aboriginal consultation plan should not be combined with the Project Description. Development of consultation plan should follow. Current direction would result in the submission of a plan prior to any meaningful discussion with Aboriginal communities on an agreed upon small “C” consultation process.</p> <p>4. A detailed consultation and engagement activity plan with all details should not be submitted as part of the broader public record or on the registry. Plan should be specific to procedural aspects the crown delegated at a high level. Detailed plans outlining broader engagement activities to be undertaken will be developed as an agreed upon process will be unique and given the sensitivity of each unique relationship should not be provided as a public document and may not be material to assist CNCS in licensing decisions.</p>	<p>CNSC staff for further guidance.</p> <p>2. The text has been revised to add flexibility in timing of submission of reporting requirements. The text now reads: “prior to or/as part of a project description”.</p> <p>3. Section 3.2.3 states “The Aboriginal engagement report should include a high-level outline of proposed Aboriginal engagement activities.”</p> <p>It is important for CNSC to know that the appropriate Aboriginal groups have been identified and how the licensee has engaged and plans to continue engage Aboriginal groups throughout the regulatory review process. By sharing this information with CNSC early in the review process, this can help reduce the risk of future delays.</p> <p>Aboriginal engagement / consultation can evolve during a review and so too can an engagement plan, hence the subsequent report would include more information.</p> <p>4. The reporting requirements of the REGDOC are flexible and are not intended to add an additional regulatory or administrative burden to licensees. As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled while respecting sensitive information.</p> <p>Section 3.2.2 of the document has been revised as follows: “Licensees are encouraged to provide relevant and necessary information on Aboriginal engagement activities to the CNSC, including elements of agreements with Aboriginal groups, as they relate to mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights.”</p>
80.	3.2.1	Bruce Power	<p>Summary of Aboriginal engagement activities to date</p> <ul style="list-style-type: none"> •The proposal may adversely impact an Aboriginal group... <p>How can a proponent identify if, and by how much, a proposal will</p>	<p>As outlined in section 3.1, licensees should conduct an analysis of potential or established Aboriginal or treaty rights that may be impacted by the proposed activity early on in the project planning process. This will help determine which Aboriginal groups should be engaged. A list of key factors is provided to consider in</p>

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			<p>adversely impact an Aboriginal group without carrying out aboriginal consultation?</p> <p>Please clarify.</p>	<p>determining which groups to engage. Additional resources are also provided in Appendix B.</p> <p>As mentioned in s. 3, in situations where a licensee is struggling to identify Aboriginal groups that may be impacted by its proposed activity, licensees are always encouraged to contact the CNSC for additional information about the licensees' approach towards and scope of Aboriginal engagement activities.</p>
81.	3.2.1	OPG	<p>CNSC may request an additional study to be conducted that may fall outside of the initial scope. Guidance should be provided with respect to:</p> <p>(i) studies being requested by multiple Aboriginal groups with overlapping territories, (ii) the scope of reference for study, (iii) responsibility for costs and (iv) usage of the report as part of the regulatory process.</p> <p>This needs to be clear as to when this can be requested during the federal reviews process.</p> <p>Potential requirement for additional studies and work to be identified late in the process. This could result in additional costs and unreasonable delays to the process.</p>	<p>As each project is unique, if such a request is made, the case-specific guidance will be provided at that time.</p>
82.	3.2.1	OPG	<p>1. "Licenses are encouraged to provide..." There is the risk that licensee could be requested to release confidential and proprietary information that should remain protected.</p> <p>Likewise, some aspects of the licensee's engagement plan may include commercial negotiations that the communities may request that be kept confidential.</p> <p>2. The wording of potential useful information on Aboriginal engagement should be reworded to say "provide relevant and necessary information on Aboriginal engagement".</p> <p>3. Delete "including agreements with Aboriginal groups."</p> <p>4. The word "encouraged" should be replaced by "can".</p>	<p>1. As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled while respecting sensitive information.</p> <p>The document has been revised as follows: "Licensees are encouraged to provide relevant and necessary information on Aboriginal engagement activities to the CNSC, including elements of agreements with Aboriginal groups, as they relate to mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights."(S 3.2.2)</p> <p>2. Agreed. Change made.</p> <p>3. Information included in an agreements between a Licensee and an Aboriginal group that would be of interest to the CNSC in its</p>

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			The potential impact of releasing material to other groups could impact relationships with communities. Confidential agreements must be respected. Risk of information of a sensitive, confidential or proprietary or commercial value could be released publicly.	<p>decision-making of a proposed activity would be related to any commitments made to the Aboriginal group such as mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights, as such information, (if not already shared) can help the Crown in meeting its consultation obligations.</p> <p>4. Noted. Although licensees are encouraged to provide information, reporting requirements of the REGDOC are flexible and are not intended to add an additional regulatory or administrative burden to licensees or lead to the release of sensitive information. Licensees are encouraged to contact CNSC staff for guidance. Section 3 has been updated to provide greater clarity on the flexibility of reporting requirements.</p>
83.	3.2.1	OPG	<p>1, CNSC may participate in licensee's Aboriginal ...activities.</p> <p>Crown should undertake its own consultation process to ensure they meet their fiduciary obligation towards Aboriginal peoples and should respect the wishes of the Aboriginal community' with respect to its engagement with the licensee and its consultation with the Crown. The Crown may attend where invited.</p> <p>2. Include statement. "Upon agreement between CNSC, licensee and Aboriginal community, CNSC may participate....."</p> <p>Licensee and Crown must maintain a separate and arms- length relationship in order for each party to maintain confidence in the process and that obligations of all parties are clear. It is important that this tenant be applied to Aboriginal engagement and consultation.</p>	<p>Comment noted. CNSC undertakes its own consultation process as set out in the <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>.</p> <p>CNSC has been previously invited on licensee-led community meetings and will continue to participate in such activities when appropriate and all parties support it.</p> <p>2. Agreed. Change made to section (S 3.2.3).</p>
84.	3.2.1	OPG	<p>Important for licensees to be given direction by CNSC on appropriate Aboriginal groups/communities to consult with early in the planning stage.</p> <p>In the list for identification of Aboriginal groups include the following point:</p> <ul style="list-style-type: none"> • Review list of recommended Aboriginal groups and 	<p>As per section 4 - After the CNSC receives the Aboriginal engagement plan with a project description and/or licence application, it will provide feedback and may request further information or seek clarification. The CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).</p>

	Section	Organization	Comment	CNSC Response
			rationale by the CNSC	In situations where a licensee is struggling to identify Aboriginal groups that may be impacted by its proposed activity, CNSC can offer assistance. Resources available to help identify Aboriginal groups have also been included in Appendix B.
85.	3.2.1	OPG	Involving an Aboriginal group in the development or implementation and review of mitigation measures is NOT a mitigation measure but a strategy. Impacts need to be identified and agreed to first and then followed by mitigation measures that may be developed by the licensee and may or may not include broader discussion or agreement. This requirement is too premature in the engagement process. It is reasonable to discuss a process for identification of possible mitigation but not the resolution of mitigation at this stage. Remove "possible mitigation measures": in second bullet.	Noted. However, as each project is unique, possible mitigation measures may be discovered during early engagement activities.
86.	3.2.1	OPG	CNSC guidance should provide for concurrence on appropriate process and planning of Aboriginal consultation and should not be assessed on projected/desired outcomes re: "responsiveness". Remove the following: ..."and to show ongoing responsiveness". The word: "responsiveness" is subjective, open to interpretation and suggests that CNSC's evaluation of the effectiveness of plan will be based on achieving desired resolution or outcomes. While all possible attempts will be made for resolution of potential or probable impacts, agreement and resolution is not always possible.	Noted. Change made and the phrase "and to show ongoing responsiveness" was removed.
87.	3.2.1	OPG	"all potentially useful information" is outside the scope of Regulatory requirements. Information provided by licensee should be in support of regulatory decisions and consultation.	Change made. Section 3.2.2 of the document has been revised as follows:

	Section	Organization	Comment	CNSC Response
			<p>Remove the wording "all potentially useful information" and replace with "relevant".</p> <p>Sentence should read as: Licensees can provide relevant information on Aboriginal engagement...</p> <p>The ability the Crown to protect certain information. The cost of releasing material to other groups in terms of relationship building etc. Confidentiality of confidential agreements must be respected.</p> <p>Additional work carried out by the licensee (beyond federal decisions processes) is at the discretion of the licensee and as agreed to by the Aboriginal community.</p> <p>Much of this work may also be confidential and proprietary.</p>	<p>"Licensees are encouraged to provide relevant and necessary information on Aboriginal engagement activities to the CNSC, including elements of agreements with Aboriginal groups, as they relate to mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights."</p> <p>As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled while respecting sensitive information.</p>
88.	3.2.1	Cameco	<p>1. First and foremost, the REG DOC does not fully incorporate the legal elements of the duty to consult, as established in several Supreme Court of Canada (SCC) decisions. The SCC has held that the Crown's duty to consult is triggered when the Crown has knowledge of the potential existence of a treaty or Aboriginal right or Aboriginal title and contemplates conduct that might adversely affect it (<i>Haida Nation v British Columbia (Minister of Forests)</i>, 2004 SCC 73, and <i>Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)</i>, 2005 SCC 69).</p> <p>2. Despite this clear direction from the SCC, s. 3.2.1 of the REG DOC states that licensees should conduct Aboriginal engagement activities (and report on such activities in an Aboriginal engagement plan and report) if:</p> <ul style="list-style-type: none"> • The proposal falls outside of the licensing basis, such as changes to the size of the footprint of a facility; • The proposal can result in changes to the environment; or • The proposal may adversely impact an Aboriginal group's ability to practice its potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title. 	<p>1. Section 2 has been revised to provide greater clarity on the three elements that raise the duty to consult as established by the SCC.</p> <p>2. The examples provided in s.2 (previously found in s.3.2.1) and Appendix A are intended to assist licensees in determining if their proposed activity may raise the Crown's duty to consult as set out in the SCC Haida decision.</p> <p><i>As stated in Canada's Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>, the threshold to determine if a duty is raised is low. The objective of the duty is to ascertain if conduct that is being contemplated by the Crown may adversely impact potential or established Aboriginal or treaty rights before any adverse impacts are caused.</p> <p>Determining if the duty to consult may arise is a tiered approach and includes determining if the proposed activity will have an impact on the environment.</p> <p>3. Agreed, it has been removed.</p>

