

**A Guide to the
Implementation of *CEAA*
by DFO's Habitat Management and Environmental Science Directorate**

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April 1996**

1. INTRODUCTION

The *Canadian Environmental Assessment Act (CEAA)* became law on January 19, 1995. At the same time, four key regulations essential to the implementation of the *Act* were also promulgated: the *Exclusion List*, *Inclusion List*, *Comprehensive Study List* and *Law List regulations*.

Recognizing the need to provide guidance to its regional staff involved in conducting environmental assessments (EAs) under the new legislation, DFO's former Marine Environment and Habitat Directorate distributed a revised **Guide to the Implementation of CEAA** in January 1995. After a year of implementing the *Act*, the Habitat Management and Environmental Science Directorate (HMESD) determined that there was a need to revise the **Guide** again in order to reflect current legal interpretations of the *Act*'s requirements, experience gained from implementing the *Act* and policy changes within DFO.

This document is not intended to duplicate the material contained in the **Responsible Authority's Guide (the RA Guide)** prepared by the Canadian Environmental Assessment Agency (the Agency). Rather, it combines the procedural direction provided in the **RA Guide**, and various Reference Guides prepared by the Agency, with relevant DFO policies and procedures and interprets the requirements of the legislation as it pertains to the HMESD. The reader is encouraged to consult the **RA Guide** and Reference Guides for more detailed direction on procedural requirements under the *CEAA*. Appendix I lists the Reference Guides available from the Agency.

The HMESD has prepared a number of policy and procedural documents for the assistance and guidance of staff conducting EAs. The present document is intended to complement this material and refers the reader to these guides where additional information is required. Appendix II contains a listing of those documents.

This policy document reflects current interpretations of the *CEAA* and current DFO policy. It will be revised periodically as changes are made to the *Act* and its regulations, as additional regulations are promulgated and as experience in implementing the legislation is gained. Suggestions for improving this **Guide** are welcome and encouraged.

2. DFO'S ROLES UNDER THE CEAA

Under the *CEAA*, DFO and its Minister are considered to be **federal authorities**. Where it is necessary to conduct an EA of a project under the *Act*, DFO may be required to assume the role of either:

- ▶ a responsible authority (RA); or
 - ▶ an expert federal department.
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TABLE OF CONTENTS

1.	Introduction.....	1
2.	DFO's Roles Under the <i>CEAA</i>	1
3.	Objectives and Guiding Principles of the <i>CEAA</i>	2
4.	Applicability of the <i>CEAA</i> to DFO.....	3
	4.1 Do You Have a Project Under the <i>CEAA</i> ?.....	3
	4.2 Is the Project Excluded?.....	6
	4.3 Is There a Federal Authority?.....	6
	4.4 Is There a <i>CEAA</i> Trigger?.....	6
	4.5 Does DFO Have a Role as an Expert Federal Department?.....	7
5.	The Law List Trigger and DFO Policy.....	8
	5.1 Law List Provisions Relating to the Minister of Fisheries and Oceans.....	8
	5.2 When is Subsection 35(2) a Law List Trigger?.....	9
	5.3 Law List Provisions Relating to the Governor in Council.....	11
6.	Initial EA Considerations.....	12
	6.1 EA Timing.....	12
	6.2 Working With Other Governments and Federal Authorities.....	12
	6.2.1 Other Governments.....	12
	6.2.2 Other Federal Authorities.....	12
	6.3 Selecting the EA Track.....	13
	6.3.1 Has the Project Been Assessed Previously?.....	14
	6.3.2 Is a Comprehensive Study Required?.....	15
	6.3.3 Is a Class Screening Report Available?.....	15
	6.4 Establishing the Public Registry.....	15
7.	Conducting the EA.....	17
	7.1 Step 1: Scoping.....	17
	7.1.1 Scope of the Project.....	19
	7.1.2 Scope of the EA.....	21
	7.1.3 Interested Parties.....	23
	7.1.4 Level of Effort.....	23
	7.2 Step 2: Assessment of Environmental Effects.....	24
	7.3 Step 3: Mitigation of Environmental Effects.....	25
	7.4 Step 4: Determining the Significance of Adverse Effects.....	26
	7.5 Step 5: Preparing the EA Report.....	27
	7.6 Step 6: Review of the EA Report.....	29
	7.7 Step 7: Decision on the Project.....	30
	7.8 Step 8: Post-Decision Activity.....	31
8.	DFO Responsibilities in a Public Review.....	32
	Appendix I: List of Agency Reference Guides.....	33
	Appendix II: List of DFO Reference Documents.....	34

When DFO is required to ensure that an EA of a project is conducted, it becomes an RA. There may be more than one RA for a given project. Where another federal authority is an RA, but DFO is not, DFO may be required to provide information as an expert federal department.

The responsibilities of an RA and expert federal department under the CEAA are described later in this document.

3. OBJECTIVES AND GUIDING PRINCIPLES OF THE CEAA

The CEAA applies to projects for which the federal government holds decision-making authority as either a proponent, land administrator, source of funding or regulator.

The Act has four stated objectives:

- ▶ to ensure that the environmental effects of projects receive careful consideration before RAs take action;
- ▶ to encourage RAs to take actions that promote sustainable development, thereby achieving or maintaining a healthy environment and a healthy economy;
- ▶ to ensure that projects to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out; and
- ▶ to ensure that there is an opportunity for public participation in the EA process.

In addition, the following principles should guide application of the Act:

- ▶ the process should be applied as early in the project's planning stages as practicable, and before irrevocable decisions are made, so that environmental factors are incorporated into decisions in the same way that economic, social and policy factors have traditionally been incorporated;
 - ▶ the self-directed assessment of projects for environmental effects by federal departments and bodies is a cornerstone of the process;
 - ▶ each project should undergo only one EA, and the level of effort required to undertake an EA should match the scale of the project's likely environmental effects; and
 - ▶ public participation is an important element of an open and balanced EA process.
- in the absence of mitigation?*

The fundamental purpose of the *CEAA* is to ensure that federal decision-makers are aware of and fulfill their obligation to consider the potential adverse environmental effects of a project prior to making a decision on whether to undertake any action that would enable the project to proceed.

4. APPLICABILITY OF THE CEAA TO DFO

DFO's HMESD receives a large number of project referrals that require determinations to be made regarding whether harmful effects on fish or fish habitat are likely to occur. Not all of these projects qualify for an EA to be conducted under the *CEAA*. Some of them may not qualify because they do not meet one or more of the criteria specified in the *Act*. The flowchart in Figure 1 illustrates the decision-making process used in determining when an EA is required under the *CEAA*.

Does this acronym apply to all regions?

Some projects may not require the HMESD to carry out an EA under the *Act* on the basis of DFO's Directive on the Issuance of Subsection 35(2) Authorizations. The decision-making process regarding the issuance of subsection 35(2) authorizations and how it affects the need to conduct EAs under the *CEAA* is addressed in section 5. THE LAW LIST TRIGGER AND DFO POLICY.

4.1 Do You Have a Project Under the CEAA?

The first stage in the decision-making process is to determine whether a project referred to the HMESD for review constitutes a "project" under the *CEAA*.

Under the *Act*, a project is described as consisting of either:

- ▶ an undertaking in relation to a physical work; or
- ▶ a physical activity not relating to a physical work that is listed in the *Inclusion List Regulations*.

An undertaking, as described in the *Act*, includes "any proposed construction, operation, modification, decommissioning, abandonment or other undertaking" in relation to the **physical work**. It must be a fixed, physical thing, which has been or will be constructed, in order to qualify as a **physical work**. Something is fixed if it has a specific location. Cars, boats and aircraft are mobile and, therefore, even though they have been constructed, they are not **physical works**.

Ocean dumping and fishing are both **physical activities** because they are real (as opposed to mental) activities that are not carried out in relation to **physical works**.

