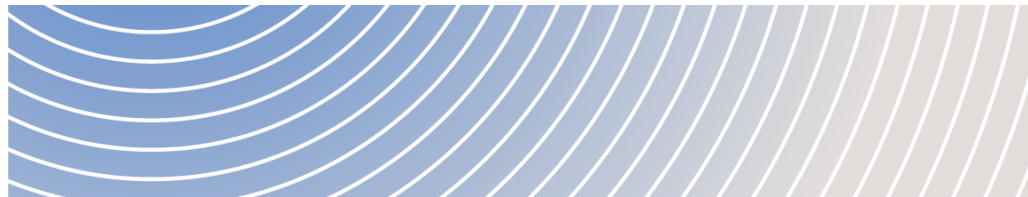


Analysis Report



WHETHER TO DESIGNATE THE **SUGAR CREEK PEAT HARVESTING PROJECT** IN MANITOBA PURSUANT TO THE *IMPACT ASSESSMENT ACT*

January 2023



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Purpose

The Impact Assessment Agency of Canada (the Agency) prepared this report for consideration by the Minister of Environment and Climate Change (the Minister) in responding to a request to designate the Sugar Creek Peat Harvesting Project (the physical activities referred to as the Project) pursuant to section 9 of the *Impact Assessment Act* (the IAA).

Context of Request

On October 19, 2022, the Minister received a request to designate the Project from Fisher River Cree Nation (the requester). The requester raised concerns regarding the potential effect of the Project on the environment including effects to fish and fish habitat, species at risk, cumulative effects and impacts to the rights of Indigenous Peoples. The Agency focused its assessment on the potential effects within federal jurisdiction as outlined in subsection 9(1) and 9(2) of the IAA for the purposes of the designation request and followed the Agency's Operational Guide: Designating a Project under the *Impact Assessment Act*¹.

The Agency sought input from Sun Gro Horticulture Canada (the Proponent), federal authorities, the Government of Manitoba, and nine additional potentially affected Indigenous groups: Peguis First Nation; Dauphin River First Nation, Lake Manitoba First Nation, Lake St. Martin First Nation, Little Saskatchewan First Nation, Kinonjeoshtegon First Nation, Pinaymootang First Nation; Manitoba Métis Federation and Interlake Reserves Tribal Council. The Agency received input from five Indigenous groups: Manitoba Métis Federation, Dauphin River First Nation, Lake Manitoba First Nation, Kinonjeoshtegon First Nation and Interlake Reserves Tribal Council.

The Proponent responded to the Agency on November 15, 2022, with information about the Project, a response to the requester's concerns, and its view that the Project should not be designated.

The Government of Manitoba has not yet received a submission from the Proponent, but confirmed that an environmental assessment and licence for the Project would be required pursuant to *The Environment Act*. The Proponent is currently preparing an Environment Act Proposal to support the issuance of a licence under *The Environment Act*. The Proponent currently holds a Peat Harvesting Licence (PHL) for the Sugar Creek area, issued June 15, 2015 under *The Peatlands Stewardship Act*, which includes the requirement of a Peatland Management Plan and Peatland Recovery Plan.

Advice on potential effects due to the Project, and applicable legislative frameworks, was received from Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), Natural Resources Canada (NRCan), Health Canada (HC), Transport Canada (TC), Indigenous Services Canada (ISC), Women and Gender Equality Canada, and the Government of Manitoba.