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			<p>Cameco has a number of concerns with this broad list of items. Specifically, the first two items are not reflective of the triggering test established by the SCC in Haida, which limits the duty to consult to Crown conduct that might adversely affect a treaty or Aboriginal right, or Aboriginal title. A similar point can be made in relation to Appendix A, as, the majority of the questions in Appendix A are not tied to any potential impact on the exercise of an Aboriginal or treaty right.</p> <p>3. In addition, the third item, which unnecessarily includes the phrase "related interests," is broader than the triggering test established by the SCC. While it is certainly possible that many new facilities and major expansions of existing facilities, particularly those related to resource development, have the potential to adversely impact an Aboriginal or treaty right and consequently trigger the duty to consult, the broad list ins. 3.2.1 as drafted has the potential to attach engagement obligations to many projects occurring at existing facilities, most of which would be unlikely to have any new impact on the exercise of an Aboriginal or treaty right. Thus, the first two items in section 3.2.1 are an example of the flawed blending in the REG DOC of duty to consult considerations with possible public engagement considerations.</p>	<p>In terms of the use of the "related interests" phrase, the bullet, now found in section 2 was revised and the phrase was removed.</p> <p>Sections 1 and 3 of the REGDOC were also updated to include greater clarity on its scope and reporting requirements.</p>
89.	3.2.1 and 3.6.1	Cameco	<p>Moreover, it is not clear to Cameco how the list of items ins. 3.2.1 that trigger a licensee to carry out Aboriginal engagement activities fits with s. 3.6.1 (non-applicability of Aboriginal engagement planning and reporting requirements), which states that licensees are not required to submit an Aboriginal engagement plan and report if the activity will not have potential adverse impacts on potential or established Aboriginal and/or treaty rights. Perhaps reflecting our earlier concern on confusing these related but distinct concepts, section 3.6.1 (non-applicability of Aboriginal engagement planning and reporting requirements) does not address the first two items listed in s. 3.2.1 (the proposal falls outside of the licensing basis, and the proposal may result in changes to the environment), which are not connected to any potential impact on the exercise of an Aboriginal or treaty right.</p>	<p>Section 2 has been revised to clarify applicability of the requirements of this document. Section 3.6 on non-applicability has been removed.</p> <p>The examples provided in s.2 (previously s.3.2.1) function as a starting point for licensees' analysis to determine if their activity could give rise to the duty to consult (i.e. the presence of the three triggers set out by the SCC).</p> <p>Should the licensee determine that their activity does not cause adverse impacts to any potential or established Aboriginal or treaty rights, they can provide a rationale to CNSC staff and staff will review and make a determination. If staff agrees, the licensee will only need to meet the requirements set out in RD/GD-99.3.</p>

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90.	3.2.1	Metis Nation of Ontario (MNO)	<p>1. Concern #2: Negligence with respect to MNO-capacity requirements per se</p> <p>CNSC outlines factors a proponent should consider when consulting Aboriginal communities: 'When developing an Aboriginal engagement work plan, licensees should consider the following:</p> <ul style="list-style-type: none"> • assignment of a consistent representative; • face-to-face meetings; • incorporation of a variety of engagement forums and techniques (e.g., letters, phone calls, presentations, working groups); • schedules and workloads of the Aboriginal groups involved; • potential engagement protocols; • translation of information into the native languages of the Aboriginal groups engaged, where appropriate; [and,] • communication with identified Aboriginal groups throughout the licensing period of the regulated facility or activity" (page 6, Regulatory Document). <p>However, CNSC fails to note the <i>capacity</i> required by the Aboriginal communities <i>in order to be consulted</i>. The importance of capacity is highlighted in federal guidelines, where capacity with respect to the duty to consult is defined as, " ... the ability of Aboriginal groups to <i>understand</i> the nature of the activity the Crown or proponent is contemplating and how that activity might adversely impact their potential or established Aboriginal or Treaty rights" (emphasis added; page 61, <i>Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011</i>). Capacity, directly related to <i>understanding</i>, is therefore essential for <i>meaningful</i> consultation; the converse of this being, <i>without</i> the MNO, per se, having capacity, Crown or proponent consultation efforts are rendered <i>meaningless</i> as MNO citizens are <i>unable</i> to understand the nature of the activity being contemplated. Ultimately, CNSC providing few mandatory requirements and many optional considerations for proponents throughout the Regulatory Document, all while being absent in addressing critical capacity issues affecting Aboriginal</p>	<p>1. The CNSC has a participant funding program to support Aboriginal consultation in the review of EA and licensing decisions. Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.</p> <p>In some instances, First Nation, Métis or Inuit groups may seek financial assistance to support their participation in the consultation process. Licensees should first determine if there are other means available to support Aboriginal capacity to participate in the consultation process, for example, whether other partners are able to contribute to capacity funding or other forms of assistance to Aboriginal groups.</p> <p>2. Proponent covering costs are at the discretion of the proponent. However, consistent with Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>, the provision of capacity will be encouraged as a best practice. CNSC may be able to assist Aboriginal groups' participation through its Participant Funding Program.</p> <p>Capacity is defined as: the ability of Aboriginal groups to understand the nature of the activity the Crown or proponent is contemplating and how that activity might adversely impact their potential or established Aboriginal or Treaty rights and can include things such as in-kind assistance, assuming costs for translation, travel, Honoraria etc.</p> <p>Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.</p> <p>3. Proponent covering costs are at the discretion of the proponent. However, consistent with Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>, the provision of capacity will be encouraged as a best practice. CNSC may be able to assist Aboriginal groups' participation through its Participant Funding Program.</p>

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			<p>communities, and the MNO per se, renders the Regulatory Document as a token with respect to the duty to consult and, unfortunately, meaningless when it comes to the execution of this Crown duty.</p> <p>2. Question #3: How does CNSC expect meaningful consultation to take place between the MNO per se and proponents/CNSC when CNSC has made no requirements for consultation-capacity delivery in the Regulatory Document?</p> <p>In the Regulatory Document, CNSC goes on further to state the value of traditional knowledge and land use in the context of proponents consulting Aboriginal communities early:</p> <p>"Early engagement provides Aboriginal groups with an opportunity to share information on local and Aboriginal traditional knowledge that helps to identify potential impacts from the regulated facility or activity on traditional land use, treaty rights, Aboriginal rights, and culturally important sites, including archaeological sites" (page 6, Regulatory Document).</p> <p>Again, however, CNSC fails to identify and obligate proponent's to provide the resources required by said Aboriginal communities who provide this critical information through the collection of project-relevant traditional knowledge information. In the case of the MNO, some of the resource-demanding tasks required to be undertaken in the development of a Crown-, project-, and MNO-relevant traditional knowledge and land use study (TKLUS) include the MNO carrying-out the following:</p> <ul style="list-style-type: none"> • Selecting qualified MNO citizen(s) to support and facilitate delivery; • Developing an interview protocol and question guide that is Crown-, project- and MNO-relevant; • Selecting MNO-citizen interviewees; • Scheduling interviews; • Coordinating meetings/interviews; 	<p>Capacity is defined as: the ability of Aboriginal groups to understand the nature of the activity the Crown or proponent is contemplating and how that activity might adversely impact their potential or established Aboriginal or Treaty rights and can include things such as in-kind assistance, assuming costs for translation, travel, Honoraria etc.</p> <p>Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.</p> <p>The intent of the REGDOC is to:</p> <p>a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage</p> <p>b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult.</p> <p>In s. 3.1 licensees are encouraged to ask Aboriginal groups how they would like to be engaged. The CNSC encourages the development of an engagement work plan that is reasonable to both parties.</p>

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			<ul style="list-style-type: none"> • Conducting interviews; • Preparing baseline information in relation to valued ecosystem components for incorporation into the project's effects assessment; • Transcribing interviews; • Actual technical drafting and development of the TKLUS report and summary presentation; • Submitting the report to the proponent, and where required, to appropriate Crown decision-makers; and • Presenting and providing advice on the TKLUS report where requested and required. <p>Fundamentally, proponent and/or Crown consultation, in itself, demands capacity for Aboriginal communities; otherwise, the consultation is rendered meaningless. MNO developing applicable and accurate TKLUS reports for the proponent/Crown is one of several cases in point of consultation activities that underline the extraordinary requirement for capacity. CNSC notes the value and applicability of traditional knowledge and land use in helping a proponent identify the potential impacts of its project on Aboriginal rights, yet CNSC fails to provide <i>necessary</i> conditions for proponents provisioning capacity to support these Aboriginal communities in the development of such valuable consultation information - information that is critical to CNSC's regulatory process and, ultimately, the Crown's duty to consult.</p> <p>3. Recommendation #4:</p> <p>Following from Recommendation #3, CNSC requires proponents to provision capacity in a manner appropriate to the content of consultation required for the proponent/CNSC to assess the potential impacts of the proposed project on, per se, MNO citizens' rights, interests and way of life, so that consultation activities are rendered meaningful as part of the duty to consult.</p> <p>Otherwise, it is MNO's view that CNSC may determine that the duty to consult is inadequate when it is required to evaluate</p>	

	Section	Organization	Comment	CNSC Response
			<p>questions such as:</p> <ul style="list-style-type: none"> • 'Were the affected Aboriginal groups able to participate in the consultation and accommodation process? • How were issues of capacity addressed? Was it through monetary or non monetary means or both? • Were funding authorities in place? Was funding available in the department or agency to support capacity? Is a funding agreement in place? • Were other departments and agencies or governments contributing to support capacity?" (page 58, <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult- March 2011</i>). 	
91.	3.2.1	Metis Nation of Ontario (MNO)	<p>Concern #3: Inappropriateness of Optional Requirement for Consultation Workplans and Memoranda of Understanding</p> <p>Concern #1 separated and distinguished between the <i>trigger for</i> and <i>content of</i> the Crown's duty to consult. It followed therein, by way of Recommendation #1, that proponent/CNSC's knowledge of MNO citizens' rights, interests and way of life, per se, as embodied in the boundaries described in existing MNO Regional Consultation Protocols vis-a-vis a project's footprint or potential transboundary-effects locations, is <i>sufficient</i> to trigger the duty to consult the MNO.</p> <p>Upon this duty being triggered, the Crown, its agent(s) or delegated proponent actors must ascertain the seriousness of potential adverse impacts to MNO citizens. A systematically defensible approach to developing an accurate, and ultimately correct, assessment of this seriousness inescapably relies upon precise and mutually agreed upon instruments that describe and guide the execution of content for the consultation required.</p> <p>Workplans and memoranda of understanding (MOUs) are the industry-standard instruments. These instruments, with respect to the MNO per se:</p> <ul style="list-style-type: none"> • Foster trust between proponents and the MNO; 	<p>Response to Concern #3</p> <p>Section 3.1 encourages licensees to ask Aboriginal groups how they would like to be engaged and supports the development of an engagement work plan that is reasonable to both parties. As each project and each Aboriginal group is unique, engagement work plans with each identified Aboriginal group are to be developed at the discretion of the licensee; therefore this section of the REGDOC will remain guidance and not a requirement.</p> <p>However, as stated in the preface, licensees are expected to review and consider guidance; should they choose not to follow it, they should explain how their chosen alternate approach meets regulatory requirements.</p> <p>CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled. In addition, CNSC staff will review the licensees' activities and plans and will provide feedback and may request further information or seek clarification.</p> <p>Response to Concern #1</p> <p>Section 2 states: The SCC has emphasized that the duty to consult and, where appropriate accommodate, is raised at a low threshold:</p>