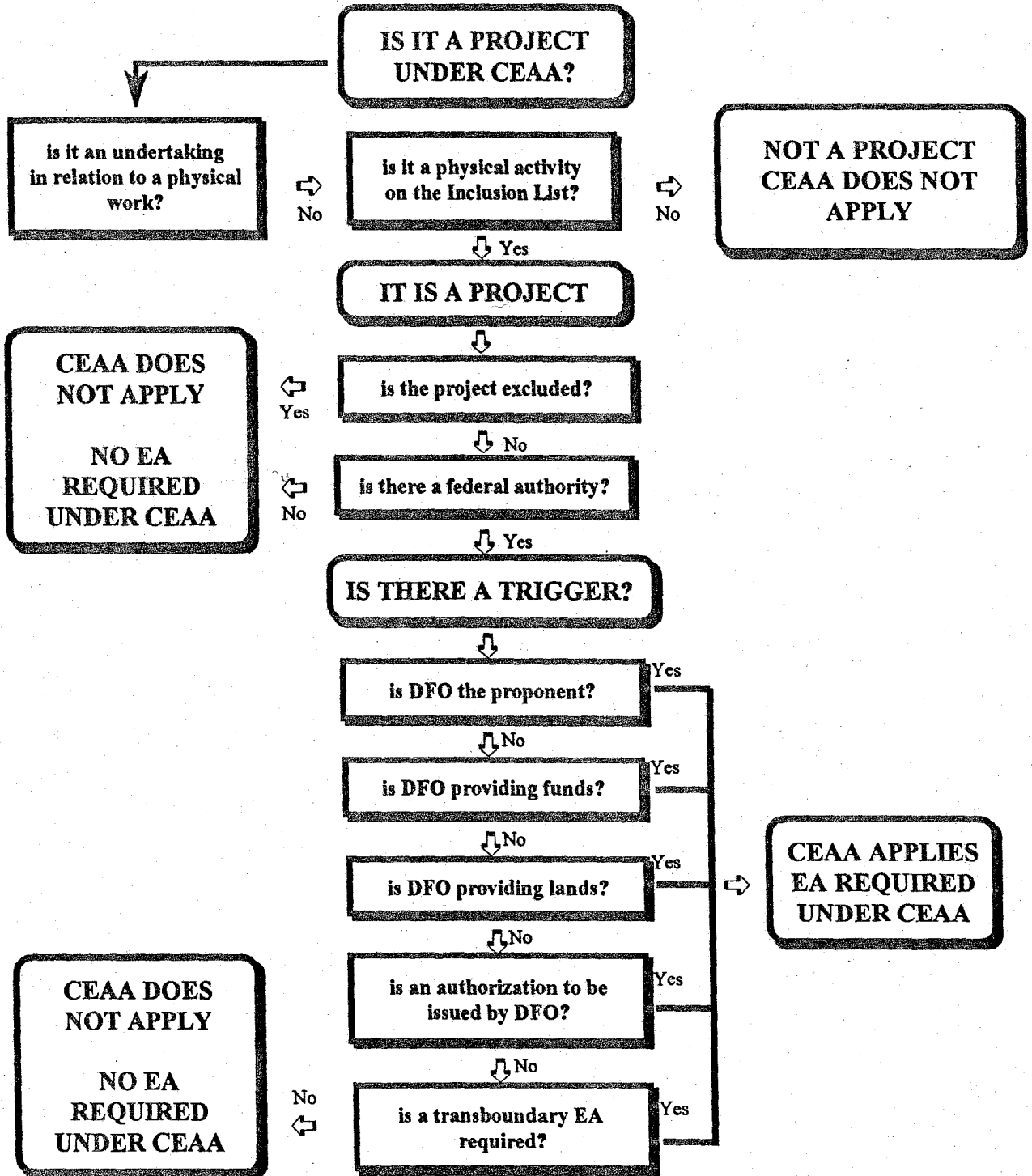


Figure 1. Determination of whether an EA is required under the CEAA.

Where it has been determined that the project is a **physical activity**, it must be listed in the **Inclusion List Regulations** in order for the *Act* to apply. If the activity is not on the **Inclusion List**, it does not constitute a project under the *Act* and no **EA** is required.

The **Inclusion List Regulations** include a number of **physical activities** that directly relate to fish and fish habitat:

- ▶ the destruction of fish by any means other than fishing that would require the authorization of the Minister of Fisheries and Oceans under section 32 of the *Fisheries Act* or authorization under regulations made by the Governor in Council under that *Act* (paragraph 42 of the *Regulations*);
- ▶ the deposit of a deleterious substance that requires authorization under regulations made by the Governor in Council under subsection 36(5) of the *Fisheries Act* (paragraph 47); and
- ▶ various activities that would result in the harmful alteration, disruption or destruction of fish habitat and would require the authorization of the Minister of Fisheries and Oceans under subsection 35(2) of the *Fisheries Act* or authorization under regulations made by the Governor in Council under that *Act*:
 - **physical activities** carried out in a water body, including dredge or fill operations (paragraph 43);
 - draining or altering the water levels of a water body (paragraph 44);
 - placement of erosion control measures adjacent to a water body (paragraph 45); and
 - removal of vegetation in or adjacent to a water body (paragraph 46).

A “water body” is defined in the **Inclusion List Regulations** as “any water body, including a canal, reservoir, an ocean, and a wetland, up to the high-water mark, but does not include a sewage or waste treatment lagoon or a mine tailings pond”.

If a project involves one or more of the **physical activities** listed above, DFO may be required to conduct an **EA** under the *CEAA*. The word “may” is used here because there must also be a “trigger” in order for an **EA** to be required under the *Act*. The *CEAA* triggers are described in section 4.4 **Is There a CEAA Trigger?**.

4.2 Is the Project Excluded?

A project could be excluded from assessment under the *CEAA* when it is:

- ▶ to be carried out for national security reasons;
- ▶ to be carried out in response to an emergency; or
- ▶ described in the *Exclusion List Regulations*.

The *Exclusion List Regulations* identify projects or classes of projects that are **physical works** and do not require an EA because the environmental effects are considered to be insignificant. An example of a project that is on the **Exclusion List** is the construction, installation, expansion or modification of a fish habitat improvement structure that would not involve the use of heavy machinery.

4.3 Is There a Federal Authority?

An EA under the *CEAA* must be triggered by a proposed action of a **federal authority**. A **federal authority** includes:

- ▶ a federal Minister of the Crown;
- ▶ a federal agency accountable to Parliament through a federal Minister; and
- ▶ a federal department or departmental corporation included in Schedule I or II of the *Financial Administration Act (FAA)*.

Crown corporations, as defined in the *FAA*, and certain commissions are not **federal authorities** under the *Act*. A regulation is being developed that will indicate how the *Act* applies to crown corporations.

4.4 Is There a CEAA Trigger?

A **federal authority**, such as DFO, must carry out an EA before it exercises any power, duty or function that would enable a project to proceed either in part or in whole (section 5). DFO would be required to carry out an EA when:

- ▶ it is the project proponent;
 - ▶ it is planning to provide financial assistance;
-

- ▶ it is planning to grant an interest in land;
- ▶ it would be required to exercise a regulatory duty in relation to the project, such as issuing a permit, authorization or other approval, that is included in the *Law List Regulations*; or
- ▶ is planning to recommend that the Governor in Council exercise a regulatory duty in relation to the project that is included in the *Law List Regulations*.

The HMESD does not normally act in the capacity of a project proponent; rather, it responds to project referrals made by project proponents, provincial agencies or other federal agencies. Similarly, the financial assistance and land triggers do not generally apply to the HMESD. However, provision of funds by the HMESD for habitat restoration projects under the Habitat Action Plan, for example, would trigger the requirement for an EA under the *Act*.

Small Craft Harbours Branch would be the proponent or federal funding agency for projects involving the construction of new harbours or modification of existing ones and, therefore, would be required to conduct an EA of those projects prior to the construction or modification work. The contribution of funds by Fishing Industry Services Branch for aquaculture development, for example, could trigger the requirement for an EA by that Branch.

The requirement for EAs to be conducted by the HMESD would most likely be triggered by one of the *Fisheries Act* provisions contained in the *Law List Regulations*. Where the HMESD is considering exercising its decision-making authority in accordance with one of these regulatory provisions, the *Act* would apply and an EA would be required. Determining when there is a need to conduct an EA as a result of a Law List trigger is addressed in section 5. **THE LAW LIST TRIGGER AND DFO POLICY.**

Similarly, an EA would be required under the *Act* before DFO could recommend that the Governor in Council exercise a regulatory duty under one of the *Fisheries Act* provisions of the **Law List**.

It should be noted that, if a project is likely to cause significant adverse transboundary environmental effects, and none of the section 5 triggers apply, the *CEAA* authorizes the Minister of the Environment to refer the project to a mediator or review panel. However, such a referral can be made only when no other federal Act or regulation applies to the project.

4.5 Does DFO Have a Role as an Expert Federal Department?

When DFO is not involved in a project as a proponent, source of funding, land manager or regulator, under the *Law List Regulations*, it is not an RA for that project. However, it may still have a role as an expert federal department.

Subsection 12(3) of the *CEAA* requires that every federal authority that is in possession of specialist or expert information or knowledge with respect to a project shall make it available to an RA, mediator or review panel. In this role, the HMESD would provide advice to RAs with respect to the effects of projects on fish and fish habitat. This advice could include recommendations for project relocation, design changes or mitigation measures that are required in order to prevent significant adverse effects on fish habitat and to meet the No Net Loss guiding principle of DFO's Policy for the Management of Fish Habitat (the Habitat Policy).

5. THE LAW LIST TRIGGER AND DFO POLICY

5.1 Law List Provisions Relating to the Minister of Fisheries and Oceans

The *Law List Regulations* include the following *Fisheries Act* habitat protection provisions that involve decision-making by DFO as a federal authority:

- ▶ subsection 22(1) relating to provision of a sufficient flow of water below an obstruction to permit the safe and unimpeded descent of fish
- ▶ subsection 22(2) relating to provision of free passage of both ascending and descending migratory fish during construction of an obstruction
- ▶ subsection 22(3) relating to provision of a quantity of water below an obstruction sufficient for the safety of fish and for the flooding of spawning grounds to the extent necessary for the safety of the ova
- ▶ section 32 relating to destruction of fish by means other than fishing
- ▶ subsection 35(2) relating to harmful alteration, disruption or destruction of fish habitat
- ▶ subsection 37(2) relating to requiring modifications to works and undertakings and restricting the operation thereof

The *Law List Regulations* also include subsection 5(2) of the *Metal Mining Liquid Effluent Regulations* under the *Fisheries Act*.