¹ Designating a Project under the Impact Assessment Act - Canada.ca

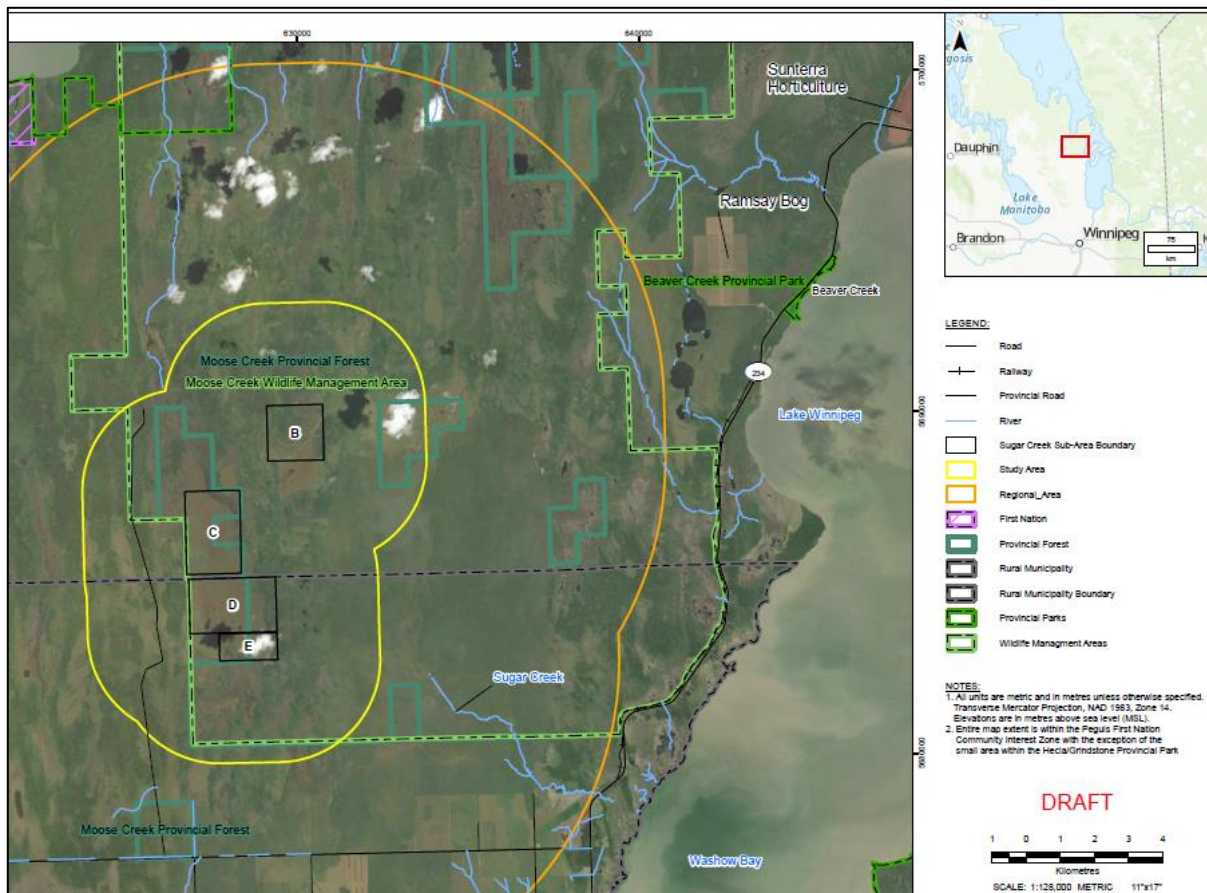


Project Context

Project Overview

The Proponent is proposing the construction, operation, decommissioning and abandonment of the Sugar Creek Peat Harvesting Project, located approximately 20 kilometres southeast of Fisher River Cree Nation, Manitoba (Figure 1). As proposed, the Project would extract peat from four sub-areas with an estimated 750 hectares of total harvestable area and include an access road, bog roads, a staging area, sedimentation ponds, and a drainage network.

Figure 1: Location of the Project



Source: KGS Group, Draft Sugar Creek Environmental Act Proposal, November 2022

Figure Description: The four Sugar Creek sub-areas are oriented north-south B, C, D and E. Sugar Creek is located southeast of the sub-areas and highway 234 and Lake Winnipeg are east of the Project.

Project components and activities

The Project would include development of the access road and site preparation followed by construction of the drainage network, and then harvesting. Site preparation will involve clearing of the proposed harvest areas during the winter. Approximately 80 hectares of trees will be cleared annually until the entire 750 hectares of harvestable area is clear. Once site preparation is complete, 80 hectares each year will be prepared for harvesting. A minimum 0.5 metres of peat will remain in place after harvesting and harvest areas will be progressively restored. Peat may be temporarily stockpiled in the staging area before it is hauled to the existing Proponent-owned processing and packing facility near Elma, Manitoba. The Peatland Recovery Plan for the Project that is required as part of the PHL, will outline the restoration process that typically consists of surface preparation to increase water availability on site, donor plant material collection and spreading, straw spreading, fertilization, drainage blocking and monitoring. The estimated Project lifespan is 37 years producing an estimated 17,200,000 m³ of horticultural grade peat.

Main project components include the following:

- A 15 metres width access road from provincial road 325 to sub-area E (approximately 7.8 kilometres). Ditches will be constructed on both sides of the road and the installation of culverts may be required.
- Bog roads within and connecting the sub-areas, and connecting the staging area to the harvesting areas. Roads will be constructed using non-merchantable timber and surface vegetation removed as part of site preparation with a clay base and gravel topping.
- A staging area at the southwest corner of sub-area E for on-site facilities and equipment storage. The staging area will be approximately four hectares and will connect to the access road and bog roads. Facilities at the staging area will include:
 - a construction trailer;
 - a shipping container;
 - a Quonset hut² or wood-framed building with a concrete foundation;
 - a holding tank for domestic water use with potential for a groundwater well in the future;
 - a generator; and
 - an accredited steel double walled diesel fuel aboveground storage tank on a concrete platform.
- Field drainage ditches in areas with harvestable peat to remove interstitial water in the upper layer of peat. Each ditch will be excavated to 1.5 metres deep and 1.5 metres wide and spaced approximately 33 metres apart. Field drainage ditches are typically constructed perpendicular to the main drainage ditches.

² A prefabricated shelter having a semicircular arching roof of corrugated metal.

- Main drainage ditches that connect to sedimentation ponds and are located at the end of the field drainage ditches and around the perimeter of the harvesting areas. Ditches will be approximately two metres wide and three metres deep and designed with a low gradient to maintain slow flow for the settlement of suspended solids.
- Sedimentation ponds at the end of the main drainage ditches that will discharge drainage from the site through an outlet ditch. Typical basin volume will be 25 cubic metres per hectare of peatland area.
- Outlet ditches that will convey discharge from the sedimentation ponds to the surrounding environment. Two outlets are proposed, one conveying discharge from sub-areas C, D and E and the second conveying discharge from sub-area B. Water from the Project will eventually flow towards Sugar Creek and then into Lake Winnipeg.