	Section	Organization	Comment	CNSC Response
			<ul style="list-style-type: none"> • Establish, in relation to the project, mutually beneficial, cooperative, productive and ongoing working relationships between proponents and the MNO; • Establish clear and distinct processes as they pertain to the content of consultation; • Provide a process for proponent's to consult MNO citizens at the local and regional levels; • Create appropriate expectations for required MNO consultation capacity; • Facilitate the identification of impacts that a project may have on MNO citizens' rights, interests and way of life; • Create an arena for determining appropriate mitigation; and • Enable the MNO to participate in the development of a proponent's environmental studies and regulatory reviews. <p>3. Recommendation #5: CNSC require proponents to develop workplan and MOU instruments with Aboriginal communities, and with the MNO per se when the duty to consult MNO citizens is triggered as detailed in Concern #1, Recommendation #1, and Recommendation #3.</p> <p>4, Recommendation #6: CNSC require the proponent to utilize workplan and MOU instruments to address the issues related to MNO consultation capacity as per Recommendation #4.</p>	<p>knowledge of a credible but unproven claim suffices to raise this duty.</p> <p>As stated in S. 3.1 licensees are encouraged to consider the engagement protocols and agreements of potentially affected Aboriginal groups when determining which Aboriginal groups to engage and when developing their engagement work plans. In their Aboriginal engagement plan and report licensees are required to report on Aboriginal engagement activities that may have already taken place as well as a description of planned future activities.</p> <p>S. 3.1 also encourages licensees to conduct Aboriginal engagement activities with identified groups as early as possible and the development of engagement work plan that is reasonable to both parties.</p> <p>Section 3.1 as well as Appendix A outline a number of considerations and factors for licensees to consider when determining if their proposed activity could have a potential impact on any potential or established Aboriginal or treaty rights, and Appendix B provides a number of resources in which to find information on potential or established rights in the vicinity of their proposed activity. A consideration regarding the spatial extent of the impacts of licensee activities was added to Appendix A.</p> <p>3. Response to recommendation #5: see response for concern #1 and #3.</p> <p>4. Response to recommendation #6: see response for concern #1 and #3.</p> <p>Proponent covering costs are at the discretion of the proponent. However, consistent with Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i>, the provision of capacity will be encouraged as</p>

	Section	Organization	Comment	CNSC Response
				<p>a best practice. CNSC may be able to assist Aboriginal groups' participation through its Participant Funding Program.</p> <p>Capacity is defined as: the ability of Aboriginal groups to understand the nature of the activity the Crown or proponent is contemplating and how that activity might adversely impact their potential or established Aboriginal or Treaty rights and can include things such as in-kind assistance, assuming costs for translation, travel, Honoraria etc. This</p> <p>Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.</p>
92.	3.2.1	Historic Saugeen Metis (HSM)	<p>Key factors to consider when determining which Aboriginal groups to engage include:</p> <ul style="list-style-type: none"> • historic or modern treaties in the region of the regulated facility or activity • proximity of the regulated facility or activity to Aboriginal communities • Aboriginal community engagement protocols and agreements • traditional territories • traditional and current use of lands • governance structure (i.e. confirming the names of elected or designated authorities who represent the Band and/or Aboriginal organization). <p>HSM Comment: HSM supports the key factors listed above.</p>	Comment noted.
93.	3.2.1	Historic Saugeen Metis (HSM)	<p>CNSC encourages the development of an Engagement Work Plan that is reasonable to both parties. When developing an Aboriginal Engagement Work Plan, licensees should consider the following:</p> <ul style="list-style-type: none"> • assignment of a consistent representative • face-to-face meetings • incorporation of a variety of engagement forums and techniques • (e.g. letters, phone calls, presentations, working groups) 	Comment noted.

	Section	Organization	Comment	CNSC Response
			<ul style="list-style-type: none"> • schedules and workloads of the Aboriginal groups involved • potential engagement protocols • communication with the identified Aboriginal groups throughout the licensing period of the regulated facility or activity. <p>HSM Comment: HSM supports the requirement for an Engagement Work Plan that is satisfactory to both parties.</p>	
94.	3.2.1	Historic Saugeen Metis (HSM)	<p>Before submitting a licence application or project description, licensees should conduct Aboriginal engagement activities as early as possible if one of the following criteria apply:</p> <ul style="list-style-type: none"> • the proposal falls outside of the licensing basis, such as changes to the size of the footprint of a facility • the proposal can result in changes to the environment • the proposal may adversely impact an Aboriginal group's ability to practise its potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title. <p>HSM Comment: HSM supports the requirement to conduct Aboriginal engagement activities as early as possible.</p>	Noted. Please note that this section has been moved to s.2.
95.	3.2.1	Historic Saugeen Metis (HSM)	<p>Licensees should have a records management process in place to record Aboriginal engagement activities. Records management tools may include an engagement log that lists activities by date, time and individual group, an issue tracking table that identifies issues raised by groups and whether these have been addressed or remain outstanding.</p> <p>HSM Comment: HSM supports the requirement to have a records management process in place to record Aboriginal engagement activities.</p>	Comment noted.
96.	3.2.1	Historic Saugeen Metis (HSM)	<p>The CNSC may participate in licensees' Aboriginal engagement activities, where appropriate. Joint licensee/CNSC activities offer Aboriginal groups the opportunity to understand the regulated facility or activity and the roles and responsibilities of licensees and the CNSC, and to raise questions and concerns with both parties.</p>	Comment noted.

	Section	Organization	Comment	CNSC Response
			HSM Comment: HSM supports the CNSC participation in licensees' Aboriginal engagement activities, and to develop its own Aboriginal consultation activity plans.	
97.	3.2.1	AANDC	<p>1. The role of the CNSC in identification of groups and rationale is not clear. Does the CNSC provide an advisory function to proponents?</p> <p>2. Is participant funding available?</p>	<p>1. Yes, the CNSC provides an advisory function to proponents. Section 4 now states:</p> <p>"After the CNSC receives the Aboriginal engagement report, it will provide feedback and may request further information or seek clarification. The CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).</p> <p>The CNSC's analysis includes creating its own preliminary list of Aboriginal groups which may have interest in the proposed activity. The CNSC will share its preliminary list of identified Aboriginal groups with the licensee. If the CNSC identifies additional Aboriginal groups not already identified by the licensee, a coordinated approach to ongoing engagement and consultation activities will be discussed with the licensee. CNSC staff also develop project-specific Aboriginal consultation processes that offer opportunities for both CNSC staff and Aboriginal groups to discuss issues and to encourage Aboriginal groups' participation in Commission hearings."</p> <p>2. The CNSC has a participant funding program to support Aboriginal consultation in the review of EA and licensing decisions. Funding is offered on a case-by-case basis and is available for Aboriginal groups, not-for-profit organizations, experts and other stakeholders with an interest in the project.</p> <p>Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.</p>
98.	3.2.1	AANDC	In the section on "Identification of Aboriginal groups and rationale" would it be helpful to mention Consultation Protocols as a consideration? I note that protocols are referred to in Appendix A as well.	<p>Section 3.1 of the document has been revised and states as follows:</p> <p>"When developing an Aboriginal engagement work plan, licensees should consider..."</p>

	Section	Organization	Comment	CNSC Response
				<ul style="list-style-type: none"> •potential engagement protocols (either drafted by the Aboriginal groups or concluded between Aboriginal groups and the Crown)"
99.	3.2.1	AANDC	Engagement protocols and agreements concluded between the Aboriginal group and the Crown? If not, please clarify.	This bullet includes engagement protocols that Aboriginal groups have drafted to identify how they wish to be engaged and protocols concluded between Aboriginal groups and the Crown. The bullet was revised in order to clarify this.
100	3.2.1	AANDC	Would suggest to add 'in a broader Aboriginal collective' (or something similar) before 'in a tribal council...'. May need to discuss further.	Agreed. Change made
101	3.2.1	AANDC	Would need to add, as a first bullet, 'the scope of the consultation required with that group, based on the strength of the claim and the severity of the adverse effects on rights'.	Agree with changes: "scope of the consultation required with each group identified, based on the preliminary analysis and the severity of the potential adverse effects on potential or established Aboriginal or treaty rights
102	3.2.1	AANDC	Already concluded between the Crown and the Aboriginal groups? Of potential engagement protocols between the licensee and the Aboriginal group?	This bullet includes engagement protocols that Aboriginal groups have drafted to identify how they wish to be engaged and protocols concluded between Aboriginal groups and the Crown. The bullet was revised in order to clarify this.
103	3.2.1	AANDC	Will there be any reference to the capacity of the Aboriginal group to understand the potential adverse impacts of the project on their rights (not just financially)? This is certainly one element licensees should consider when developing their engagement work plan.	Agreed. Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.
104	3.2.1	AANDC	Would replace 'such as involving' by 'and it is recommended that they involve Aboriginal groups in...'.	Comment noted. This phrase was removed and replaced with a recommendation that licensees should provide Aboriginal groups with opportunities to participate in the development, implementation and review of mitigation measures in s. 3.1.
105	3.2.1	AANDC	Would suggest to add 'information about' before 'possible mitigation measures' as, at this point, licensees are not provide info on possible mitigation measures, they are not providing accommodation measures themselves (almost as a fait accompli).	Comment noted. This phrase was removed and replaced with a recommendation that licensees should provide Aboriginal groups with opportunities to participate in the development, implementation and review of mitigation measures in s. 3.2.1.
106	3.2.1	AANDC	What are licensees to do with such a request? Will there be some guidance for them on how to handle such requests?	As stated in s. 3. licensees are encouraged to contact CNSC for advice and additional information about its approach to Aboriginal consultation.

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107	3.2.1	AANDC	Would suggest to add 'and how' after 'whether' and before 'these have been addressed...'	Agreed. Change made to section 3.2.2.
108	3.2.1	AANDC	In the end, what is the message the CNSC wants to convey here: that joint licensee/CNSC activities are encouraged? If so, is there more guidance the CNSC wants to provide to licensees so that they try to organize joint sessions?	<p>There are many approaches to engage with Aboriginal communities. The CNSC does not have a preference as to how a licensee chooses to conduct its engagement activities. However, the CNSC has been previously invited on licensee-led community meetings. As these joint CNSC/licensee activities have been welcomed by some Aboriginal communities CNSC is identifying that it is willing to continue this practice if all three parties involved agree to it. Licensees are encouraged to contact CNSC staff for further guidance.</p> <p>Section 3.2.3 of the document was also revised to provide further guidance as follows: "Upon agreement between the CNSC, licensee and Aboriginal community, the CNSC may participate..... "</p>
109	3.2.1	AANDC	'Agreements' such as 'engagement agreements'? Or IBAs? If the latter, have licensees provided info on such 'agreements' in the past? How is the CNSC dealing with the info afterwards? What is it planning to use it for?	<p>Information included in an agreement between a Licensee and an Aboriginal group (i.e. IBA) that would be of interest to the CNSC in its decision-making for a proposed activity would be related to any commitments made by the licensee to the Aboriginal group such as mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights. Such information can help the Crown in meeting its consultation obligations.</p> <p>Section 3.2.2 of the document has been revised as follows: "Licensees are encouraged to provide relevant and necessary information on Aboriginal engagement activities to the CNSC, including elements of agreements with Aboriginal groups, as they relate to mitigation measures and other forms of accommodation to address adverse impacts to potential or established Aboriginal or treaty rights."</p>
110	3.2.1	AANDC	Perhaps the list of potential activities could begin with "proposals that impact an Aboriginal group's ability to... such as (insert the other examples)	Comment noted. The bullet has been revised and the following examples have been added: hunting, fishing, trapping, gathering