Subsections 22(1), 22(2) and 22(3) provide the Minister of Fisheries and Oceans with the authority to issue orders or directives specifying requirements for protecting fish at an obstruction. When the Minister chooses to exercise this decision-making authority, the *CEAA* applies and an EA must be conducted before any order or directive is issued.

Similarly, if the Minister decides to authorize the destruction of fish under section 32, or to make an order regarding works and undertakings under subsection 37(2), the *CEAA* is triggered and an

EA is required before any such actions can be taken.

Subsection 5(2) of the *Metal Mining Liquid Effluent Regulations* authorizes the Minister to designate a tailings impoundment area at a specific site. Currently, the Minister of the Environment administers these *Regulations* on behalf of the Minister of Fisheries and Oceans. Therefore, although the Minister of Fisheries and Oceans would be responsible for making the final screening decision as the RA, the Minister of the Environment would be expected to provide advice to assist in the decision-making.

Because of the large number of project referrals that the HMESD receives, subsection 35(2) of the *Fisheries Act* is the most common potential Law List trigger for an EA. However not all of these referrals would result in the issuance of authorizations under subsection 35(2). Where there is no requirement for a subsection 35(2) authorization, *CEAA* is not triggered, the HMESD is not an RA and is not required to conduct an EA. The next section addresses how to determine when subsection 35(2) triggers the requirement for an EA under the *CEAA*.

5.2 When is Subsection 35(2) a Law List Trigger?

When assessing a project referred to the HMESD, a reviewer must determine whether it is possible for the project to proceed and still fulfill the No Net Loss guiding principle and maintain the productive capacity of fish habitat. In making this determination, the following questions must be answered:

- ▶ does the project have the potential to cause a harmful alteration, disruption or destruction (HADD) of fish habitat?;
- ▶ can the HADD be avoided through project relocation, redesign or mitigation?; and
- ▶ if the HADD cannot be avoided, would a subsection 35(2) authorization be issued in order to avoid contravention of subsection 35(1)?

These questions must be answered in accordance with the principles contained in the following DFO policy documents:

- ▶ **Policy for the Management of Fish Habitat (the Habitat Policy);**
 - ▶ **Directive on the Issuance of Subsection 35(2) Authorizations (the Directive);**
 - ▶ **Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat (the HADD Document); and**
 - ▶ **Habitat Conservation and Protection Guidelines (the C and P Guidelines).**
-

In order to answer the first two questions, it is necessary to identify what constitutes a HADD of fish habitat. The **HADD Document** defines HADD as “any meaningful change in one or more habitat components that can reasonably be expected to cause a real reduction in the capacity of the habitat to support the life requisites of fish”. In the **C and P Guidelines**, fish habitat is considered to include “freshwater, estuarine and marine environments that directly or indirectly support fish stocks or fish populations that sustain, or have the potential to sustain, subsistence, commercial or recreational fishing activities”.

A conclusion of HADD should be reached when there is expected to be a reduction in the capacity of the habitat to support the life requisites of fish such that, despite the implementation of project relocation, project redesign or mitigation, a net loss of productive capacity is likely to occur. In most cases, it is not possible to quantify the productive capacity of a particular habitat as part of a project assessment. Therefore, changes in various habitat components are used as a proxy for the assessment of impacts on productive capacity. Determining whether a HADD is likely to occur is not normally made by direct measurement or estimation of the habitat components themselves, but depends on an understanding of how these habitat components contribute to productive capacity.

The **Directive** instructs that a subsection 35(2) authorization would not be required where the No Net Loss objective can be achieved by undertaking actions that would ensure that no meaningful loss in productive capacity would be incurred in the first place. Only when it is impossible or impractical to maintain the same level of productive capacity through project changes or mitigation would the issuance of a subsection 35(2) authorization be considered

Subsection 35(2) authorizations are not normally issued until adequate compensation measures have been developed that will result in the No Net Loss objective being achieved. The purpose of compensation is to offset the loss of productive capacity. It usually consists of either on-site rehabilitation of the affected habitat, creation of new habitat off-site or improving the productive capacity of existing habitat off-site.

Where the HADD is short term and the habitat is not that productive, compensation measures may not be required. In that situation, it would be necessary to issue a subsection 35(2) authorization for the temporary loss of habitat productivity before the project could proceed. However, because there would be no meaningful loss of productive capacity in the long term, no compensation would be required.

Where a project could result in the HADD of critical habitats (ones that are essential for the continuing survival of a fish stock), compensation is not an acceptable option. In such cases, authorizations would not normally be issued. In addition, where it has been determined that a project could result in the loss of a given habitat type that would be unacceptable, an authorization would not be issued.

In situations where a HADD is likely and compensation is feasible, compensation measures are developed and a subsection 35(2) authorization is issued. The need for a subsection 35(2) authorization would trigger the requirement for an EA under the CEAA.

In summary, from a practical standpoint, the HMESSD must first meet its *Fisheries Act* and *Habitat Policy* obligations by screening a project to determine whether a HADD of fish habitat is likely to occur, whether the potential impacts can be avoided through project relocation, project redesign or mitigation, or whether a subsection 35(2) would be issued. Once the conclusion has been reached that a subsection 35(2) authorization would be required, CEAA is triggered, DFO is an RA and an EA must be carried out.

In order to streamline the EA process and harmonize with assessments being carried out at the provincial level, it is important that conclusions be reached as quickly as possible concerning the need for subsection 35(2) authorizations. The Director General of the HMESSD provided guidance on this issue in a November 24, 1995 memo to Regional Directors General. This memo included the following statements:

“An important balance must be struck in determining exactly when the decision that an authorization is required should be made, and the CEAA process activated. On one hand, this decision must be taken at a point where coordination with any provincial assessment process can be optimized, and adequate advance notice provided to other regulatory agencies and the proponent. At the same time, the Department must also be reasonably assured that an authorization will in fact be required.”

5.3 Law List Provisions Relating to the Governor in Council

The *Law List Regulations* include several *Fisheries Act* provisions that confer powers, duties or functions on the Governor in Council: section 32, subsection 35(2), subsection 37(2) and paragraphs 36(5) (a) to (e). These provisions authorize the Governor in Council to make regulations for the purpose of protecting fish or fish habitat.

Paragraphs 36(5) (a) to (e) pertain to the making of regulations regarding the deposit of deleterious substances. For the purpose of the *Law List Regulations*, only the making of site-specific regulations would trigger the need for an EA. The Minister of the Environment regulates the disposal of deleterious substances on behalf of the Minister of Fisheries and Oceans. Therefore, although the Minister of Fisheries and Oceans would be responsible for making the final screening decision as the RA, the Minister of the Environment would be expected to provide advice on the possible effects of the contaminants to be released to enable DFO to assess the possible effects of the project on fish and fish habitat.

With respect to the other provisions (section 32, subsection 35(2) and subsection 37(2)), DFO would be required to conduct an EA under the *CEAA* before recommending that the Governor in Council make site-specific regulations concerning a project. This is because DFO would be involved in decision-making that could influence the outcome of the project.

6. INITIAL EA CONSIDERATIONS

6.1 EA Timing

Once it has been determined that the *CEAA* applies to a project, section 11 of the *Act* requires the RA to ensure that an EA is conducted as early in the planning stages of the project as is practicable and before irrevocable decisions are made. The RA must not exercise any power or perform any duty or function in relation to the project until the EA has been completed.

Since, in many cases, the HMESD does not become aware of a project until there is a request for a review or an authorization, the Directorate does not have control over the timing of the EA in relation to the project planning cycle. In some cases, this may limit the extent to which the HMESD can influence the final design of a project through the EA process. However, the project must still be guided by the No Net Loss principle which will ensure that no meaningful loss of habitat productive capacity occurs as a result of the project.

6.2 Working With Other Governments and Federal Authorities

6.2.1 Other Governments

Where a project requires authorization from both the federal government and a province or territory, the EA of the project may be covered by an EA harmonization agreement established by the two governments.

Harmonization agreements are based on the **Framework for Environmental Assessment Harmonization** approved by the Canadian Council of Ministers of the Environment (CCME) in 1992. These bilateral agreements are intended to eliminate unnecessary duplication by providing a "single-window" approach to EA. They provide guidelines for the roles and responsibilities of each government involved in the EA. The agreements cover cooperation in such areas as joint review panels, mediation, screening, comprehensive studies, notification, cost-sharing and time frames.

6.2.2 Other Federal Authorities

A project may have more than one RA and other federal authorities may be involved in the EA process as expert federal departments. As soon as the HMESD anticipates that it will be required to conduct an EA under the *Act*, it should identify other RAs and federal authorities as early as possible. This is necessary in order to avoid unnecessary delays and duplication in the conduct of the EA and to ensure that federal decisions on the project are coordinated.