Analysis of Designation Request

Authority to designate the Project

The *Physical Activities Regulations* (the Regulations) of the IAA identify the physical activities that constitute designated projects.

The items of the Regulations most applicable to the Project are:

- (60) The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m³/year or more of water from a natural water body into another natural water body.

The Project, as described in the information submitted by the Proponent, is not included in the Regulations because the peat harvesting will not divert 10 000 000 m³/year or more of water from a natural water body into another natural water body.

Under subsection 9(1) of the IAA the Minister may, by order designate a physical activity that is not prescribed in the Regulations. The Minister may do this, if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

The Minister cannot designate a physical activity if the carrying out of the physical activity has substantially begun, or a federal authority has exercised a power or performed a duty or function in relation to the physical activity (subsection 9(7) of the IAA).

The Agency is of the view that the Minister may consider designating the Project pursuant to subsection 9(1) of the IAA as the carrying out of the Project has not substantially begun and no federal authority has exercised a power or performed a duty or function that would permit the Project to be carried out, in whole or in part.

Legislative Context

Federal

Fisheries Act

The Fish and Fish Habitat Protection Program of DFO reviews projects for their impacts to fish and fish habitat by ensuring compliance with the *Fisheries Act* and *Species at Risk Act* (SARA). Through this program, DFO may provide information to the Proponent in order to avoid and mitigate the negative impacts of the Project.

A *Fisheries Act* Authorization would be required if the Project is likely to cause the harmful alteration, disruption, or destruction to fish habitat and/or is likely to result in the death of fish. The *Fisheries Act* also prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations or other federal legislation.

Consideration of the issuance of a *Fisheries Act* Authorization includes consultation with Indigenous groups. The *Fisheries Act* gives explicit consideration under section 2.4, where the Minister of Fisheries and Oceans must consider any adverse effects that the decision (under paragraphs 34.4(2)(b) and 35(2)(b)) may have on the rights of Indigenous Peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*. The precise nature of DFO's consultation activities is dictated by developing a shared understanding with each respective community, and determining a mutual path forward. Feedback from Indigenous groups, such as those concerns raised by the requester regarding impacts to spawning habitat in Sugar Creek for the Project, would be incorporated into DFO's assessment of impacts, and contribute to methods used to mitigate, offset, and monitor impacts within the bounds of DFO's mandate.

If granted, a *Fisheries Act* Authorization would include legally-binding conditions for avoidance, mitigation, and offsetting requirements commensurate with project impacts. Monitoring to validate impacts, and verify efficacy of mitigation measures and offsetting are also part of Authorization conditions.

Species at Risk Act

For non-aquatic species listed in Schedule 1 of SARA as Extirpated, Endangered, or Threatened, a permit may be required from ECCC (e.g., under section 73 of SARA) for activities that affect a listed terrestrial wildlife species, any part of its critical habitat, or the residences of its individuals, where those prohibitions are in place. Such permits may only be issued if: all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted; all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and, if the activity will not jeopardize the survival or recovery of the species.

It is possible that prohibitions may come into force through Orders in Council for individuals, residences, and critical habitat on Project-implicated, non-federal lands and a SARA permit may be required for the Project.



Canadian Environmental Protection Act, 1999

The Project may be required to provide greenhouse gas (GHG) emissions reporting as required by the Greenhouse Gas Reporting Program under the *Canadian Environmental Protection Act, 1999* if ten kilotonnes or more of GHGs are emitted in carbon dioxide equivalent units per year.

Migratory Birds Convention Act, 1994

The *Migratory Birds Convention Act, 1994* protects migratory birds and their eggs and nests, wherever they occur, regardless of land tenure. A permit may be required for activities affecting migratory birds, with some exceptions detailed in the Migratory Birds Regulations.

Canadian Navigable Waters Act

The Project may require approval under the *Canadian Navigable Waters Act* if components such as the access road cross a navigable waterway.

Provincial

The Environment Act

A licence will be required for the Project under *The Environment Act*. *The Environment Act* requires the proponent to prepare a proposal for review and approval by Manitoba Environment, Climate and Parks. The proposal will provide a description of the Project and existing environment conditions, a summary of Indigenous and public engagement that will be completed and an assessment of potential biophysical (air quality, soils, groundwater, surface water, vegetation and aquatic and terrestrial biota and habitat) and socioeconomic (economic, traffic, noise, human health, aesthetics, recreation, areas of interest, heritage resources and Aboriginal and treaty rights) effects of the Project.

Once submitted to Manitoba Environment, Climate and Parks; technical review of *The Environment Act* proposal will be completed by subject matter experts and the proposal will be posted publically for review. Following the public and technical advisory committee review, Manitoba Environment, Climate and Parks will determine whether additional information is required from the proponent and whether a public hearing is warranted based on public concern received. Manitoba Environment, Climate and Parks will also determine whether the province has a legal duty to consult with Indigenous groups.

When the Project receives approval, *The Environment Act* Licence will include terms and conditions to address adverse effects. Proponents are required to comply with the terms and conditions of an approval.