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				and cultural ceremonies. Furthermore, the bulleted list has been moved to s. 2 Background.
111	3.2.1	AANDC	<p>It's interesting to note the statement that "The CNSC may participate in licensees' Aboriginal engagement activities, where appropriate ." This is certainly positive.</p> <p>Will this be considered part of the formal duty to consult?</p>	<p>CNSC has been previously invited on licensee-led community meetings. The sentence, now part of section 3.2.3 has been revised by adding the following text: "Upon agreement between the CNSC, licensee and Aboriginal community, the CNSC may participate..... "</p> <p>All engagement activities form part of the Crown record and may be used toward fulfilling the duty to consult.</p>
112	3.2.1	Hiawatha First Nation	Third bullet should also include proximity to Treaty lands.	The first bullet of section 3.1 addresses this comment.
113	3.2.1	Fond Du Lac Denesuline First Nation And Black Lake Denesuline First Nation	<p>Ensuring Meaningful Aboriginal Consultation</p> <p>1. REGDOC 3.2.2 states on pp. 5-6 that Licensees, "<i>should</i> ask the (Aboriginal) groups how they would like to be engaged, as preferences may vary by community. The CNSC <i>encourages</i> the development of an engagement work plan that is reasonable to both parties."</p> <p><i>Recommendations</i> #1 For this section cited above, we recommend that the term "should" be changed to "shall".</p> <p>2. Further, we recommend that the CNSC, which has the ultimate responsibility for completion of meaningful crown consultation, require the licensee to inform the CNSC in a timely fashion of any instances where an agreeable engagement work plan has not been reached</p> <p>3. In addition, we recommend adding to the list on p. 6 of potential content for a Plan to include:</p> <ul style="list-style-type: none"> • "Mutually agreed upon timelines", • "Adequate resources for enable meaningful participation of Aboriginal groups", and • "Mutually agreed upon studies, monitoring processes and follow-up measures that are required to properly assess effects of the 	<p>1. As each project and each Aboriginal group is unique, engagement work plans with each identified Aboriginal group are to be developed at the discretion of the licensee and therefore this section of the REGDOC will remain guidance and not a requirement.</p> <p>However, as stated in the preface, licensees are expected to review and consider guidance; should they choose not to follow it, they should explain how their chosen alternate approach meets regulatory requirements.</p> <p>2. Comment noted. A licensee's engagement plan submitted to the CNSC should include information on the status of the work plan developed between licensees and individual Aboriginal groups, including whether each Aboriginal group supports the work plan. CNSC staff will review the licensees' activities and plans and will provide feedback and may request further information or seek clarification.</p> <p>3. The CNSC encourages a work plan that is reasonable to both parties. As each project and each Aboriginal group is unique, engagement work plans with each identified Aboriginal group are to be developed at the discretion of the licensee. As such, this section of the REGDOC will remain as guidance and will not include specific requirements for timelines, capacity or studies.</p>

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			project or activity on Aboriginal groups”.	<p>Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.</p> <p>As well, s. 3.1 encourages licensees to consider the need for addressing requests for additional studies including traditional land use studies or archaeological assessments.</p> <p>As stated in s. 3.1 licensees are encouraged to contact CNSC for advice and additional information about its approach to Aboriginal consultation.</p> <p>This section was revised to encourage the licensee to contact the CNSC for advice if unsure of how to deal with a request from an Aboriginal group for an additional study.</p>
114	3.2.1	Fond Du Lac Denesuline First Nation And Black Lake Denesuline First Nation	<p>Communicating Outcomes: Reporting</p> <ul style="list-style-type: none"> • The reporting of the Licensee’s engagement activities is as equally important to our communities as it is to Crown entities such as the CNSC. However, we note that the requirement for interim status reports on Aboriginal engagement activities, noted on p. 7 of REGDOC 3.2.2, only includes reporting to the CNSC (i.e., and not communities). <p><i>Recommendation</i></p> <ul style="list-style-type: none"> •All interim reports on Aboriginal engagement related to Aboriginal consultation should be required to report on the progress of consultations aimed at evaluating potential impacts to rights and interests, and identifying effective means to avoid, reduce and/or accommodate potential impacts to treaty rights and related interests (including socio-economic and health concerns). • All reports must be required to be sent to Athabasca communities for comment prior to their filing for verification (specific sections relevant to that Aboriginal group only) and upon their filing with CNSC. In addition, the CNSC should provide Aboriginal groups with adequate time and opportunity within the regulatory timeline to provide such comments on the Licensee’s reports. 	<p>Sentence was added to section 3.2.4 regarding proposed interim status reporting schedule, encouraging licensees to share reports with identified Aboriginal groups, and noting that CNSC would share these reports with identified groups, upon request.</p>

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115	3.2.1 page 5 – bullet on settled or ongoing land claims	Environment Canada	EC recommends that in the consideration of land claims in the determination of Aboriginal groups to engage, there should be a differentiation between specific (Treaty based) vs. comprehensive (no Treaty) claims.	Comment noted. The CNSC encourages licensees to consider all types of on-going and completed land claims when considering which Aboriginal groups to engage.
116	3.2.1 page 5 – bullet on Governance structure	Environment Canada	EC recommends that in the consideration of governance structures in the determination of Aboriginal groups to engage, additional considerations should be given to a community operating under self-government agreement. This may be a critical consideration since depending on the self-government agreement (SGA), a First Nation may no longer be captured under the Indian Act and therefore certain acts of parliament and their associated regulations (i.e. CEPA, NSCA etc.) may no longer apply. Additionally, SGAs may have specific conditions for Crown consultation & engagement.	<p>This consideration is set out in Appendix A:</p> <p>“Does the proposed regulated facility or activity involve lands or resources that are currently the subject of land claim negotiations or are part of existing comprehensive land claim agreements or self-government agreements?”</p> <p>As stated in s. 3.1, licensees are encouraged to contact the CNSC for additional information about its approach to Aboriginal consultation activities.</p> <p>The opening paragraph of Appendix A was revised to state that should the licensee require clarity or have questions about how to approach a particular situation, including Aboriginal groups with self-government agreements, they are encouraged to contact the CNSC.</p>
117	Section 3.2.1, page 6 - bullet on schedules and workloads of the Aboriginal groups	Environment Canada	EC recommends that in the development of an Aboriginal engagement workplan, in addition to schedules and workloads, the internal capacity (technical and administrative) of the Aboriginal community should be taken into consideration since this is one of the greatest challenges for communities to participate in reviews.	Agreed. Appendix A of the REGDOC was updated to ensure that licensees consider the capacity of identified Aboriginal groups.
118	3.2.2	OPG	<p>“...the CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown...</p> <p>This should be the very first step in process and owned by the Crown.</p> <p>The CNSC should not conduct its own analysis after it receives</p>	CNSC staff will conduct its own analysis early in the process; however upon receipt of a licence application and/or licence it needs sufficient information from the licensee to base the analysis on. REGDOC-3.2.2 requires more detailed information from licensees at this stage to assist in reducing the risk of further delays, as such information has sometimes been provided later in

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			<p>industry material (plan). This costs industry in terms of both time and money adding delays.</p>	<p>the regulatory review process.</p> <p>Licensees are encouraged to conduct engagement activities as early in the project development process as feasible; this could include conducting activities prior to submitting a formal application or project description to the CNSC. The CNSC will conduct its own analysis once it has received a licence application or project description.</p> <p>In its submission, Cameco states that proponents are best placed to identify which Aboriginal groups may be adversely impacted by a proposed activity.</p> <p>The courts have been supportive of this approach and have allowed a consultation process to be carried out by a third party proponent when the Crown is approving the proponent's project. This is because the proponent knows their project better than anyone and it is not unreasonable for them to take a lead in explaining their project to the Aboriginal group(s) and discuss ways in which any potential adverse impacts may be avoided.</p> <p>In situations where a licensee is struggling to identify Aboriginal groups that may be impacted by its proposed activity, CNSC can offer assistance. Resources for such information have also been included in Appendix B.</p>
119	3.2.2	OPG	<p>1. Licensee requires clarity on CNSC role in Aboriginal consultation.</p> <p>2. This document is for licensees – a section on CNSC activities is not warranted.</p> <p>Question the relevance of including this section.</p> <p>Recommend removal of this section.</p>	<p>1. More details regarding CNSC's approach to Aboriginal consultation can be found in CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i> which identifies that the CNSC's approach follows Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> as referenced in REGDOC 3.2.2.</p> <p>2. Section 3.2.2 sets out what actions the CNSC will take once they have received a licensee's Aboriginal engagement plan and report.</p> <p>Providing clarity to licensees on the roles and activities of both the CNSC and licensees in the context of the REGDOC and consultation is important. As such the section will remain in the</p>

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				document.
120	3.2.2	OPG	<p>1. At the early planning stages it is important for the licensee to be given direction by the CNSC on the appropriate Aboriginal groups to consult.</p> <p>#1. Licensee requires a review and confirmation by the CNSC early in the process that the submitted Aboriginal plan is appropriate and that the correct groups are being engaged or if not that proper direction by given in writing. "Coordinating" activities is not always prudent with Aboriginal groups. The Crown holds a very specific duty and there needs to be a clear division between licensee and Crown.</p> <p>2. Remove "as the consultation process evolves".</p> <p>3. Remove last sentence "If the CNSC identifies additional Aboriginal groups a coordinated approach to ongoing engagement and consultation activities will be discussed with the licensee."</p> <p>Replace this line with: "The CNSC, upon receipt of the Aboriginal plan will review and provide written comments on the appropriateness of the activities to be undertaken by the licensee."</p> <p>4. Requests from the regulator to adjust or modify the Aboriginal plan late in the process could trigger additional regulatory burdens or delay federal review decisions or approvals. Direction from CNSC in early stages is required to ensure that during a future decision making stage, the regulator does not request or apply conditions to the Aboriginal efforts after the fact.</p> <p>5. Identification of appropriate Aboriginal groups to consult needs to be determined early in the process.</p> <p>6. It is not always appropriate for licensee and CNSC to undertake a "coordinated approach" with Aboriginal consultation. The Crown</p>	<p>1. Section 3 has been revised to add flexibility in timing of submission of reporting requirements. The text now reads: "prior to or as part of a project description".</p> <p>Furthermore, the section has been updated to include a sentence which states that the CNSC encourages licensees to contact the CNSC for advice on their Aboriginal engagement plan early in the project development processes.</p> <p>CNSC is available to meet with licensees prior to a project description or licence application being submitted.</p> <p>2: Agreed. Change made.</p> <p>3: It is important for licensees to understand that the CNSC's Aboriginal consultation process is adaptive and the scope of activities and/or groups identified may change as new information is gathered by the CNSC. As well, the groups identified by the CNSC may differ from the Licensee. Therefore it is important to keep this sentence in the REGDOC.</p> <p>After the CNSC receives the Aboriginal engagement plan, it will provide feedback and may request further information or seek clarification.</p> <p>4. See response to #1 above.</p> <p>Aboriginal consultation is often an iterative process and must be flexible should it need to be adjusted as appropriate as new information may be presented. This approach can help reduce potential delays in the regulatory review process.</p> <p>Section 3of the REGDOC was updated to include a sentence which states that the CNSC encourages licensees to contact the CNSC for advice on their Aboriginal engagement plan early in the project development process.</p>