The Agency is in the process of developing *Federal Coordination Regulations* for the purpose of formalizing cooperation between federal authorities in the conduct of EAs. Under these Regulations, RAs would be required to notify other federal authorities that are likely to be either RAs or expert federal departments and provide them with a project description. These federal authorities would be required to indicate the nature of their involvement, if any, with respect to the project.

An Agency document entitled *Process Advice for the Participation of Federal Authorities in an Environmental Assessment* can be used to identify other RAs for an EA. The CEAA requires that, where there are two or more RAs in relation to a project, they shall together determine the manner in which to best carry out their individual EA responsibilities. The Process Advice document contains suggestions for determining how the EA should be managed including how to select a lead RA that would be responsible for coordinating the EA process.

6.3 Selecting the EA Track

6.3.1 Has the Project Been Previously Assessed?

Before deciding what form the EA should take, first it should be determined whether an EA has already been conducted previously. One of the amendments to the CEAA requires that, where a screening or comprehensive study has already been conducted, an RA must use that previous EA to an appropriate extent when:

- ▶ the project did not proceed after the EA was completed;
- ▶ in the case of a project that is a physical work, the proponent proposes an undertaking in relation to that work different from that proposed when the EA was conducted;
- ▶ the manner in which the project is to be carried out has subsequently changed; or
- ▶ the renewal of a license, permit, approval or other action under a Law List provision is being sought.

When using a previous EA, the RA must ensure that any necessary adjustments are made in its screening report or comprehensive study report to take into account any significant changes that may have occurred in the environment, including cumulative environmental effects, and in the circumstances of the project, since the previous EA was conducted.

If the project has not been previously assessed, Figure 2 illustrates the decision-making process used in determining what type of EA should be conducted.

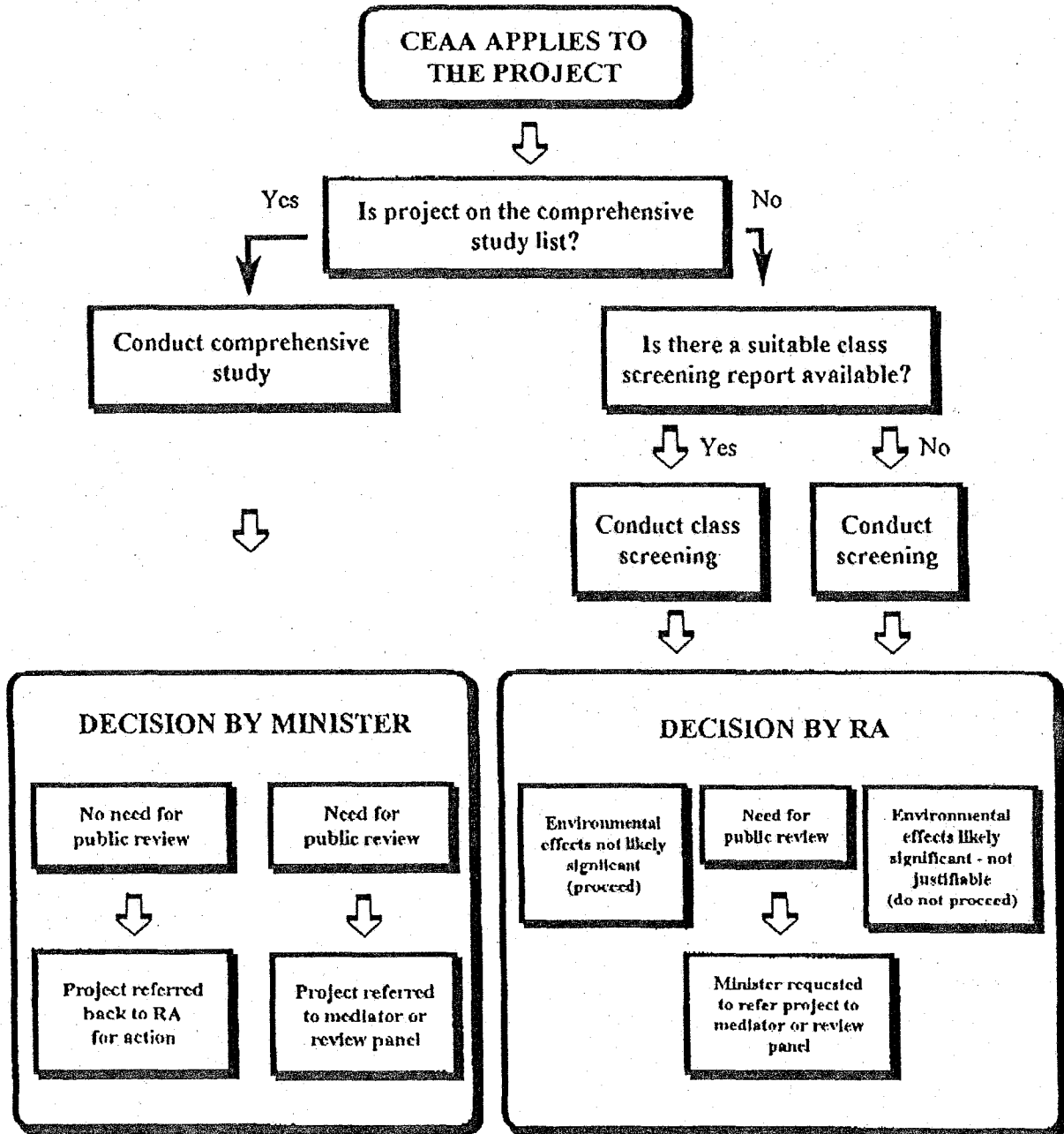


Figure 2. Selecting the EA track and making a decision on the project.

Figure 1-4:

Determining the EA Track

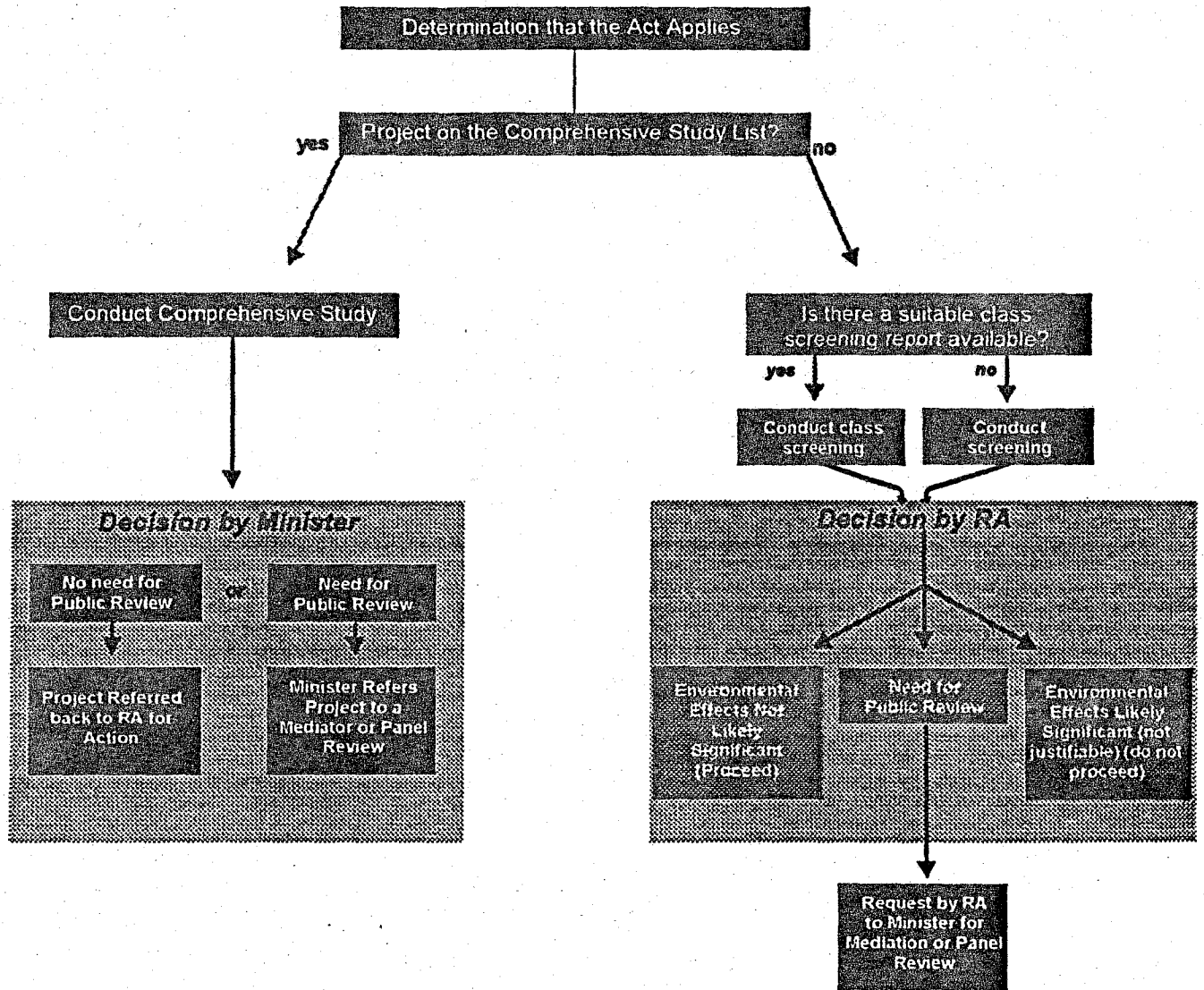


FIGURE 2

6.3.2 Is a Comprehensive Study Required?

The reviewer must consult the *Comprehensive Study List Regulations* in order to answer this question. These *Regulations* list projects or classes of projects that are considered likely to have significant adverse environmental effects before implementation of site-specific mitigation.