The Peatlands Stewardship Act

The Peatlands Stewardship Act provides the legal framework for PHLs in Manitoba. The licensing process promotes proactive, proponent-led engagement with Indigenous and stakeholder groups, and provides the opportunity for public input on PHL applications.



Crown consultation under *The Peatlands Stewardship Act* is required when issuing new licences. Since the Proponent holds the peat harvesting rights for the proposed harvest areas, no Crown consultation will occur with respect to the Project PHL.

The Endangered Species and Ecosystems Act

Under *The Endangered Species and Ecosystems Act*, it is unlawful to kill, injure, possess, disturb or interfere with the species, destroy or interfere with the habitat of the species, and damage, destroy, obstruct or remove a natural resource on which the species depends for its life and propagation. Endangered or threatened ecosystems are also protected. The Manitoba Wildlife and Fisheries Branch is responsible for the administration of the Act.

The Crown Lands Act

A General Permit for the access road construction on provincial crown land and a Work Permit authorizing work on provincial crown land will be required for the Project. Permits are issued by Manitoba Natural Resources and Northern Development and there is no public or Indigenous consultation.

The Water Rights Act

A Licence to Construct Water Control Works will be required to authorize drainage, water flow and water level alteration for the Project. Licences are issued by Manitoba Environment, Climate and Parks and there is no public or Indigenous consultation.

The Forest Act

A Timber Permit for the removal of timber from Crown forests, including those within a Peat Harvest Licence area will be required for the Project. Permits are issued by Manitoba Natural Resources and Northern Development, Forestry and Peatlands Branch and there is no public or Indigenous consultation.

The Heritage Resources Act

A permit may be required to ensure heritage resources are protected. The Proponent submitted a screening request to the Manitoba Historic Resource Branch on October 21, 2022 to assess if the Project has the potential to impact heritage resources and determine whether the Proponent is required to complete a Heritage Resource Impact Assessment and obtain the associated permit.

Potential adverse effects within federal jurisdiction

The Agency's analysis identified the potential for adverse effects within federal jurisdiction that may result from carrying out the Project. The Agency is of the view that the potential adverse effects within federal jurisdiction would be limited and managed through project design, mitigation measures, and existing legislative frameworks.



Federal and provincial legislative mechanisms relevant to the Project described above were considered in the Agency's analysis of potential adverse effects or public concerns within federal jurisdiction in relation to subsections 9(1) and 9(2) of the IAA.

Fish and fish habitat

The Agency considered information provided by the requester, Indigenous groups, DFO, ECCC, the Government of Manitoba and the Proponent. The Agency is of the view that the potential for a change to fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*, is limited. In addition, existing legislation provides a framework to address potential adverse effects.

Concerns expressed by the requester and Indigenous groups included Project effects on the hydrological and ecological functions of groundwater and surface water in the requester's traditional territory, and effects on fish and fish habitat, and spawning areas within the Sugar Creek watershed system. Additional concerns of Project effects on wetlands in the requester's traditional territory were expressed and the related effects to:

- habitats for a wide range of fish;
- nutrient source for connected waters;
- natural shoreline protection from wave action and erosion; and
- natural flood reduction and control through water storage and retention.

DFO stated that the scale and extent of the Project's potential to cause harmful alteration, disruption, or destruction of fish habitat or the death of fish is unclear at this time and that the Project may require authorization under the *Fisheries Act*. Additional information regarding the duration and seasonality of changes to flow are also required for DFO to characterize fish and fish habitat downstream of the Project.

ECCC noted that the construction, operation, and decommissioning of the Project could have adverse effects on the quality of groundwater and surface water, as well as on the hydrological regimes of watercourses and water bodies. Surface water quantities could be changed by the alteration of flows and erosion and sedimentation due to the Project and could negatively impact water quality. The removal of peatlands and surrounding wetlands will also affect water quality by removing the natural process of filtration that peatlands provide. ECCC also indicated that water drained from peat is proposed to be collected in sedimentation ponds via drainage ditches and released to natural watercourses. These activities could result in erosion and sedimentation, increases in suspended solids, changes in pH, and mobilization of other contaminants to surrounding waters, resulting in adverse effects on water quality. Contaminants may be introduced into waterbodies through wastewater discharge, groundwater resurgence, or spills resulting in adverse effects on water quality.

The Manitoba Government noted that water quality and quantity will be considered in the licensing process under *The Environment Act* for the Project and stream crossings will be required to be designed to the recommendations in the Manitoba Stream Crossing Guidelines for the Protection of Fish and Fish Habitat³.

³ https://discovery.gov.mb.ca/nrnd/fish-wildlife/pubs/fish_wildlife/fish/sguide.pdf

The Proponent specified that drainage and harvesting activities during operation of the Project could result in increased sediment loads to downstream waterbodies. Elevated levels of suspended sediment can reduce water quality, which may interfere with fish spawning, navigation and the ability to locate food and escape predators. However, a drainage plan for Sugar Creek will be developed for *The Environment Act* Licence and drainage is not anticipated to discharge any water directly into waterways. The Proponent noted that there are no in-water construction works required. The Proponent stated that water quality will be monitored immediately downstream of the sedimentation pond outlet channel. Constructed drainage at the harvesting areas will follow existing drainage patterns and water samples will be collected monthly for analysis of total suspended solids and pH. Additional samples may be collected as required. Sugar Creek is located six kilometers east of the Project, with several beaver ponds and calm water environments which will allow sediment to settle. The Proponent indicated that the Project will have no measureable effect on fish and fish habitat.