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			<p>and licensee need to establish separate and unique relationships relative to each individual accountability and role. An arm's length relationship must be clearly maintained.</p> <p>7. In order to ensure licensee is in compliance with the Aboriginal Guidance the licensee requires a review of the plan by the CNSC for concurrence and effectiveness.</p>	<p>5. Agreed.</p> <p>6. There are many approaches to engage with Aboriginal communities. The CNSC does not have a preference as to how a licensee chooses to conduct its engagement activities. However, the CNSC has been previously invited on licensee-led community meetings. As these joint CNSC/licensee activities have been welcomed by some Aboriginal communities CNSC is identifying that it is willing to continue this practice if all three parties involved agree to it. Licensees are encouraged to contact CNSC staff for further guidance.</p> <p>7. This is addressed in section 4 which states as follows: "After the CNSC receives the Aboriginal engagement plan, it will provide feedback and may request further information or seek clarification."</p>
121	3.2.2	AANDC	p. 8 2 nd para – This information more clearly indicates the role of the CNSC, perhaps it should be made clearer earlier on in the document.	Agreed. Clarity on the CNSC's role as an agent of the Crown was added to section 1 and 2.
122	3.2.2	AANDC	'Identified' by the licensee? Or by the CNSC? Or may be could say '... will notify the Aboriginal groups it has determined may need to be consulted...'	Identified by the CNSC. The text, now is section 4, was revised in order to clarify this.
123	3.2.2	AANDC	Once the CNSC is ready to start its consultation activities, therefore long after the licensee will have shared its list of groups it is engaging with? As asked in early comment, will there have been some back and forth between the licensee and the CNSC on the list of Aboriginal groups of the licensee? How will the CNSC ensure consistency between the list mentioned in 3.2 and any Crown exchange with the licensee earlier about the groups and the engagement by the licensee?	<p>CNSC staff presently conducts such analysis upon receipt of a licence application and/or project description as it needs such information to help inform the analysis. REGDOC-3.2.2 requires more detailed information from licensees at this stage to assist in reducing the risk of further delays as such information has sometimes been provided later in the regulatory review process.</p> <p>CNSC is available to meet with licensees prior to a project description or licence application being submitted.</p> <p>Section 3. of the REGDOC was updated to include a sentence which states that the CNSC encourages licensees to contact the CNSC for advice on their Aboriginal engagement plan early in the project development processes.</p>
124	3.2.2	AANDC	"Additional' as compared to its own Crown preliminary list (groups identified later)? Or 'additional' as compared to the licensee's list	In this instance it refers to the licensee's list of identified groups as the CNSC will typically conduct its analysis following receipt of the

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			for engagement purposes?	information required of the licensee. However, if necessary the CNSC will add Aboriginal groups to their list of potentially affected Aboriginal groups as appropriate if not identified in the preliminary analysis.
125	3.2.2	Historic Saugeen Metis (HSM)	<p>After CNSC receives the Aboriginal Engagement Plan with a project description and/or licence application, it will provide feedback and may request further information or seek clarification. CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).</p> <p>HSM Comment: HSM supports the CNSC conducting its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities.</p>	Comment noted.
126	Section 3.4, page 8 – Guidance, bullet on summary of mitigation measures	Environment Canada	EC recommends that accommodation is included with mitigation measures in the summaries required for the licensee CMD. The bullet might be edited as follows: “a summary of accommodation and mitigation measures or plans and proposed timing for accommodation and mitigation measures, to address adverse impacts”.	Agreed. The bullet was revised in order to include accommodation.
127	3.4	Historic Saugeen Metis (HSM)	<p>The Aboriginal engagement section of a licensee CMD should include:</p> <ul style="list-style-type: none"> • a list of identified Aboriginal groups • a summary of Aboriginal engagement activities conducted • a summary of concerns raised related to potential adverse impacts on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title • a summary of potential adverse impacts on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title • a summary of mitigation measures, or plans and proposed timing for mitigation measures to address adverse impacts • a summary of actions taken, or proposed actions to be taken, to address previously unidentified issues or 	Comment noted.

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			<p>impacts raised by the CNSC</p> <ul style="list-style-type: none"> a summary of planned Aboriginal engagement activities. <p>HSM Comment: HSM supports the Aboriginal engagement section of Commission Member Documents having the items listed above.</p>	
128	3.4	AANDC	<p>What are the differences CNSC see between the info it wants to obtain in relation to 'concerns' related to potential adverse impacts and the info about the potential adverse impacts themselves?</p>	<p>Comment noted. The bullet point on concerns was deleted.</p>
129	3.4	OPG	<p>Information provided in Section 3.4 should be contained in the CNSC's GD-379 Guide for Applications and Interveners Writing CNSC CMDs.</p> <p>Delete section 3.4.</p> <p>This document does not require this direction – licensee should seek direction from GD-379 of what to include in CMD. The Regulatory framework is an integrated system. Duplicating information in various documents can be expected to lead to future inconsistency.</p> <p>Licensees should take direction from GD-379 for CMD submissions.</p>	<p>The information provided s 3.4 is guidance specific to writing an Aboriginal engagement section for the CMD that meets the information requirements of REGDOC-3.2.2 and is beyond the scope of GD-379, <i>Guide for Applicants and Interveners Writing CNSC Commission Member Documents</i>.</p>
130	3.5	OPG	<p>Licensees are not required to submit an Aboriginal engagement plan and report if..."Licence renewal with no changes..."</p> <p>Clarification required - would this be an "inform" only exercise?</p>	<p>In such cases, a licensee would not trigger requirements of REGDOC-3.2.2 and staff would review information provided by licensee in its Public Information and Disclosure Program under RD/GD-99.3.</p>
131	3.5	Fond Du Lac Denesuline First Nation And Black Lake Denesuline First Nation	<p>Post-Licensing Engagement Requirements</p> <ul style="list-style-type: none"> The guidance provided in the Guide for, "keeping Aboriginal groups and the [CNSC] informed after a Commission decision", falls below requirements for communication/engagement related to monitoring and follow-up measures that have been set out in other CEAA 2012 decision statement conditions. <p><i>Request for Clarification</i></p> <ul style="list-style-type: none"> We request the CNSC clarify whether its intention is to supplement communication requirements set out in REGDOC 3.2.2 with additional conditions either in the Licence or EA decision statement. <p><i>Recommendation</i></p>	<p>CNSC is a CEAA 2012 decision-maker hence any requirements made for a CEAA 2012 decision would be included in subsequent CNSC licensing decisions.</p> <p>As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis to ensure REGDOC-3.2.2 requirements are fulfilled.</p>

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			<p>• If not, then it is strongly recommended that this section of REGDOC 3.2.2 related to post-Licensing engagement be strengthened by making all post-decision communication/engagement with Aboriginal groups related to monitoring and follow-up measures mandatory, with clearly established reporting scheduling and timelines, to be captured in license conditions.</p>	
132	3.5	Historic Saugeen Metis (HSM)	<p>Licensees may also be required to update the CNSC about their continued Aboriginal engagement activities; e.g. the status of mitigation and accommodation measures. Licensees should also update the CNSC on new issues raised by Aboriginal groups with respect to an adverse impact on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, which could affect future operations of the regulated facility or activity or a future licence application. CNSC will advise the licensee on when and how this information is to be provided, but will use existing processes, annual reporting, etc.</p> <p>HSM Comment: HSM supports the requirement for licensees to update the CNSC about their continued Aboriginal engagement activities.</p>	Comment noted.
133	3.6	Bruce Power	<p>1. Non-applicability statement provided is unclear.</p> <p>2. Is the list of examples in 3.6.1 complete?</p> <p>Revise 3.6 to state all types of facilities or activities that do not require submission of an Aboriginal engagement plan.</p> <p>Also include the basis for non-applicability (i.e. why would certain licensees not have to submit an Aboriginal engagement plan?)</p> <p>3. The lack of clarity in this section results in a situation where proponents/licensees may not know what is expected of them.</p>	<p>1. Section 3.6 has been deleted, and the applicability of this document has been clarified in section 1.2.</p> <p>2. The list of examples is not an exhaustive list. As each proposed activity is unique (type of activity, location), an exhaustive list cannot be provided.</p> <p>Section 1.3 lists the relevant legislation and regulations of which REGDOC-3.2.2 is focussed upon.</p> <p>If a licensee is uncertain if their proposed activity could be exempted from REGDOC-3.2.2, they should contact CNSC staff for assistance.</p> <p>3. The comment is noted and Sections 1 and 3 of the REGDOC were updated to include greater clarity on its scope and reporting requirements.</p>

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134	3.6.1	OPG	This section should be moved to under 3.2 where it states when an engagement plan is required. Move information from section 3.6.1 to section 3.2.	Comment noted. This text has been moved to section 1.2.
135	3.6.1	Hiawatha First Nation	Who decides if there is a potential for adverse effects or impact on First Nation communities as we have a different meaning of this sometimes because of our relationship with and to Mother Earth.	The goal of REGDOC-3.2.2. is to ensure that licensees engage potentially affected Aboriginal groups early the project development stage so that potential adverse impacts can be raised by Aboriginal groups. CNSC encourages Aboriginal groups to participate in its regulatory reviews and sharing their views, concerns and identifying potential adverse impacts to their potential or established Aboriginal or treaty rights. Section 3. 1 encourages licensees to ask Aboriginal groups how they would like to be engaged and supports the development of an engagement work plan that is reasonable to both parties. Section 3.1 and Appendix A have been updated to include recommendation to seek input from Aboriginal groups early on regarding the potential for the project to impact their rights.
136	Section 3.6.1, page 10 – non-applicability of Aboriginal engagement	Environment Canada	EC recommends that where a determination of non-applicability of Aboriginal engagement is likely, the CNSC should examine whether the Aboriginal engagement undertaken previously has adequately fulfilled the responsibilities and maintained the honour of the Crown. If the examination confirms that prior engagement was not adequate then the CNSC should inform the licensee to consider augmenting with additional Aboriginal engagement.	Comment noted. Upon receipt of a project description or a licence application that falls under the relevant legislation and regulations outlined in Section 1.3, CNSC staff will conduct its own analysis to determine if it has a duty to consult regardless if a licensee submits an Aboriginal engagement plan and report. Additionally, for those activities that do not trigger the requirements of REGDOC 3.2.2, licensees are still required to meet the requirements of <i>RD/GD 99.3 Public Information and Disclosure Program</i> , which should include reporting on engagement and outreach activities with Aboriginal groups if they are identified as part of their target audience.
137	3.6.1 1.st bullet on p. 10	Hiawatha First Nation	Old licenses may not have required duty to consult but now we do.	Comment noted. The intent of the REGDOC is to: a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage. Sections 1 and 2 of the REGDOC have been revised to clarify CNSC's responsibilities as an agent of the Crown and provide examples of

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				<p>which situations trigger the duty to consult.</p> <p>b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult.</p> <p>Section 3.6 has been deleted, and the applicability of this document has been clarified in the scope section.</p>
138	3.6.2	Historic Saugeen Metis (HSM)	<p>CNSC will sometimes review licence applications for regulated facilities or activities to which this document's requirements do not apply. This is in order to determine if Aboriginal engagement activities are appropriate. Following its review of such licence applications, the CNSC may still request the submission of an Aboriginal Engagement Plan and report. Aboriginal engagement activities may be appropriate if licensees have, for example, made commitments during Commission proceedings or were given direction by the Commission.</p> <p>HSM Comment: HSM supports the CNSC to sometimes review licence applications in order to determine if Aboriginal engagement activities are appropriate.</p>	Comment noted.
139	Appendix A, page 11 – 3rd bullet	Environment Canada	EC recommends the word "near" is defined in this guidance for identifying potentially impacted Aboriginal groups. The scale of proximity (or nearness) to the proposed facility or activity is dependent on the potential effect being considered. For example air transport and deposition of contaminants would likely occur over much greater geographic scale than potential contamination of drinking water wells or potential effects on a culturally important area.	Comment noted. As each project is unique, CNSC staff will work closely with licensees on a case-by-case basis regarding the meaning of proximity to the facility.
140	Appendix A	Areva	1. By broadening the scope of Aboriginal engagement that is not related to the potential to impact the CNSC is heightening expectations of Aboriginal groups and is creating additional burden and cost on the licensees and the CNSC staff that is not justifiable and have the potential to take away from the Aboriginal communities that have already been identified as having a relationship to the project in questions.	<p>1. Many of CNSC licensees already have dedicated programs to engage with Aboriginal communities and have existing relationships with Aboriginal communities with interest in their projects; therefore much of the required information exists.</p> <p>Appendix A is for guidance only to help determine if the licensee's activity could have an impact on any Aboriginal or treaty rights. As stated s. 1.2, the REGDOC applies to facilities or activities listed in</p>