If the project is on the **Comprehensive Study List**, the EA must take the form of a **comprehensive study** and a **comprehensive study report** must be prepared. Because of the likelihood of significant adverse environmental effects, a **comprehensive study** requires a more intensive and rigorous assessment of the potential environmental effects than a **screening**. The requirements for carrying out a **comprehensive study** are covered in section 7. **CONDUCTING THE EA**.

6.3.3 Is a Class Screening Report Available?

If the project is not on the **Comprehensive Study List**, the project must be subjected to some form of **screening**. The next question that should be asked is: has the Agency designated a **class screening report** that could be used to conduct a **screening** of the project? A **class screening report** represents the accumulated knowledge about the environmental effects of a specific class or type of project and identifies the known mitigation measures.

A **class screening report** is not a substitute for an EA and its availability does not relieve the RA from having to conduct a **screening**. However, it can help to simplify and streamline the **screening** process. The RA must still factor site-specific issues and cumulative environmental effects into the assessment and must still prepare a **screening report**.

If no **class screening report** is available, the RA must conduct a **screening**. The requirements for carrying out a **screening** are addressed in section 7. **CONDUCTING THE EA**.

6.4 Establishing the Public Registry

When either a **screening** or **comprehensive study** is initiated, a public registry must be established for the project. The purpose of the public registry is to facilitate public participation in the federal EA process.

Section 55 of the *CEAA* requires RAs to:

- ▶ establish a public registry for the purpose of facilitating public access to the records relating to the EA; and
 - ▶ maintain the registry in a manner that ensures convenient public access.
-

The RA must maintain the registry from the start of an EA to the completion of any follow-up program. However, when a project is referred for mediation or panel review, the Agency maintains the registry from the time of the referral until the report of the mediator or review panel is submitted to the RA and the Minister of the Environment.

The Agency has established a public registry system framework within which all RAs can meet their public registry obligations. The framework consist of three components:

- ▶ the Federal EA Index (FEAI), an electronic database listing of all EAs conducted under the *Act*;
- ▶ RA record listings, maintained by each RA, of all publicly-available records relating to each EA; and
- ▶ the EA records themselves.

The RA is responsible for the collection and input of information on each EA and the electronic transfer of this information to the Agency each month. The RA is responsible for maintaining a record listing for each of the EAs it is carrying out and for managing the collection of records that comprise the registry for each EA.

Where there is more than one RA for a project, the RAs must together ensure that each EA is entered only once on the FEAI. Where a lead RA has been designated, that RA should be responsible for transmitting the required information on the EA to the Agency.

In order to meet its public registry obligations under the *CEAA*, DFO has established a national public registry system as a component of the Habitat Referral Tracking System (HRTS). Each DFO region operates its own independent regional registry as part of the national public registry system. Each region is responsible for developing and operating an appropriate system for tracking and retrieving EA records in order to facilitate responding to public requests for information on EAs included on the FEAI.

Each regional registry is operated by one or more Public Registry Officers (PROs) who are responsible for the day-to-day operation of the public registry. The PRO is responsible for addressing all public requests for EA record listings and for coordinating responses to all public enquiries on the EAs.

Relevant information on each EA is entered on the HRTS by the Lead Technical Officer (LTO) who is responsible for conducting the EA. The actual electronic transfer of information on each EA to the Agency's FEAI is carried out by the HQ FEAI Officer.

Public requests for actual EA records must be made through a formal request to the Departmental ATIP Coordinator. This procedure is made known by the PRO when an EA record listing is provided in response to the initial request for information on an EA.

Further details on DFO's public registry system is contained in a document entitled **Department of Fisheries and Oceans' CEAA Public Registry System**. Additional information is contained in the Agency's Public Registry Reference Guide.

Where the HMESD is not an RA for a project but participates in the EA process as an expert federal department, it is not required to establish a public registry under the CEAA. However, depending on the level of its participation in providing advice with respect to a project and the nature of the environmental effects on fish habitat, the HMESD should still document its activities using the HRTS. This would be particularly useful when, for example, the HMESD decides not to issue a subsection 35(2) authorization for a given project and, therefore, is not an RA under the Act. The HRTS can be used to document this decision and its rationale (e.g. describe the mitigation measures that the proponent will be implementing).

7. CONDUCTING THE EA

Figure 3 shows the steps that should be followed in conducting either a screening or comprehensive study.

It should be noted that the HMESD has prepared a draft document that provides direction for conducting a comprehensive study entitled **Comprehensive Study Environmental Assessment and Report. Department of Fisheries and Oceans (Habitat Management Program) as Responsible Authority (RA)**.

7.1 Step 1: Scoping

Scoping enables the spatial and temporal boundaries of the project and the EA to be established and focuses the analysis on the relevant issues and concerns. Scoping is addressed in sections 15 and 16 of the Act.

Scoping consists of determining:

- ▶ the undertakings and activities that must be assessed as part of the project;
 - ▶ the factors and issues that need to be considered in the EA;
 - ▶ the parties that should be involved in the project and their interests and concerns; and
 - ▶ the appropriate level of effort required for the EA.
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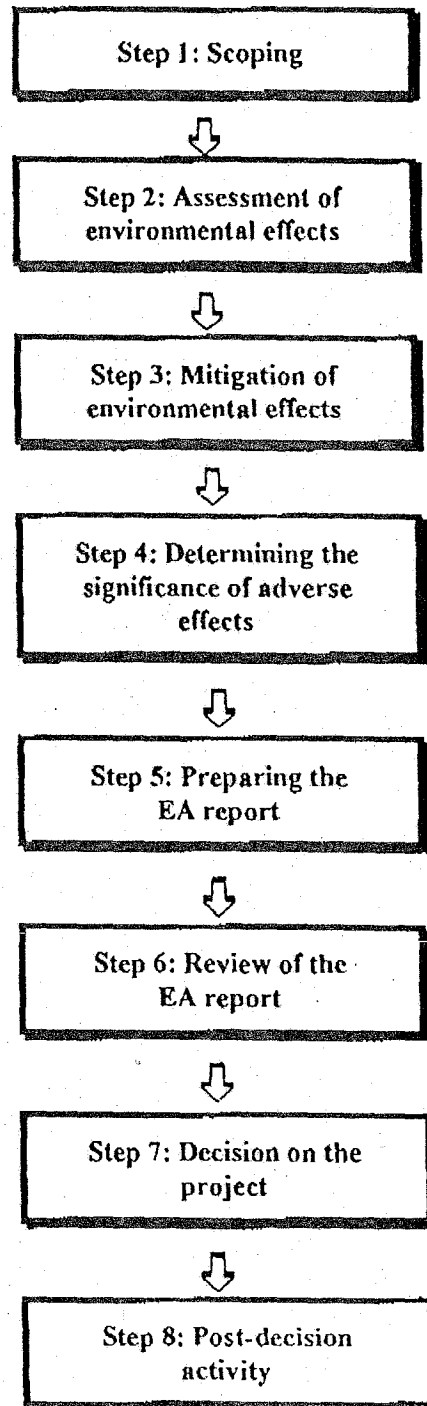


Figure 3: Steps for conducting a screening or comprehensive study.