The Proponent is undertaking the following studies to analyze baseline biophysical conditions:

- A hydrologic assessment of the existing natural drainage within the bounds defined for the Project area and adjacent areas that contribute to basin runoff in the region;
- A hydraulic analysis to assess the potential impacts of the proposed peat development on the hydraulic capacity of existing water crossings identified during the site reconnaissance survey;
- An aquatic assessment of water courses within or immediately adjacent to the Sugar Creek sub-areas to determine the presence of fish and fish habitat as well as aquatic species at risk; and
- A baseline surface water quality sampling program with samples collected at five locations within the proposed harvest areas and nearby water bodies, to assess how future drainage water will potentially impact downstream receiving water.

The Proponent indicated that potential impacts to fish and fish habitat would be mitigated through:

- minimizing the surface area being drained or disturbed;
- avoiding the destruction of water bodies by maintaining a 100 meter buffer;
- maintaining water levels on undisturbed lands;
- directing drainage to settling ponds prior to discharging to the natural drainage system;
- preventing leaks, spills and releases of contaminants such as fuels;
- providing spill clean-up equipment and materials;
- preparing an emergency spill response plan and implementing a closure plan to restore predevelopment water levels;
- no in-water construction activities are proposed and no direct discharge of drainage to a natural waterbody is anticipated;
- treatment of contact water prior to release to the receiving environment;
- harvesting peat in an environmentally sustainable fashion that minimizes local, regional, and national effects on the environment, using industry accepted practices; and
- the peatland will be reclaimed after harvesting, including re-establishing the hydrology and returning it to a functioning wetland ecosystem.



The Proponent does not expect an authorization under the *Fisheries Act* will be required but plans to submit project plans to DFO's Fish and Fish Habitat Protection Program to ensure compliance with the *Fisheries Act*.

Potential effects of the Project to fish, fish habitat, water quality and quantity will be assessed through the provincial licensing process under *The Environment Act* and could be assessed through the federal SARA and *Fisheries Act* if required.

Aquatic species

The Project will not result in a change to aquatic species, as defined in subsection 2(1) of the SARA as it will not affect the marine environment or marine plants.

Migratory birds and species at risk

The Agency considered information provided by the requester, Indigenous groups, ECCC, the Government of Manitoba, and the Proponent. The Agency is of the view that existing legislation provides a framework to address changes to migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and effects on federally listed species at risk under the SARA.

Concerns expressed by the requester and Indigenous groups included effects to wetlands in the requester's traditional territory and related effects to:

- habitats for a wide range of waterfowl, flora, furbearers and reptiles;
- wildlife (e.g., moose) and plant species, some of which are species at risk;
- refugia for rare and endangered species; and
- preservation of biodiversity and vitality of species.

ECCC does not expect that it will be required to exercise a power or perform a duty or function related to the Project to enable it to proceed. The Project will remove habitat important for nesting, foraging, staging, and overwintering for migratory birds. Individual mortality and the destruction of nests and eggs or any other structure necessary for the reproduction and survival of species at risk could occur during all Project phases, particularly during site preparation, operation and Project decommissioning. Mortality of migratory birds and species at risk could also occur due to collisions with vehicles or infrastructure related to the Project. Accidental oil or chemical spills could also have adverse effects if these substances come into contact with migratory birds and species at risk.

ECCC noted that the Project is not located on federal lands and there are no SARA orders in place for the proposed project location. Only the SARA prohibitions pertaining to migratory birds would apply and these would not apply to critical habitat unless an order is put in place. ECCC has identified critical habitat for one species at risk, the golden-winged warbler, which intersects with the northern portion of the Project area. The golden-winged warbler is listed as threatened under Manitoba's *The Endangered Species and Ecosystems Act*. Sandhill crane and other shorebird species that use peatlands are likely to be breeding in the Project area. ECCC identified 20 species with ranges that intersect the project area: eight threatened (barn swallow, bank swallow, bobolink, Canada warbler, common nighthawk, eastern whip-poor-will and horned grebe), two endangered (little brown myotis and northern myotis) and eight of special concern (eastern wood-pewee,

evening grosbeak, horned grebe, peregrine falcon, short-eared owl, yellow rail, northern leopard frog and monarch). All of the aforementioned species are on Schedule 1 of the SARA. All of the bird species except the peregrine falcon are protected under the *Migratory Birds Convention Act, 1994*.

The Government of Manitoba noted that a proponent must conduct a survey of species that are endangered or of special concern as well as migratory birds, their nests and eggs prior to construction. If wildlife losses are identified during operation, mitigation measures are required.

The Proponent acknowledges that predatory birds, waterfowl, amphibians and other fur bearing mammals of interest to local trappers (i.e., moose) utilize peatland habitat and that the clearing and peat harvesting will result in the disturbance and loss of this habitat until the peat areas are restored. The Proponent currently holds a PHL for the Sugar Creek area and the existing Peatland Recovery Plan will be updated to fulfill the requirements of *The Peatlands Stewardship Act*.