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			<p>2. This concern is evidenced by the list of Considerations for Aboriginal Engagement in Appendix A which states that if the "answer is yes to one or more of the questions, than Aboriginal engagement is likely appropriate". Given the list, it is difficult to envision a project or proposed activity that would not trigger the proposed REGDOC.</p>	<p>the <i>Class I Nuclear Facilities Regulations</i> and the <i>Uranium Mines and Mills Regulations</i> that have the potential to have an impact on Aboriginal or treaty rights.</p> <p>The comment is noted and Sections 1 and 3 of REGDOC were updated to include greater clarity on its scope and reporting requirements.</p> <p>2. Appendix A has been revised and the quoted sentence has been deleted.</p>
141	Appendix A	Bruce Power	<p>1. What aboriginal input was obtained prior to drafting the list in Appendix A?</p> <p>2. Is the draft REGDOC review and comment process intended to capture all aboriginal consultation with respect to the REGDOC and its contents?</p>	<p>1. Most of the questions included in Appendix A were adapted from Canada's <i>Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> which was drafted following consultation activities with Aboriginal groups across Canada.</p> <p>2. REGDOC-3.2.2 was made available for a 120-day public consultation period which provided industry, Aboriginal groups, members of the public, and stakeholders an opportunity to provide feedback on this draft document. The public and Aboriginal groups were provided with an additional 21-day period to provide feedback on the comments received. Comments were dispositioned and will influence the revision of REGDOC 3.2.2.</p> <p>The revised REGDOC along with this comment table will be sent to all Aboriginal groups and stakeholders who submitted comments.</p> <p>The CNSC always welcomes comments. Comments provided outside of the formal consultation period will be addressed during the next scheduled revision of the REGDOC.</p>
142	Appendix A	Bruce Power	<p>The considerations use the phrase "are you aware..." on a number of occasions. The proponent's awareness of a particular activity does not correlate to the occurrence of that activity.</p> <p>The use of the considerations appendix should be explained more thoroughly. It is possible that Aboriginal activities in an area may</p>	<p>Appendix A is guidance to help determine if the licensee's activity could have an impact on any Aboriginal or treaty rights. The questions are intended to help guide the licensee's analysis and provide key suggestions of key considerations when determining if their proposed activity could have an impact on any Aboriginal or treaty rights and which Aboriginal groups should be engaged.</p>

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			<p>not be well known by proponents.</p> <p>Aboriginal consultation may be missed or delayed as a result.</p> <p>Late or missing aboriginal consultation could cause significant delays to projects or other proposed activities.</p>	<p>Appendix B provides a number of key resources that can help inform the licensee regarding the existence of Aboriginal or treaty rights that could be affected by their project or activity.</p> <p>As stated in s. 3, licensees are encouraged to contact CNSC staff for further project-specific guidance.</p>
143	Appendix A, pages 11,12 – General comment	Environment Canada	EC recommends that previous and established relationships between the Aboriginal community and the licensee and/or the CNSC should be well understood and taken into consideration when developing a consultation and/or engagement plan (i.e., history of engagement with the licensee both positive and negative).	Agreed. A consideration regarding an Aboriginal groups previous and established relationship with the Licensee and/or CNSC was added to the document.
144	Appendix A, 3 rd bullet	Hiawatha First Nation	Should include treaty lands as well.	Agreed. Change made.
145	Appendix A	Historic Saugeen Metis (HSM)	<p>Appendix A – Considerations for Aboriginal Engagement provides questions that may guide licensees in determining if Aboriginal engagement is appropriate, and if so, to what extent. The questions include:</p> <ul style="list-style-type: none"> • Does the Aboriginal group claim traditional territory that encompasses the location of the proposed regulated facility or activity? • Are there any First Nation reserve lands or Aboriginal communities near the proposed regulated facility or activity? • Are you aware of any communication from Aboriginal groups who are raising concerns about the proposed regulated facility or activity or similar facilities or activities in the area? • Are you aware of any past grievances or issues that an Aboriginal group may have with your industry or organization? How were these grievances addressed? • Have any Aboriginal groups expressed concerns about the proposed regulated facility or activity and suggested any remedial measures that may accommodate the adverse impacts on their rights and/or related interests, including Aboriginal title? • Does the proposed regulated facility or activity involve 	Comment noted.

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			<p>lands or resources that are currently the subject of land claim negotiations or are part of existing comprehensive land claim agreements or self-government agreements?</p> <ul style="list-style-type: none"> • Are you aware of the nature and scope of any asserted rights and/or related interests, including Aboriginal title, in the area? • Has the Aboriginal group continually occupied the area near the regulated facility or activity? • Does the group still occupy the area? If the Aboriginal group does not still occupy the area, at what period of time did they occupy it? • Are there historical and/or current traditional Aboriginal practices occurring in the area? • Is the Aboriginal group alleging that the claimed rights were exercised prior to European contact (or for the Metis, prior to effective control)? Do they continue to exercise these rights today in a traditional or modernized form? • Could the status of land claims and self-government agreements have implications with respect to the proposed regulated facility or activity? • Are there any cultural activities or events that may prevent many community members from participating in engagement activities? • Is the Aboriginal group a signatory of a historic or modern treaty? • Does the Aboriginal group have a consultation protocol? • Has the Aboriginal group been involved in recent litigation or landmark court cases? • Is the Aboriginal group involved in the negotiation for treaty land entitlements? • Is the Aboriginal group currently involved in any other consultations with industry or government? <p>HSM Comment: HSM supports the list of questions given above in order to determine if Aboriginal engagement activities are appropriate, and if so, to what extent.</p>	

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146	Appendix A	AANDC	'Strength of the responses'? What is meant by that? The strength of the claim? The severity of the adverse effect? Would suggest to modify or clarify. How does the 'strength of the responses' relate to the consultation activity spectrum mentioned in the next sentence?	This sentence was deleted from the opening paragraph.
147	Appendix A	AANDC	Do we mean 'located near' the proposed facility? Groups may be located in one place but may hold rights in a much larger area.	Agreed. Change made.
148	Appendix A	AANDC	Given that the CNSC is dealing with facilities related to nuclear power, there may not be a lot of 'similar facilities or activities in the area'. May be the bullet needs to be broader, such as '... or about similar adverse effects in the area'.	Noted. This is one of numerous questions for consideration listed in Appendix A.
149	Appendix A	AANDC	Not sure how this last sentence relates to the first one, to the rest of the bullet. May be the sentence would work if 'with the relevant decision-makers' was taken out.	Comment noted. The last sentence has been deleted.
150	Appendix A	AANDC	Would need to add 'Aboriginal' after 'claimed'. If it was claimed treaty rights, they would not need to have been exercised prior to European contact, etc.	Agreed. Change made.
151	Appendix A	AANDC	What is meant by the 'status' of land claims and self-gov agreements? What is meant by them having a different 'status'?	<p>The "status" refers to the process step that the land claim or self-government agreement is at. If a land claim or self-government agreement is in the final stages of negotiations its conclusion may impact the consultation process and should be considered by licensees when conducting their analysis to determine if Aboriginal engagement may be required and how to approach engagement with each group identified.</p> <p>A sentence was added to opening paragraph of Appendix A to indicate that the licensee should contact the CNSC should they have any questions regarding their analysis</p>
152	Appendix A	AANDC	Consultation protocol concluded with the Crown? Consultation guidelines/protocol developed by the FN itself. Would need to explain that it might be useful to know about the latter, but it does not bind the Crown.	Agreed. Change made.
153	Appendix A	AANDC	Court cases don't need to be 'landmark' cases to apply. Should clarify with something like 'or have judgments be rendered that clarify rights of the Aboriginal group, obligations of the Crown toward it or other relevant issue'.	Agreed. Change made.
154	Appendix B	Metis Nation of Ontario (MNO)	Concern #4: No Reference to Metis Nation of Ontario Consultation Resources	The resources listed in REGDOC 3.2.2 are intended to provide general guidance to licensees that include accurate information on

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			<p>Appendix B of the Regulatory Document lists resource tools available to support the implementation of the CNSC's Aboriginal consultation approach and that can assist proponents in planning their Aboriginal consultation. This list of resources, however, does not include MNO resources that advise the proponent/the Crown on when the duty to consult the MNO is triggered, nor does it include resources on the MNO's established consultation system.</p> <p>Recommendation #7: CNSC add the follow resources to Appendix B: • MNO Lands, Resources and Consultations Branch's duty to consult homepage: http://www.metisnation.org/programs/lands,-resources-consultations/duty-to-consult • MNO's duty to consult guide: http://www.metisnation.org/media/51974/duty_to_consult_guide.pdf • MNO's contact information for proponent/the Crown's consultation: http://www.metisnation.org/programs/lands,-resources-consultations/duty-to-consult/contact</p>	<p>Aboriginal and treaty rights for Aboriginal groups across Canada, including the MNO.</p> <p>As stated in s. 3.1 licensees are encouraged to consider the engagement protocols and agreements of potentially affected Aboriginal groups when determining which Aboriginal groups to engage and when developing their engagement work plans. In addition, s. 3.1 encourages licensees to ask Aboriginal groups how they would like to be engaged and encourages the development of an engagement work plan that is reasonable to both parties.</p>
155	Appendix B, page 14 - Other Resources, 2nd bullet	Environment Canada	EC recommends that the reference to "umbrella organizations" be more explicit. Umbrella organizations may include regional organizations, provincial/territorial organizations and tribal councils. Explicitly listing the types of "umbrella organizations" would likely be more effective in guiding licensees to consider communicating with appropriate umbrella organizations in the determination of Aboriginal communities or groups to engage.	Agreed. Change made.
156	Appendix B	AANDC	Recommend that you receive a summary from the Consultation Information Service on ATRIS and CIS, to include in this document.	Comment noted. The text in this section was replaced with text provided by AANDC in comment 162
157	Appendix B, page 14 - Other Resources	Environment Canada	EC recommends deleting the words "considering studies about" and "(if available to the public)" and leave "Aboriginal traditional knowledge" on its own. These qualifiers seem to unnecessarily narrow the use of this resource. Aboriginal traditional knowledge	Agreed. Changes made to bullets on traditional land use and Aboriginal traditional knowledge.