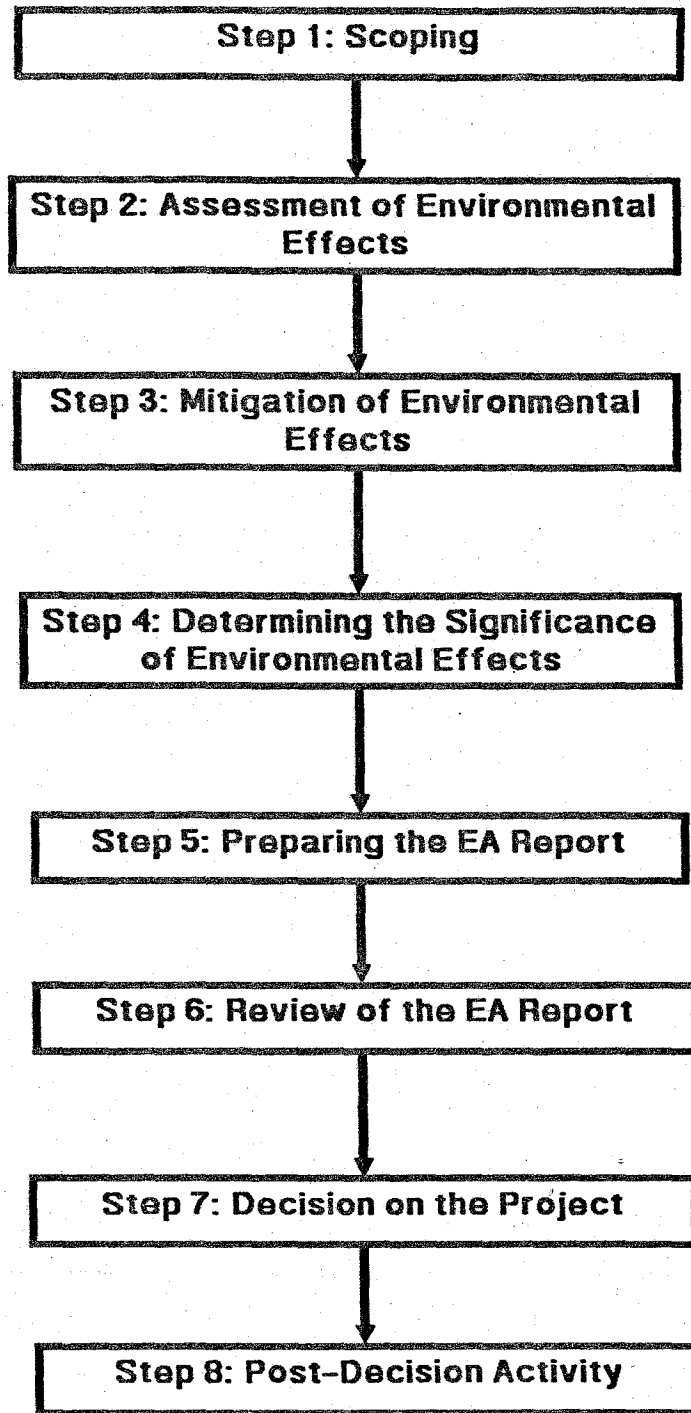


Figure 3. Steps for conducting a screening or comprehensive study.

The Agency has prepared a Scoping Reference Guide entitled **Scope of an Environmental Assessment Under the Canadian Environmental Assessment Act**. This Reference Guide replaces the material contained in section 1.4.1 of the **RA Guide**. The material presented in the following sections of the present document reflects the contents of the Scoping Reference Guide and additional information obtained from Agency staff.

7.1.1 Scope of the Project

Determining the scope of the project involves identifying those components of the proposed development that should be considered as being part of the project for the purposes of the **EA** under the **CEAA**. The challenge in making this determination is to avoid two extreme situations:

- ▶ taking too narrow an approach and artificially separating related **physical works** or **physical activities** in the **EA**; and
- ▶ making the scope too broad and including **physical works** or **physical activities** that are only remotely related to the project that triggered the **EA** in the first place and are, for example, under provincial jurisdiction.

It should be noted that both of these situations exposes the **RA** to legal risk. Scoping too narrow could result in a legal challenge from environmentalists while scoping too broad could result in legal action by a provincial government.

Project scoping must be carried out by the **RA** in a manner that is consistent with sound **EA** practices while, at the same time, minimizing the extent to which the **RA** is exposed to legal challenges. An appropriate project scoping should meet the following objectives:

- ▶ the potential environmental effects will be adequately considered and the environment adequately protected;
- ▶ the resources (time and money) expended during the **EA** process are appropriate for the project being assessed;
- ▶ the various stakeholders are satisfied; and
- ▶ legal risk is minimized.

Unfortunately, the **CEAA** itself does not provide any guidance on how to determine the scope of a project for the purposes of the **EA**; the **RA** (or **RAs**) must make these decisions on a project by project basis. In its Scoping Reference Guide, the Agency has suggested that project scoping should be determined by asking three questions. These questions have been modified slightly to take into account various viewpoints that have been expressed since the Reference Guide was

prepared:

1. what is the **undertaking** in relation to a **physical work**, or **physical activity** included on the **Law List**, that is triggering the requirement for an **EA** under the *Act*?
2. what other **physical works** or **physical activities** will be undertaken that are linked to the triggered project?; and
3. what are the other **undertakings** that would be carried out in relation to the **physical works** identified through questions 1 and 2?

For example, a gold mine has been proposed in B.C. that requires the construction of an access road to enable development of the mine site and transportation of the ore to market. The access road must cross a stream and a bridge has been proposed for this purpose that would involve placing the abutments on the stream bed. There is no federal funding involved.

The project has been referred to the HMESSD from the B.C. government because of the possible impact of the stream crossing on fish habitat. It is determined that it will not be possible to avoid a HADD of fish habitat through project relocation, project redesign or mitigation and that it will be necessary to issue a subsection 35(2) authorization for the project.

Construction of the stream crossing triggers the *Act* because of the requirement for a subsection 35(2) authorization (question 1). The stream crossing is part of the road project which is required in order to develop the mine facilities and to enable transportation of the ore. If the mine was not being developed, the road would not be needed. In other words, the road is being built for the sole purpose of supporting the mine project. Therefore, it is directly linked to the mine project and forms part of that project. In like manner, if the road was not needed, there would be no need to cross the stream and cause a HADD of fish habitat. The scope of the project should, therefore, include the stream crossing, the road and the mine development (question 2). With respect to question 3, the project scope would include: construction of the stream crossing; construction, operation and decommissioning of the access road; and construction, operation and decommissioning of the mine.

In this example, the possible legal risk of including the mine in the **EA** can be significantly reduced by having the proponent and the B.C. government agree to having the mine, road and stream crossing included in the same **EA**.

The *Act* enables an **RA** to combine two or more triggered projects into the same **EA** if it determines that the projects are so closely related that they can be considered to form a single project. In order to determine whether two projects can be considered to form a single project, the following questions should be considered:

- ▶ does the decision to undertake the triggered project rely on another triggered project's approval?;
- ▶ does the decision to undertake the triggered project make the decision to undertake another triggered project inevitable?; and
- ▶ do the geographic study areas developed in relation to the scope of the factors to be considered for the individual projects overlap?

If, in the above example, Natural Resources Canada was planning to provide funding for development of the mine, and a subsection 35(2) authorization was required for the stream crossing, the mine and stream crossing would automatically end up being assessed together in the same EA.

7.1.2 Scope of the EA

An RA must consider, in the EA, all factors that are relevant to the decision it must make on whether to take an action that would allow the project to proceed. This would include:

- ▶ all factors described in section 16 of the *Act* (listed later in this document), including any environmental effects which the project may have on any area of federal or provincial jurisdiction; and
- ▶ any factors that are relevant to the assessment of the environmental effects of the project that any other federal law or regulation require or permit the RA to consider.

If DFO was an RA because it was the project proponent, or was providing funds or an interest in lands, the scope of factors to be considered can go beyond those provided for in section 16 of the *Act* or under any federal law or regulation. This is because the decision to be taken by the RA on the project would relate to the operation of the government itself or its property. In those cases, DFO could attach to its decision supporting the project any condition, or require any mitigation measure to be implemented, that it considers appropriate in the circumstances.

However, in the majority of cases when DFO is acting as a regulator and following completion of the EA decides, for example, to issue a subsection 35(2) authorization, it must restrict any conditions attached to the authorization to areas under federal jurisdiction only.

Section 16 of the *CEAA* requires the following factors to be addressed in both a **screening** and a **comprehensive study**:

- ▶ the environmental effects of the project, including:
-

- the environmental effects of malfunctions or accidents that may occur in connection with the project; and
 - any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
- ▶ the significance of the environmental effects;
- ▶ comments received from the public;
- ▶ technically and economically feasible measures that would mitigate any significant adverse environmental effects of the project; and any other matter relevant to the EA that the RA may require, such as the need for and alternatives to the project.

Because of the definition of “environmental effect” in the *Act*, consideration of environmental effects must include:

- ▶ changes in the environment caused by the project;
- ▶ the effect of any such changes on:
- health and socio-economic conditions;
 - physical and cultural heritage;
 - current use of lands and resources for traditional purposes by aboriginal persons; or
 - any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; and
- ▶ any change to the project caused by the environment.

In addition to these factors, a comprehensive study must also consider:

- ▶ the purpose of the project;
- ▶ technically and economically feasible alternative means of carrying out the project as well as the environmental effects of those alternative means;
- ▶ effects on the capacity of renewable resources, likely to be significantly affected by the project, to meet present and future needs;
-

- ▶ the need for, and the requirements of, any follow-up program.

The geographic and temporal boundaries of the EA will be determined to a large extent by the nature and scale of the project. The boundaries will also be influenced by the nature of the environmental effects. For example, the EA must consider the timing of biological events, such as spawning, or socio-economic activities, such as fishing, that may conflict with the project.