The Proponent undertook biological surveys to support their proposal under *The Environment Act*, and there are no vegetation, amphibian and mammal species federally protected under SARA within the development area. While three bird species listed as Threatened under SARA were identified (common nighthawk, eastern whip-poor-will and olive-sided flycatcher) within the development area there is no critical habitat identified for these species in the area. The Project is not located within federal land and the tree clearing will be completed during the winter in accordance with the *Migratory Birds Convention Act*. Measures to mitigate potential effects on wildlife and their habitat generally include:

- minimizing loss and disturbance of vegetation by limiting construction activities to designated areas;
- conducting clearing during the winter outside of the critical nesting and rearing periods;
- limiting operation activities to areas disturbed during construction; and
- maintaining habitat around the leases and re-vegetating disturbed or reclaimed areas during and after operation.

Potential effects to species at risk will be considered in the assessment under the provincial licensing process required under *The Environment Act*. The Proponent will also be required to adhere to applicable federal legislation, such as the *Migratory Birds Convention Act, 1994* and SARA and the provincial *The Endangered Species and Ecosystems Act*.

Indigenous Peoples

The Agency considered information provided by the requester, Indigenous groups, ISC, HC, ECCC, the Government of Manitoba, and the Proponent. The Agency is of the view that existing legislation will provide a framework to address the potential that the Project has to cause a change occurring in Canada on the health, social, or economic conditions of Indigenous Peoples or an impact occurring in Canada and resulting from any change to the environment on physical and cultural heritage, the current use of lands and resources for traditional purposes, or on any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance to Indigenous Peoples. In addition to the views shared by FRCN in their request, the Agency also sought views from nine potentially impacted Indigenous groups. Input was received from Manitoba Métis Federation, Dauphin River First Nation, Lake Manitoba First Nation, Kinonjeoshtegon First Nation and Interlake Reserves Tribal Council. The five Indigenous groups that responded all support the



requester's request to designate the Project. The five Indigenous groups also stated that peat bogs are ecologically fragile and sensitive areas that require exhaustive studies to understand effects and interactions between groundwater, surface water, bogs, wetlands, forests, and vegetation and the linkages between the various eco-systems in terms of biodiversity, carbon storage and sequestration, water filtering and flood control.

The requester and Indigenous groups expressed concerns regarding Project effects on:

- wetlands in the requester's traditional territory and the related natural purification and storage of freshwater for humans and wildlife;
- Aboriginal and treaty rights of the requester, as well as significant adverse effects on the requester's health, social, and economic conditions;
- the requester's ability to develop its land and economic plans⁴;
- highly used traditional hunting, trapping and gathering areas;
- locations of cultural and historical importance to the requester and other Indigenous communities;
- direct, indirect, and cumulative impacts to the constitutionally protected rights, claims, and interests of the Red River Métis⁵;
- peatland projects fragmenting and altering the landscape, specifically the Crown lands that the Red River Métis use to exercise their rights⁵;
- lack of engagement with Indigenous groups who utilize the Project area; and
- cumulative adverse effects of the numerous active and planned peat mining operations within traditional territories which infringe on Indigenous rights and affect their economic and social conditions.

It is the opinion of the requester's Chief and Council, Manitoba Métis Federation, Dauphin River First Nation, Lake Manitoba First Nation, Kinonjeoshtegon First Nation and Interlake Reserves Tribal Council that any additional peat harvesting in the area of the Project will have serious, long-lasting and likely irreversible adverse effects on the sensitive and fragile natural ecosystems.

The Manitoba Métis Federation noted a potential benefit of the proposed Project being an opportunity for Indigenous Citizen Scientists to be employed in ongoing environmental monitoring of the Project site to ensure any adverse and unanticipated effects are known and addressed.

ISC indicated that Project activities will likely interfere with land use/access, loss of traditional lands and ability to hunt (loss of terrestrial habitat), fish, gather and/or trap as well as the ability for Indigenous people to practice their culture. ISC also noted the Project may cause changes in the physical environment (e.g., flooding, soil, fish habitat, surface and groundwater quality), and changes to health and socio-economic conditions and community well being due to reduced access to traditional lands (activities), sites of spiritual importance and a displacement of culturally important wildlife resulting in reduced access to traditional foods.

⁴Chief and Council are currently developing a campground, a tree seedling nursery and a food security program. The requester's community development strategy relies on ecotourism potential and pristine environmental conditions of the region. Peat mining developments in the requester's Traditional Territory Notice Area will affect both current economic programs and new initiatives.

⁵ Concern submitted by the Manitoba Métis Federation.



HC indicated that there is uncertainty regarding traditional land use practices (hunting, trapping, fishing, harvesting plants and drinking water and recreational water use) and that there is a need for clarification on traditional land use practices in the region in order to identify the extent of any direct effects on Indigenous Peoples.

ECCC advised that construction of the Project may adversely affect air quality through the combustion of fossil fuels by construction equipment and through physical disturbance of land, introducing particulate matter into the air. Air pollutants as a result of the Project could potentially affect human health and sensitive ecosystem receptors at local and regional extents. Furthermore, emissions of air contaminants as a result of this Project may add cumulatively to the emissions from other activities, contributing to degradation of air quality in the region.