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	- bullet on Aboriginal traditional knowledge		may be available in many forms (written, oral tradition, direct communication etc.) not just in studies and as part of engagement/consultation activities, traditional knowledge - irrespective of public availability, may be accessible.	
158	Appendix B	AANDC	'Conglomerates'??	Comment noted. The text in this section was replaced with text provided by AANDC in comment 162
159	Appendix B	AANDC	Same comment as above.	Comment noted. The text in this section was replaced with text provided by AANDC in comment 162
160	Appendix B	AANDC	Suggest to add 'and any other relevant regional information'.	Agreed. Change made.
161	Appendix B	AANDC	Wouldn't it be the same as the info available in ATRIS. Would suggest to verify with CIS.	Comment noted. Reference to the AANDC web-site was removed from Appendix B, "Other resources".
162	Appendix B	AANDC	<p>Other resources – most of this information is housed in ATRIS. See this link for further info https://www.AANDC-aandc.gc.ca/eng/1100100014686/1100100014687</p> <p>Consultation Information Service – the information that is listed here under the bulleted list is information that is found in ATRIS. Officials and proponents are encouraged to go to ATRIS first, should there be a situation that additional expert advisement is required, that's where the CIS comes in.</p> <p>We would suggest CNSC replace their ATRIS and CIS bullets/content on p. 13 with the following:</p> <p>The Consultation and Accommodation Unit of Aboriginal Affairs and Northern Development Canada has developed the Aboriginal and Treaty Rights Information System (ATRIS) to disseminate relevant information about Aboriginal groups in Canada and the Section 35 rights those groups exercise or assert. ATRIS is a web-based tool that features an interactive map and corresponding narrative content to help users identify Aboriginal communities in proximity to a given project area or whose potential or established Aboriginal or treaty rights may intersect with a project. Officials, proponents and others seeking to inform their Aboriginal consultations are encouraged to carry out their preliminary</p>	Agreed. Change made.

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			research within ATRIS. ATRIS and its content are managed by the Consultation Information Service (CIS) . If you have questions about the system or the information within it, queries can be sent to the CIS at the following address: cau-uca@AANDC-aandc.gc.ca	
FEEDBACK ON COMMENTS PERIOD MARCH 2-23, 2015				
163	General	Andrei N.	<p>Regarding the government's guidelines in respect to the involvement people of the First Nations have in Canada's future, I believe there is a great inconsistency. Guiding Principle and Directive #4 states that Aboriginal groups: "make their concerns known to the Crown and share any other relevant information that can assist in assessing the strength of their claim or the seriousness of any impacts on their potential or established Aboriginal or Treaty rights and related interests."</p> <p>"Assist in assessing the strength of their claim" - and who is doing this assessing? By chance, is it done by politicians who do this "assessing" between opening checks from oil/gas lobbyists? This is outrageous. The government states in the same file, "Guiding Principle and Directive # 4" that Aboriginal groups: "consider that they do not have a veto over the proposed project; that consultation may not always lead to accommodation or that there may not always be agreement on what accommodation measures may be appropriate."</p> <p>So, this present government was brought to power by 39.62% of the 61.1% of eligible voters who placed a ballot in 2011. This 39.62% is telling Aboriginal groups that they do not have a final say in what happens to their land, culture and livelihood?! And that "consultation may not always lead to accommodation". How convenient, the government created an easy way to ignore people's concerns. I'll tell you what: this is unacceptable! Start changing the platform/pattern(s) please asap.</p> <p>I can guarantee anyone that the public (including Aboriginal groups) do actually have the final say. It is not the government who</p>	The comment is specific to the contents of Canada's <i>Aboriginal Consultation and Accommodation Updated Guidelines for Federal Officials to Fulfill the Duty to Consult</i> , and is beyond the scope of REGDOC 3.2.2.

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			<p>dictates to the people - the government is the Servant of the people. That is why politicians are called public servants, although nowadays they mainly serve lobbyists.</p> <p>39.62% out of 61.1% is not a majority. The rest of us will have to be heard, we're not invisible people.</p>	
164	General	United Chiefs and Council of Mnídoo Mnising	<p>United Chiefs and Council of Mnídoo Mnising has concerns with the draft REGDOC-3.2.2, Aboriginal Engagement and its failure to consult with Aboriginal groups or representatives on processes that affect Aboriginal rights or interests.</p> <p>United Chiefs and Council Mnídoo Mnising requests the Canadian Nuclear Safety Commission to conduct consultation meetings with Aboriginal groups or representatives on draft REGDOC-3.2.2, Aboriginal Engagement.</p>	<p>REGDOC-3.2.2 was made available for a 120-day public consultation period which provided industry, Aboriginal groups, members of the public, and stakeholders an opportunity to provide feedback on this draft document. The public and Aboriginal groups were provided with an additional 21-day period to provide feedback on the comments received. Comments were dispositioned and will influence the revision of REGDOC 3.2.2.</p> <p>The revised REGDOC along with this comment table will be sent to all Aboriginal groups and stakeholders who submitted comments.</p> <p>The CNSC always welcomes comments. Comments provided outside of the formal consultation period will be addressed during the next scheduled revision of the REGDOC.</p>
165	General	Saugeen Ojibway Nation	<p>This letter is sent on behalf of the Saugeen Ojibway Nation (the "SON") and provides comments on the <i>Draft REGDOC-3.2.2, Aboriginal Engagement</i> (the "REGDOC"). The SON continues to reject the CNSC's determination of the CNSC's consultation obligations to the SON, or the procedures it believes will discharge those obligations in the context of the REGDOC. We submit the following comments only to ensure that a continued consultation process between the SON and the CNSC will occur expeditiously with respect to the continued development of the REGDOC. As such, the following should not be viewed as an exhaustive list of the SON's concerns with respect to the REGDOC.</p>	<p>The CNSC is committed to building its relationship with the SON.</p> <p>REGDOC-3.2.2 was made available for a 120-day public consultation period which provided industry, Aboriginal groups, members of the public, and stakeholders an opportunity to provide feedback on this draft document. The public and Aboriginal groups were provided with an additional 21-day period to provide feedback on the comments received. Comments were dispositioned and will influence the revision of REGDOC 3.2.2.</p> <p>The revised REGDOC along with this comment table will be sent to all Aboriginal groups and stakeholders who submitted comments.</p> <p>The CNSC always welcomes comments. Comments provided outside of the formal consultation period will be addressed during the next scheduled revision of the REGDOC.</p>
166	General	Saugeen Ojibway Nation	<p><u>Role of the Crown vs. Role of the Proponent</u></p> <p>The draft REGDOC fails to clearly distinguish between the role of</p>	<p>The Preface, and Sections 1 and 2 of the REGDOC have been updated to clarify that the CNSC as an agent of the Crown has the ultimate responsibility to fulfill the legal duty to consult and that</p>

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			<p>the Crown and the proponent concerning the duty to consult and accommodate and requires the proponent to conduct the bulk of the engagement with an Aboriginal group(s). The CNSC, as the Crown, unilaterally determines what, if any, "consultation activities" are required with an Aboriginal group based solely on an Aboriginal engagement plan and report filed by the proponent as part of a project description and/or license application. This is problematic for two reasons.</p> <p>First, such unilateral decisions are very much part of the "old way" of relating to Aboriginal people and is inconsistent with the law, the honour of the Crown and the Crown's fiduciary obligations. More importantly, it fails to focus on the primary outcome of any consultation process - the protection of Aboriginal and Treaty rights and the facilitation of reconciliation. Instead, the REGDOC continues to reflect a unilateral, "check box" approach to the Crown's duty to consult and accommodate where critical early determinations of potential impacts are made by CNSC without the requirement of early consultation or engagement on the scope of the consultation itself. This inevitably will lead to significant disagreement between the CNSC and the SON on the requirements of consultation for a given review and leave the SON with the impression that consultation has been reduced to a hollow series of meetings, telephone calls and emails. It is unclear how unilateral determinations by the CNSC on the scope of consultations efforts could effectively address the SON's concerns, protect the SON's rights and interests, or ultimately, promote reconciliation with the SON. The CNSC must seek out, understand and incorporate the SON's perspective on the requirements of consultation and accommodation in the review of an activity, application or project <i>prior</i> to establishing or implementing its review process. This is true also for those circumstances where CNSC determines either no, or cursory, consultation engagement is required due to the low potential for adverse impacts. These determinations simply cannot be made by CNSC in the absence of consultation with SON to understand the significance of the proposed licensee activities or their potential impact on SON Rights and interests.</p>	<p>REGDOC 3.2.2 in no way absolves the CNSC of this responsibility.</p> <p>The intent of the REGDOC is to:</p> <ul style="list-style-type: none"> a) provide guidance to help licensees consider the potential and established rights of Aboriginal groups and engage with potentially affected groups early in the project development stage b) establish reporting requirements for licensees so that when the duty to consult is potentially raised, the CNSC is informed early-on regarding licensee engagement activities. This information will help the CNSC in fulfilling its duty to consult. <p>Section 3.2.2 outlines the CNSC's generic process upon receipt of a licensee's Aboriginal engagement plan and report. As guided by its approach to Aboriginal consultation as outlined in CNSC's <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>, the CNSC establishes project specific consultation processes that are flexible and may be adapted to respond to specific requests by identified Aboriginal groups. Although licensees may conduct certain procedural aspects of the consultation process, REGDOC 3.2.2 in no way absolves the CNSC of the ultimate responsibility as an agent of the Crown to fulfill the legal duty to consult.</p> <p>CNSC's identification of Aboriginal groups to consult, with input from a licensee's engagement plan, is only a first step. The CNSC recognizes the importance of having input from Aboriginal groups regarding the characterization of their concerns and the consultation process.</p> <p>The CNSC understands the importance of seeking input from Aboriginal groups and working collaboratively to determine an activities potential impact on any Aboriginal or Treaty rights. That is why in S. 3 licensees are encouraged to ask Aboriginal groups how they would like to be engaged and encourages the development of an engagement work plan that is reasonable to both parties.</p>

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			<p>Second, the CNSC cannot wash its hands of the duty to consult and accommodate. Consultation and accommodation cannot proceed in the absence of the Crown. It must be absolutely clear to all parties what procedural aspects of the duty the CNSC is planning to delegate to a proponent. The SON expects the CNSC to be fully and directly engaged with the SON on activities or projects, planned or existing, that may impact on the SON's rights, interests and way of life. As such, the SON expects that the parties (CNSC, SON and the proponent) would set out by way of agreement the specific role of the Crown and the procedural aspects of the Crown's duty that are being delegated to the proponent before the commencement of a SON specific process¹. Such an approach provides the necessary clarity for the parties and provides for a much more efficient process, and will help avoid any unnecessary delays in the process. More importantly, it ensures that the ensuing process fully addresses the SON's concerns and that the fundamental objectives of the duty are being met, that is, the protection of the SON's Aboriginal and Treaty Rights and the facilitation of reconciliation.</p> <p>¹ SON has expressed its concern to the CNSC that consultation efforts within the SON Traditional Territory must be specific to SON. This is also consistent with the long engagement history between CNSC and SON on previous nuclear project reviews, including Bruce Power's application to build new nuclear reactors, as well as the current and ongoing review of OPG's DGR Project. Many aspects of the REGDOC seem to be inconsistent with the past practice between the SON and the CNSC on these matters. The SON must have confidence in any consultative process for matters or projects within Anishnaabeking and has and will continue to insist that any consultative process be specific to them. In short, SON must help shape and develop the consultative process. The language in the REGDOC must reflect this fundamental principle.</p>	<p>Appendix A was updated to include recommendation to seek input from Aboriginal groups early on regarding the potential for the project to impact their rights.</p> <p>Furthermore, as stated in s. 4, the CNSC establishes project specific consultation processes that are flexible and may be adapted to respond to specific requests by identified Aboriginal groups. If the CNSC determines that Aboriginal consultation activities are required, it will notify the identified Aboriginal groups and provide information regarding:</p> <ul style="list-style-type: none"> • the regulated facility or activity • the regulatory review process to be followed • the proposed scope of Aboriginal consultation activities • CNSC contact information <p>As the consultation process evolves, the CNSC will review its preliminary list of Aboriginal groups and Aboriginal consultation activity plan, and change them accordingly. The CNSC's approach is flexible and will adapt according to feedback received from identified Aboriginal groups.</p>
167	General	Saugeen Ojibway Nation	<p><u>Early Engagement and Role of Proponent Engagement Activities</u></p> <p>The SON has consistently stressed upon the CNSC and proponents the importance of early engagement. Early engagement is essential to any successful consultation and</p>	<p>The CNSC understands the importance of seeking input from Aboriginal groups and working collaboratively to determine an activities potential impact on any Aboriginal or Treaty rights. That is why in s. 3 licensees are encouraged to ask Aboriginal groups how they would like to be engaged and encourages the development of</p>