7.1.3 Interested Parties

It is necessary to identify who has an interest in the project, the nature of their concerns and how they should be involved in the EA. Interested parties might be other federal departments, other levels of government, private sector organizations or the public.

Other federal departments may also be RAs for the project, in which case a lead RA may be designated and arrangements made for coordination of the EA process. Alternatively, a federal department might be the source of baseline data, knowledge or expertise relevant to the EA and would participate in the EA as an expert federal department.

Another level of government could also be the source of baseline information, expertise or specialized knowledge. Alternatively, where a project is also subject to a provincial review, the project could be assessed through a joint EA procedure. In this situation, the EA should be carried out in accordance with any federal-provincial harmonization or similar agreements that may exist.

A private sector organization might be involved in the EA as the project proponent, as a source of environmental information or expertise or because it might be affected by the project.

It is important to determine the level of interest the public has with respect to a project and whether any sector of the public might be directly or indirectly affected by the project. The RA needs to be aware of public concerns about a project and to be in a position to respond to these concerns throughout the EA. It should also determine the level and form of public involvement in the EA process that is appropriate for the project. Providing opportunities for public comment is mandatory for **comprehensive studies**.

7.1.4 Level of Effort

The appropriate level of effort for a **screening** or **comprehensive study** will depend on the nature and complexity of the project, the environmental setting, the nature of the environmental effects, the availability of information and the degree of uncertainty about the environmental effects or mitigation measures.

Proper scoping of the issues and concerns and identification of the interested parties makes it easier to determine the level of analysis required for the EA.

7.2 Step 2: Assessment of Environmental Effects

Use of a previously prepared **screening report, comprehensive study report or class screening report** was addressed earlier in this document. In the absence of these reports, the **RA** must start the **EA** from the beginning. The **RA** may delegate this responsibility to the proponent. However, the **RA** is still responsible for making the final screening decision.

Assessment of the environmental effects of the project consists of:

- ▶ describing the project;
- ▶ describing the existing environment;
- ▶ identifying the project-environment interactions (environmental effects); and
- ▶ considering cumulative environmental effects.

The Agency's **RA Guide** provides guidance on the assessment of environmental effects. The Agency is in the process of developing a Reference Guide entitled **Biological Diversity and Environmental Assessment**. This Guide stresses the importance of considering the effects of a project on biodiversity, particularly during the analysis of cumulative environmental effects.

The Agency has also prepared a draft Reference Guide entitled **Assessing Environmental Effects on Physical and Cultural Heritage Resources** and has completed a discussion paper entitled **A National Health Guide for Environmental Assessment**.

The **RA Guide** contains a Reference Guide entitled **Addressing Cumulative Environmental Effects**. In brief, the assessment of cumulative environmental effects must consider the environmental effects of the project in combination with existing or planned projects and activities. Addressing cumulative environmental effects involves considering:

- ▶ time and geographic boundaries;
- ▶ interactions between the project's environmental effects;
- ▶ interactions between the project's environmental effects and those of existing projects and activities; and

- ▶ interactions between the projects's environmental effects and those of planned projects and activities.

In assessing cumulative effects:

- ▶ only planned projects that will be carried out need to be considered;
- ▶ only likely cumulative environmental effects should be taken into account; and
- ▶ the significance of the cumulative effects must be determined.

7.3 Step 3: Mitigation of Environmental Effects

The *CEAA* requires that mitigation measures be developed to address potentially significant adverse environmental effects. However, mitigation should be considered for all environmental effects whether they are significant or not.

Mitigation measures are considered to be part of the project when determining the significance of any adverse environmental effects under the *CEAA*. It should be noted that, while the terms "mitigation" and "compensation" have different meanings under DFO's **Habitat Policy**, mitigation includes compensation under the *Act*.

As discussed in section 5. **THE LAW LIST TRIGGER AND DFO POLICY**, DFO policy directs that subsection 35(2) authorizations should be issued only when it is impossible or impractical to maintain the same level of habitat productive capacity using mitigation measures or where it is not technically feasible to avoid damage to habitat. In those situations, and provided that critical habitat is not involved, compensation options are considered in order to meet the No Net Loss principle.

DFO's **Habitat Conservation and Protection Guidelines** provide a hierarchy of preferred compensation measures ranging from most to least preferred:

- ▶ create similar habitat at or near the development site and within the same ecological unit;
 - ▶ create similar habitat in a different ecological unit that supports the same stock or species;
 - ▶ increase the productive capacity of existing habitat at or near the development site and within the same ecological unit;
 - ▶ increase the productive capacity of a different ecological unit that supports the same stock or species; and
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- ▶ increase the productive capacity of existing habitat for a different stock or a different species of fish either on or off site.

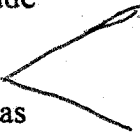
7.4 Step 4: Determining the Significance of Adverse Effects

Determination of the significance of adverse environmental effects is a crucial part of the EA. This determination directly affects whether the RA can take a course of action with respect to the project or whether assessment is required through mediation or panel review.

In this step, the RA must determine whether or not the project is likely to cause significant adverse effects, taking into account implementation of mitigation measures (including compensation). This requires three questions to be considered:

- ▶ are the environmental effects adverse?
- ▶ are the adverse environmental effects significant?
- ▶ are the significant adverse environmental effects likely to occur?

Guidance for determining the significance of adverse environmental effects is provided in the Agency's Reference Guide entitled **Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects** and contained in the RA Guide.

Again, it should be noted that the *Act* considers compensation, applied to maintain productive capacity of fish habitat, to be a form of mitigation. Consequently, it would be possible to conclude that a project may have harmful effects on fish habitat, that a subsection 35(2) authorization is required and compensation is to be undertaken, but that, in the context of the *CEAA*, the environmental effects on fish or fish habitat would not be significant. Only if an authorization was to be issued without adequate compensation would the adverse environmental effects be potentially significant. 

Following a **screening or comprehensive study**, the *Act* provides for the following range of conclusions on the significance of the effects, taking into account the implementation of appropriate mitigation measures:

- ▶ the project is not likely to cause significant environmental effects;
 - ▶ the project is likely to cause significant adverse environmental effects that cannot be justified;
 - ▶ the project is likely to cause significant adverse environmental effects and it is uncertain whether they can be justified in the circumstances; or
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- ▶ it is uncertain whether the project is likely to cause significant adverse environmental effects.

In addition, it may be concluded that there are public concerns associated with the project.

7.5 Step 5: Preparing the EA Report

Depending on which EA track was selected, either a **screening report** or **comprehensive study report** must be prepared on the results of the assessment. The RA may prepare this report or it may require the proponent to perform this task. The EA report must be included in the public registry established for the project.

As a minimum, a **screening report** should include:

- ▶ identification of the trigger requiring an EA to be conducted under the *CEAA*;
- ▶ a description of the project activities;
- ▶ a description of the environmental components in the study area;
- ▶ a summary of the environmental effects, including cumulative effects and the effects of malfunctions and accidents;
- ▶ a description of the proposed mitigation measures (and/or compensation measures, if applicable);
- ▶ a determination of the significance of the adverse environmental effects (with mitigation/compensation applied);
- ▶ comments received from the public, if applicable;
- ▶ a statement and rationale of the screening conclusion; and
- ▶ identification of who to contact for more information.

The **screening report** could also include the following information:

- ▶ a description of the need for the project, alternatives to the project and alternative means of carrying out the project;
 - ▶ a record of consultations with expert federal departments;
-

- ▶ identification of other RAs, provincial agencies or other jurisdictions involved; if applicable;
- ▶ a description of any public consultation process that was carried out, if applicable;
- ▶ a description of any necessary follow-up programs; and
- ▶ additional supporting information, such as the results of environmental studies carried out in relation to the project.

As a minimum, a **comprehensive study report** should include:

- ▶ identification of the trigger requiring an EA to be conducted under the *CEAA*;
 - ▶ a description of project activities;
 - ▶ a description of alternative means of carrying out the project;
 - ▶ a discussion of the rationale for the scope of the project and scope of the EA;
 - ▶ a description of the environmental components;
 - ▶ a summary of the environmental effects, including cumulative effects and the effects of malfunctions and accidents;
 - ▶ a consideration of the effects of the project on sustainable use of renewable resources;
 - ▶ a description of the proposed mitigation measures (and/or compensation measures, if applicable);
 - ▶ a determination of the significance of the adverse environmental effects (with mitigation/compensation applied);
 - ▶ identification of other RAs, provincial agencies or other jurisdictions involved; if applicable;
 - ▶ a record of consultations with expert federal departments;
 - ▶ identification of public groups having an interest in the project, comments received from the public and a discussion of how the **comprehensive study report** has taken these comments into account;
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- ▶ a statement and rationale of the screening conclusion;
- ▶ a description of any necessary follow-up programs;
- ▶ additional supporting information, such as results of environmental studies conducted in relation to the project; and
- ▶ identification of who to contact for more information.

The **comprehensive study report** can also address other issues as the **RA** sees fit, such as: the need for the project and alternatives to the project that have been considered.