The Manitoba Government noted that potential impacts on Aboriginal and treaty rights are assessed during the Crown consultation process with Indigenous communities. Potential direct impacts of a project on Indigenous communities and their resource use (including hunting, fishing, trapping, gathering, and cultural or traditional activities in the project area) is required as part of *The Environment Act* proposal that will undergo a provincial technical review. Socio-economic implications resulting from environmental impact are also required as part of *The Environment Act* proposal⁶.

The Proponent stated that Indigenous engagement activities have not commenced for the proposed Project. The Proponent's overall engagement goals are to ensure there is an open and transparent process, building trust with rights holders, to provide clear and consistent information, and to understand and address Indigenous community concerns and needs. The Proponent has developed a consultation plan to engage with Indigenous communities to understand the impacts to their Aboriginal and treaty rights for hunting, fishing, trapping, and gathering, as well as significant cultural or spiritual areas. All Indigenous communities located within 100 kilometers of the proposed project will be contacted by the Proponent, this includes the following communities:

- Black River First Nation;
- Brokenhead Ojibway Nation;
- Peguis First Nation;
- Fisher River Cree Nation;
- Lake St. Martin First Nation;
- Little Saskatchewan First Nation;
- Pinaymootang First Nation;
- Dauphin River First Nation;
- Berens River First Nation;
- Kinonjeoshtegon First Nation;
- Bloodvein First Nation;
- Hollow Water First Nation;
- Sagkeeng / Fort Alexander First Nation; and
- Manitoba Metis Federation

⁶ https://www.gov.mb.ca/sd/pubs/environmental-approvals/eap_report_guidelines.pdf



The Proponent will design, coordinate, and facilitate two rounds of engagement, the first including an initial introduction to the Project to interested and affected Indigenous groups, gather input on engagement preferences, foster project awareness, and share ideas. During the second round, the Proponent will provide Indigenous communities two options for further engagement.

The first option includes meeting with leadership (chief and council) and the second option includes meeting with the community and stakeholders. Both options include the following objectives:

- share key information on the project process, impacts, and mitigation measures;
- gain understanding of interests, needs, wants, and concerns;
- obtain feedback on process;
- review timeline and next steps; and
- respond to comments and questions.

The Proponent will summarize all engagement activities, responses to concerns identified and any applicable accommodations and/or Project changes in a final engagement and consultation report as part of Manitoba's *The Environment Act* licensing process.

The Proponent acknowledged that construction and operation of the proposed Project may have adverse effects on resources harvested as part of Aboriginal and Treaty rights (e.g., vegetation, mammals and birds). Potential effects will need to be confirmed as part of the proposed Indigenous engagement program required as part of *The Environment Act* proposal, or the subsequent Province of Manitoba-led consultation. The harvest area is not unique in the area as peat bogs are regionally abundant. The Proponent also noted that there will be measurable socioeconomic benefits for the local Indigenous communities in the form of employment and business opportunities.

Potential effects to Indigenous Peoples will be considered during the assessment conducted under the *Fisheries Act*, if required, and the provincial licensing process under *The Environment Act* which includes consultation on potential impacts to Indigenous Peoples. Additionally, the Project will be evaluated under *The Heritage Resources Act*.

Federal lands

The Project is not located on or near federal land. FRCN lands approximately 20 kilometres northwest of the Project are the closest federal lands. The Proponent indicated that the Project is located on provincial Crown land. The Agency is of the view that there will be no change to the environment that would occur on federal lands.

Transboundary effects

The Agency is of the view that existing legislation will provide a framework to address the potential that the Project has to cause a change to the environment that would occur in a province other than the one in which the Project is being carried out or outside Canada.

Concerns expressed by the requester and Indigenous groups included the Project's contribution to climate change due to loss of peatland carbon storage and sequestration area, effects to wetlands in the requester's



traditional territory and related effects to natural sinks for pollutants such as sulphur from acid rain and heavy metals.

ECCC noted that Project activities may result in GHG emissions, or impact carbon sinks and may hinder the Government of Canada's ability to meet its commitments in respect of climate change. Combustion of fossil fuels during construction can result in the emission of air contaminants such as sulfur oxides, nitrogen oxides, volatile organic compounds, and fine particulate matter.

As part of the provincial proposal under *The Environment Act*, climate change implications including a greenhouse gas inventory is required.

The Proponent stated that the average year of production for the proposed Project will account for approximately 0.0018% of the total annual emissions for the country. The Proponent noted that the quantity of carbon dioxide equivalent can be decreased by incorporating mitigation measures to minimize GHG emissions throughout the life cycle of peat harvesting and that the loss of carbon sequestration, storage and the flood control and filtering will be restored once harvesting is completed and restoration activities begin.

The Project will be subject to federal GHG emissions reporting requirements, pursuant to the *Canadian Environmental Protection Act, 1999*, if ten kilotonnes or more of GHGs are emitted in carbon dioxide equivalent units per year.

Other considerations

Cumulative effects

The Agency considered information provided by the requester, Indigenous groups, ISC, DFO, and the Proponent in relation to effects set out in subsections 9(1) and 9(2) of the IAA, and is of the view that existing legislation provides a framework to address cumulative effects.