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			<p>accommodation process. The REGDOC requires licensees who “propose regulated facilities or activities” that could adversely impact potential or established Aboriginal and/or Treaty rights to engage with the potentially impacted Aboriginal group(s). The SON welcomes the CNSC’s recognition of the importance of a proponent engaging the SON directly on any matters that may impact on their rights, interests and way of life at the earliest possible stages, and while the greatest opportunities exist for mitigation of impacts.</p> <p>However, the SON has deep concerns for the determination of the scope of this early engagement. The REGDOC clearly states that the level of engagement by the proponent is “commensurate” with the significance of the potential impact on asserted and established Aboriginal and Treaty rights and related interests, including Aboriginal title. This is highly problematic for many of the same reasons outlined above in the context of the CNSC’s unilateral determination of the scope of the Crown’s consultations with an Aboriginal group(s). Specifically, it reaffirms an historic pattern of exclusion and marginalization of the SON from fundamental decisions that may adversely impact on their rights, interests and way of life and their relationship to their territory for many generations to come. It presupposes that the SON’s Aboriginal and Treaty rights and its relationship to their territory are frozen in time and fails to acknowledge that SON’s rights, interests and way of life can and will evolve over time and take on a modern expression consistent with their relationship with and sustained vision for their territory². Moreover, it creates a recipe for conflict and adversarial approaches that will not achieve the reconciliation that is so desperately needed in the context of the nuclear industry’s historic and ongoing operations within SON territory - Anishnaabekiing. This is simply unacceptable.</p> <p>A proponent cannot possibly determine the scope of its engagement with an Aboriginal group(s) without first having some context and deep understanding of the asserted and established Aboriginal and Treaty rights. This deeper understanding can only come from the Aboriginal group(s) itself. This is the crucial first step</p>	<p>an engagement work plan that is reasonable to both parties.</p> <p>Appendix A has been updated to include recommendation to seek input from Aboriginal groups early on regarding the potential for the project to impact their rights.</p> <p>As stated in s. 3 licensees are encouraged to consider the engagement protocols and agreements of potentially affected Aboriginal groups when determining which Aboriginal groups to engage and when developing their engagement work plans.</p> <p>REGDOC 3.2.2 encourages licensees to engage Aboriginal groups early and, as stated in s. 3.2.2, early engagement provides Aboriginal groups with an opportunity to share information on local and Aboriginal traditional knowledge (ATK) that helps to identify potential impacts from the regulated facility or activity on traditional land use, treaty rights, Aboriginal rights, and culturally important sites, including archeological sites.</p> <p>The CNSC understands the importance of ATK and that it must be understood from the perspective of the Aboriginal group. Section 3.1 has been updated to include guidance to licensees regarding the importance of understanding ATK in the context of the Aboriginal group’s world view and the gathering of ATK must be approached respectfully, in collaboration with the Aboriginal group, with the understanding that the ATK may be sensitive or proprietary.</p> <p>Reconciliation was added to section. 2, Background.</p>

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			<p>in the early engagement of the Aboriginal group(s). The proponent's primary focus should be on a respectful and meaningful process that will foster the necessary rapport, trust and confidence to move the process forward and to ensure that it will achieve its primary objectives. This will likely require the completion of the necessary protocol or framework agreements that will set out the terms of the engagement with the Aboriginal group as well as to, among other things, facilitate the sharing of vital information, address capacity issues, provide for the identification of key issues and means for addressing those issues, provide a mechanism(s) for the development and implementation of key mitigation measures/strategies, and anything that may be of importance to the parties either in terms of the process itself and or the overall relationship. This work will also be informed by which procedural aspects of the Crown's duty have been delegated to the proponent.</p> <p>² The SON has consistently stated that any consultative process must not adopt or adhere to a narrow view of Aboriginal and Treaty rights. The dialogue is much broader than whether or not one can hunt, trap or fish. The process must focus on the protection of the SON's fundamental relationship to Anishnaabeking. The relationship is ever evolving and is not frozen in time. A full expression of the SON's Aboriginal rights, Treaty rights, interests and way of life are inextricably linked to this relationship. The REGDOC simply does not provide enough flexibility to fully analyze the risk and potential impacts of project, activity or development on the SON's rights, interests and way of life.</p> <p>There is reference to the use and incorporation of Aboriginal Traditional Knowledge but the REGDOC fails to acknowledge that the use and incorporation of such knowledge must be done on the SON's terms, consistent with their relationship to Anishnaabeking.</p>	
168	General	Saugeen Ojibway Nation	<p><u>Accommodation</u></p> <p>1. It has been the SON's experience that the Crown has increasingly relied on proponent activities to discharge its constitutional duties, including the conclusion of appropriate accommodation measures. The REGDOC suggests that any proposed mitigation or accommodation measures be submitted as part of the overall engagement plan and report and that such</p>	<p>1. Comment noted. REGDOC 3.2.2 has been updated to clarify that any accommodation or mitigation measures identified by the proponent will help inform the CNSC's consultation process and will be communicated to the Commission, who will ultimately make the decision on mitigation measures and accommodation measures relevant to its authority, through the licensee's Aboriginal engagement section of their Commission Member Document.</p>

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			<p>information will inform the CNSC's own consultations with an Aboriginal group(s). However, there is no reference or guidance to the CNSC's role concerning the treatment of the mitigation/accommodation measures established through the proponent's engagement with an Aboriginal group(s). There should, at a minimum, be clear language in the REGDOC that the CNSC will use the mitigation or accommodation measures to further support and or enhance its consultation and accommodation process with a specific Aboriginal group(s). The CNSC will render the proponent's engagement meaningless if, as the Crown, it is unable or unwilling to support and implement the mitigation or accommodation measures arrived at between the proponent and a specific Aboriginal group(s). This would be inconsistent with the honour of the Crown and the Crown's fiduciary obligations to the specific Aboriginal group(s).</p> <p>2. The REGDOC also fails to offer any guidance in terms of the CNSC's role in the event that the proponent and an Aboriginal group are unable to reach an agreement on potential impacts and the appropriate mitigation or accommodation measures for addressing those impacts. The failure of the proponent and an Aboriginal group(s) to reach an agreement on the appropriate accommodation measures does not mean that accommodation is not required. The responsibility to ensure that the appropriate accommodation measures are in place ultimately rests with the Crown. While it is recognized that the Commission can make decisions and impose licence conditions that facilitate or implement accommodation measures, the REGDOC should clearly set out what the CNSC perceives to be its role, as the Crown, in the development and implementation of appropriate accommodation measures. This should be consistent with the primary objective of the duty to consult and accommodate – to ensure the protection of Aboriginal and Treaty rights and the facilitation of reconciliation.</p> <p>3. Lastly, it is extremely disappointing that the REGDOC fails to incorporate, or even acknowledge, the principle of free, prior and informed consent. Canada is a signatory to the <i>United Declaration on the Rights of Indigenous Peoples</i>, which expressly articulates</p>	<p>2. As stated in the Preface, for further information on the CNSC's approach to Aboriginal consultation, including the CNSC's role and approach to accommodation measures, refer to the external policy found in the <i>Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation</i>.</p> <p>As stated in the Codification of Current Practice:</p> <p>The CNSC ensures that all its licensing decisions under the <i>Nuclear Safety and Control Act</i> and environmental assessment decisions under the <i>Canadian Environmental Assessment Act</i> uphold the honour of the Crown and consider Aboriginal peoples' potential or established Aboriginal or treaty rights pursuant to section 35 of the <i>Constitution Act, 1982</i>.</p> <p>The CNSC recognizes that the effect of good faith consultation may result in the need to establish accommodation measures to prevent or minimize impacts of activities involving nuclear substances on Aboriginal Interests. Accommodation will likely flow through licensing requirements on licensees subject to the CNSC's authority. Any such potential accommodation must be within the statutory mandate of the CNSC, keeping in mind that the CNSC's mandate is broad in that it allows for the protection of the environment, and the health, safety and security of Canadians and there are opportunities for potential impacts to rights to be mitigated through the licensing processes.</p> <p>Licensee's consultation activities are important and can inform and assist the CNSC staff's consultation activities. The outcome of all such activities, including any proposed accommodation measures by the licensee, will also form part of the evidence presented by licensees for consideration by the Commission.</p> <p>3. The CNSC approach to consultation including the approach to implementing Canada's support of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) is informed by the guiding principles outlined in Canada's <i>Aboriginal Consultation and</i></p>

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			<p>the principle and identifies its application in circumstances in which the CNSC may have regulatory authority (e.g. the burial of toxic substances on aboriginal lands). Yet, we have seen no effort by Canada, or the CNSC, to begin the implementation of the declaration or the principle of consent. At a minimum we would have expected some recognition or acknowledgement that consent <i>may</i> be required for some projects or developments.</p> <p>4. We look forward to the opportunity to discuss our concerns in greater detail in an in-person meeting so that we can ensure that the development of the REGDOC, and its implementation in Anishnaabekiing, is consistent with the previous consultation relationship between the SON and the CNSC and is responsive to the needs of SON.</p>	<p><i>Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult.</i></p> <p>The updated guidelines state:</p> <p>On November 12, 2010 Canada issued a Statement of Support endorsing the United Nations Declaration on the Rights of Indigenous peoples (Declaration), an aspirational document, in a manner fully consistent with Canada's Constitution and laws. The Declaration describes a number of principles such as equality, partnership, good faith and mutual respect. Canada strongly supports these principles and believes that they are consistent with the Government's approach to working with Aboriginal peoples.</p> <p>However, Canada has concerns with some of the principles in the Declaration and has placed on record its concerns with free, prior and informed consent when interpreted as a veto. As noted in Canada's Statement of Support, the Declaration is a non-legally binding document that does not change Canadian laws. Therefore, it does not alter the legal duty to consult. A copy of Canada's statement of support, along with other materials, can be found at: http://www.aandc-aadnc.gc.ca/eng/1309374407406</p> <p>Reconciliation was added to section. 2: background.</p> <p>4. Comment noted. CNSC staff will follow up with the SON in regards to this request.</p>