Where there is more than one **RA** for a project, and a lead **RA** has been designated, the lead **RA** would be responsible for coordinating the preparation of the **comprehensive study report**. Each **RA** would assess the effects of the project on its area of responsibility and provide the results of its assessment to the lead **RA**. The report would also reflect the advice and information received from expert federal departments.

The final document would serve as a common screening or **comprehensive study report** for use by all **RAs**. Each **RA** would include the report in its own public registry for the project. Only the lead **RA** would enter the **EA** on the Agency's FEAI.

7.6 Step 6: Review of the EA Report

Where a **comprehensive study** is required, the **comprehensive study report** must be submitted to the Agency after all relevant expert federal departments have had an opportunity to review the report and comment on its scientific and technical accuracy.

Upon receipt of a **comprehensive study report**, the Agency is responsible for reviewing the report, publishing a notice to facilitate public comment on the report, reviewing the public comments received and making recommendations to the Minister of the Environment concerning the next step in the **EA** process. In its review, the Agency determines whether the **comprehensive study** was carried out in accordance with the requirements of the *Act* and whether consultations with expert federal departments and the public has been adequate. The Agency must also ensure that the report and all public comments are filed in the public registry maintained by the Agency for the project.

At that point, the Minister of the Environment may decide that a public review in the form of mediation or a panel review is required. The responsibilities of DFO during a public review of a project are covered in section 8. **DFO RESPONSIBILITIES IN A PUBLIC REVIEW.**

Where a screening has been carried out, the RA has the option of enabling public review and comment on the screening report. It may also choose to solicit comments on the report from expert federal departments.

7.7 Step 7: Decision on the Project

When the review of the EA report is completed, a determination must be made on whether the RA (or RAs) can take any action that enables the project to proceed or whether further assessment is required. In the case of a screening, this determination is made by the RA(s). However, when a comprehensive study is carried out, the Minister of the Environment makes this decision. Figure 2 illustrates the range of possible decisions.

Where DFO is the proponent (e.g. a new harbour facility), this decision determines the ultimate fate of the project. However, if DFO is considering providing financial assistance (e.g. for aquaculture development) or issuing some form of approval (e.g. a subsection 35(2) authorization), a decision not to take action would influence the proponent's decision on whether to proceed with the project.

Following completion of a screening, the RA can make one of the following three decisions (screening conclusions), taking into account implementation of appropriate mitigation measures:

- ▶ federal support to the project can be provided because the project is not likely to cause significant adverse environmental effects;
- ▶ federal support to the project cannot be provided because the project is likely to cause significant adverse environmental effects that cannot be justified;
- ▶ a request must be made to the Minister of the Environment to refer the project to a public review if:
 - it is uncertain whether the project is likely to cause significant adverse environmental effects;
 - the project is likely to cause significant adverse environmental effects and a determination must be made whether these effects are justified in the circumstances; or
 - public concerns warrant a public review.

Following completion of a comprehensive study, the Minister will refer the project back to the RA(s) for action if it has been concluded that, taking into account implementation of appropriate mitigation measures:

- ▶ the project is not likely to cause significant adverse environmental effects (RA(s) may provide federal support); or
- ▶ the project is likely to cause significant adverse environmental effects that cannot be justified (RA(s) may not provide federal support).

The Minister will refer the project to a mediator or review panel if:

- ▶ it is uncertain whether the project is likely to cause significant adverse environmental effects;
- ▶ the project is likely to cause significant adverse environmental effects and a determination must be made whether these effects are justified in the circumstances; or
- ▶ public concerns warrant a public review.

In both cases (**screening and comprehensive study**), if the project is referred to a public review, no federal support must be provided to the project by the RA(s), or any other federal authority, until after the public review is completed.

7.8 Step 8: Post-Decision Activity

After the RA has completed the **screening report** or **comprehensive study report**, and has determined whether it should take any action that would enable the project to proceed, a number of post-decision activities are required under the *Act*.

If it decides not to provide federal support to the project, the RA must file a notice of that decision in the public registry. If the RA decides to provide support, it must ensure that the mitigation measures identified during the EA are implemented.

If a **screening** was carried out, the need for a follow-up program does not have to be addressed in the **screening report**. If, on completion of the report, however, the RA decides to provide support for the project, it must decide whether a follow-up program is appropriate. If it is, the RA must ensure that one is designed and implemented.

The need for a follow-up program must be addressed during a **comprehensive study**. If the RA decides to provide federal support, it must then decide whether to implement the follow-up program.

In both cases, when it has decided to take action on the project, the RA must advise the public of:

- ▶ the action it has decided to take;
-

- ▶ any mitigation measures or compensation agreements that are to be implemented;
- ▶ any follow-up program that is to be carried out; and
- ▶ the results of any follow-up program.

8. DFO RESPONSIBILITIES IN A PUBLIC REVIEW

Most frequently, the involvement of the HMESD under the *CEAA* will occur at either the screening or comprehensive study phase of the EA process. This involvement would be in the capacity of either an RA or expert federal department.

Mediation or a panel review might be required by a request made by the RA to the Minister of the Environment following completion of a screening report or comprehensive study report. The *Act* also enables the RA to request the Minister to refer a project for public review at any time where it is of the opinion:

- ▶ after taking into account appropriate mitigation measures, the project may cause significant adverse environmental effects; or
- ▶ public concerns warrant a reference to a mediator or a review panel.

The *Act* also authorizes the Minister of the Environment to refer a project, for which an EA is required, to a mediator or review panel where he or she is of the opinion that one or both of the two above situations apply. However, the Minister is required to consult with the RA Minister first before making the referral.

Mediation is a voluntary process of negotiation in which an independent and impartial mediator helps interested parties resolve their issues. Members of the public participate as representatives of interested parties, along with representatives of the RA, the proponent and other groups, as appropriate.

In a panel review, the Minister of the Environment appoints the panel and establishes its terms of reference in consultation with the RA. An Environmental Impact Statement (EIS) is prepared for the project and interested parties are invited to participate in the assessment of the project through public hearings.

Recommendations made by the mediator or review panel are presently not binding on the RA. However, under one of the amendments to the *CEAA* that was promulgated with the *Act*, the report issued by the mediator or review panel must be approved by the Governor in Council. The RA's course of action on the project must be in conformity with the approval of the Governor in Council.

The following is a list of the roles and responsibilities of an **RA** in a mediation or panel review. The **RA**:

- ▶ must not exercise any power, duty or function that would allow the project to proceed until after completion of the **EA**;
- ▶ recommends to the Minister of the Environment whether mediation or a panel review is an appropriate step;
- ▶ for mediation, advises the Minister on the terms of reference for the mediator and provides background information;
- ▶ for a panel review, ensures that any deficiencies in the EIS, identified by the panel, are addressed by the proponent;
- ▶ participates in the panel's public hearings or mediation process;
- ▶ maintains a public registry from the time the mediator's or panel's report is submitted to the Minister and the **RA** until the completion of any follow-up program;
- ▶ determines, after a successful mediation or panel review, whether it may take action to enable the project to proceed;
- ▶ provides public notice of its course of action, including the extent to which the mediator's or panel's recommendations have been adopted;
- ▶ ensures that all necessary mitigation measures are implemented for the project; and
- ▶ ensures that, when appropriate, a follow-up program is designed and implemented.

Where DFO is not an **RA** for a project undergoing a public review, it may still have a responsibility to participate in the review. Subsection 12(3) of the *CEAA* requires that every **federal authority** that is in possession of specialist or expert information or knowledge with respect to a project must make it available to a mediator or review panel.

Also, it should be noted that section 35 of the *Act* authorizes a review panel to summons any person to appear before the panel to give evidence and produce such documents and things that the panel considers is necessary for conducting an **EA** of a project. DFO might be involved in a panel review as either an **RA** or an expert federal department. In either case, a HMESD staff member could be called upon to provide information to the panel.

Appendix I: List of Agency Reference Guides

Responsible Authority's Guide

Process Advice for the Participation of Federal Authorities in an Environmental Assessment

A Reference Guide for the Canadian Environmental Assessment Act. The Public Registry

Scope of an Environmental Assessment Under the Canadian Environmental Assessment Act

A Guide on Biological Diversity and Environmental Assessment

A Reference Guide for the Canadian Environmental Assessment Act. Assessing Environmental Effects on Physical and Cultural Heritage Resources

A National Health Guide for Environmental Assessment: A Discussion Paper

A Reference Guide for the Canadian Environmental Assessment Act. Addressing Cumulative Environmental Effects

A Reference Guide for the Canadian Environmental Assessment Act. Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects

Appendix II: List of DFO Reference Documents

Memorandum from Director General, Habitat Management & Environmental Science, to Regional Directors General, dated November 24, 1995
The Department of Fisheries and Oceans Policy for the Management of Fish Habitat
Directive on the Issuance of Subsection 35(2) Authorizations
Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat
Habitat Conservation and Protection Guidelines
Department of Fisheries and Oceans' CEAA Public Registry System
Comprehensive Study Environmental Assessment and Report, Department of Fisheries and Oceans (Habitat Management Program) as Responsible Authority (RA)