The requester and Indigenous groups expressed concerns related to cumulative effects of the Project, the effects included:

- The Project is located in an ecologically sensitive area where an impact on an environmental value component can result in impacts to other environmental value components and ultimately have a devastating cumulative effect on the environment and the requesters; and
- Cumulative effects of existing peat harvesting operations in the area combined with future developments of existing peat licence areas are likely irreversible or not restorable for well over 100 years which infringe on Indigenous rights and affect their economic and social conditions.

ISC indicated that the potential impacts of the Project to Indigenous communities should be considered over an extended period of time (80 – 100 years) and with particular attention to anticipated impacts of advancing climate change on food security and traditional activities of Indigenous people. ISC noted sensitive habitat and downstream impacts of peatlands loss to traditional and cultural areas as well as the Fisher Bay Provincial Park and proposed expansion.



DFO noted that the *Fisheries Act* provides a framework of considerations to guide ministerial decision-making, including consideration of cumulative effects. Potential cumulative effects would be considered during the assessment conducted under the *Fisheries Act* if an authorization is required.

The Manitoba Government noted that other industries or developments are considered when reviewing a proposal under *The Environment Act*.

The Proponent acknowledges that it will take over 100 years to regrow the full depth of peat harvested. The Canadian Sphagnum Moss Association Peatland Restoration Guide⁷ has research from peatland restoration activities showing that a functioning peat producing wetland ecosystem can be restored within five to seven years. The Proponent stated the proposal to be submitted to the provincial government will provide information on potential cumulative effects and Manitoba's Technical Advisory Committee will undertake a review as part of *The Environmental Act* licensing process.

Potential adverse direct or incidental effects

Direct or incidental effects refer to effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity, or to a federal authority's provision of financial assistance for the purpose of enabling that physical activity to be carried out, in whole or in part. The carrying out of the Project has the potential to cause adverse direct or incidental effects; however, the Agency is of the view that existing legislation provides a framework to address them.

The Project may require a *Fisheries Act* authorization from DFO if the Project could cause harmful alteration, disruption, or destruction of fish habitat or death of fish. The Project may also require approval under the *Canadian Navigable Waters Act* from Transport Canada if the access road will cross any navigable waterways. The Proponent does not anticipate that these approvals will be required since the Project will not require any near or in-water work.

Public concerns

The Agency is of the view that existing legislation provides a framework to address the concerns within federal jurisdiction and adverse direct or indirect effects and include opportunities for public participation and consideration of public comments. The Agency received concerns from one member of the public that supports Kinonjeoshtegon First Nation's concerns regarding the Project and a letter of support from the Manitoba Eco-Network and the Wilderness Committee (Manitoba) supporting the requester's designation

⁷ Canadian Sphagnum Peat Moss Association (CSPMA). 2017. 2017 Statistics about Peatland Areas Managed for Horticultural Peat Harvesting in Canada. https://tourbehorticole.com/wpcontent/uploads/2020/01/Summary_2016_2017_Indutry_Statistic_AREAS_WE_B.pdf.

request. Manitoba Eco-Network and the Wilderness Committee (Manitoba) supports a cooperative approach where both the provincial and federal governments review the Project and that designating the project would be appropriate given that the provincial licensing process has not yet begun which would afford the opportunity for coordination between federal and provincial processes.

Once a proposal for the Project is submitted to the Province, the public will be informed of the Project and the licensing process under *The Environment Act*, and will have an opportunity to comment within a prescribed timeframe. Public meetings to discuss information and concerns may also be held.

Potential adverse impacts on the section 35 rights of Indigenous Peoples

The Project is located within Treaty 2 territory and within the Manitoba Métis Federation Thompson Region. The Agency sought views from nine potentially impacted Indigenous groups and received input from five groups. The Agency considered submissions from the requester, Manitoba Métis Federation, Dauphin River First Nation, Lake Manitoba First Nation, Kinonjeoshtegon First Nation and Interlake Reserves Tribal Council. In relation to subsection 9(2) of the IAA, the Agency is of the view that while there is the potential for the Project to cause adverse impacts on rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982* (section 35 rights), existing legislative mechanisms applicable to the Project may trigger the duty to consult thereby providing a framework to address potential impacts and would include consultation with potentially affected Indigenous groups.

Potential adverse impacts on the section 35 rights of Indigenous Peoples would be considered in the *Fisheries Act* Authorization process and the provincial licensing process under *The Environment Act*; both will involve consultation and/or accommodation on potential impacts to Indigenous Peoples.

Regional and strategic assessments

There are no regional or strategic assessments pursuant to sections 92, 93, or 95 of the IAA that are relevant to the Project.

Conclusion

The Agency took into account the information it received as part of the designation request process for the Project to inform its analysis. The Agency is of the view that existing provincial and federal legislation provides a framework to address the potential for adverse effects as described in subsections 9(1) and 9(2) of the IAA. These include the provincial licensing process under *The Environment Act*, which can include enforceable terms and conditions to mitigate potential environmental effects for all stages of the development, and federal legislative mechanisms such as an authorization under the *Fisheries Act*, which would include Indigenous consultation activities.



While there is the potential for the Project to cause adverse impacts on the section 35 rights of the Indigenous Peoples, existing legislative mechanisms applicable to the Project may trigger the duty to consult thereby providing a framework to address potential impacts and would include consultation with potentially affected Indigenous groups.