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Memorandum of Understanding for the Cabinet Directive on Implementing the *Canadian Environmental Assessment Act*

([Cabinet Directive](#))

Introduction:

The Cabinet Directive on Implementing the *Canadian Environmental Assessment Act*, (the CEAA Directive) (Annex 1) creates a framework within which federal authorities can exercise their respective powers, duties, functions or discretion under the *Canadian Environmental Assessment Act* (the Act) in a manner that places a priority on the delivery of high quality environmental assessments (EAs) in a predictable, certain and timely manner.

Clause 12 of the CEAA Directive requires the President of the Canadian Environmental Assessment Agency (the Agency) and the deputy heads of Environment Canada, Fisheries and Oceans Canada, Health Canada, Natural Resources Canada and Transport Canada (the Departments) (collectively, the Agency and the Departments constitute the Parties) to enter into a Memorandum of Understanding (MOU) setting out specific actions to implement the CEAA Directive.

Subsequent to the CEAA Directive, a Cabinet Directive and Memorandum of Understanding on Improving the Performance of the Regulatory System for Major Resource Projects have been put in place to provide direction on issues that include, but extend beyond the federal government's EA requirements. This MOU provides clarity on the implementation of the *Canadian Environmental Assessment Act*, and, in doing so, complements the objectives and administrative process set out for major resource projects including the roles and responsibilities of the Major Projects Management Office.

To that end,

THE PARTIES AGREE AS FOLLOWS:

Part 1 - Objectives:

The objectives of this MOU as described in Clause 12 of the CEAA Directive are to:

- set out the respective roles and responsibilities of the Agency and the Departments in working together to ensure timely, predictable and efficient preparation of high quality EAs; and
- provide specific direction on key issues such as:
 - identification of each department's federal interest based on its legislative or policy mandate;
 - determination of triggers;
 - determination of scope of project and scope of the factors to be considered in an assessment;
 - implementation of mitigation measures;
 - implementation of follow-up programs; and
 - incorporating species at risk considerations into EAs.

Part 2 - Application

Except where otherwise indicated, the provisions of this MOU apply to all projects subject to screening or comprehensive study under the Act where more than one Party is involved in the EA as a responsible authority, an expert federal authority or the Federal Environmental Assessment Coordinator.

In support of this application, the MOU also addresses related policy development, quality assurance and performance tracking activities.

This MOU does not fetter the exercise of the respective powers, duties, functions or discretion of the Parties in their roles as responsible authorities, expert federal authorities, or the Federal Environmental Assessment Coordinator under the Act.

Part 3 - Commitment of the Parties

The Parties commit to giving due consideration to the provisions of this MOU when exercising their respective individual powers, duties and functions under the Act and when working together to facilitate predictable, certain and timely preparation of high quality EAs.

Part 4 - Implementation Committee

The Environmental Assessment Projects Committee (EAPC) is chaired by the Agency and comprised of Vice-President and Director General representatives of the Parties. The EAPC will oversee implementation of this MOU, including discussion and where possible resolution of issues pertaining to individual or collective consideration of any provision of this MOU.

The EAPC will also serve as a dispute resolution forum for issues arising from any project-specific EA work plan set out in accordance with Part 7 of this MOU.

Part 5 - Roles and Responsibilities

Undertakings of the Canadian Environmental Assessment Agency

The Agency will take the lead on the following activities, with the Departments providing advice and input:

- reviewing existing or developing new generic or sector-specific guidance to assist proponents in preparing project descriptions;
- ensuring that EA policies and procedures are in place to support consistent application of the federal EA process; and
- implementing quality assurance, tracking, evaluation and reporting procedures with respect to the implementation of the MOU.

The Agency will be the environmental assessment project manager for:

- major resource projects subject to the Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects other than those projects subject to the review processes of the National Energy Board or the Canadian Nuclear Safety Commission; and
- other multi-jurisdictional screenings and comprehensive studies when agreed to by the Agency and the responsible authority(ies) for a project.

As the environmental assessment project manager, the Agency will, in support of the Responsible Authority's(ies') duties, functions and discretionary authority under the Act, augment its Federal Environmental Assessment Coordinator duties by undertaking specific tasks that include:

- coordinating discussions among responsible authorities to seek agreement on a single scope of project that will be addressed through a single federal EA;
- assisting in the preparation of the screening or comprehensive study report;
- coordinating the engagement of Aboriginal peoples in the EA process;
- coordinating public consultation; and
- liaising with the Major Projects Management Office.

The environmental assessment project manager functions and the roles and responsibilities of all federal participants will be outlined in a project-specific EA work plan in accordance with Part 7 of this MOU.

Undertakings of the Departments

When participating in an EA, all Parties will work to satisfy their responsibilities under the Act in a manner that gives due consideration to the provisions of this MOU. Parties will raise any issues in meeting that commitment to the EAPC for discussion and where possible resolution.

In accordance with project-specific EA work plan prepared in accordance with Part 7 of this MOU, Parties will support the responsible authority(ies), Federal Environmental Assessment Coordinator or project manager by preparing or assisting in the preparation of the analysis and documentation required to enable the responsible authority(ies) to make its/their decisions under the Act.

Part 6 - Key Issues

The Parties will develop, monitor, evaluate and refine tools, approaches and direction to support the on-the-ground delivery of high quality EAs in a predictable, certain and timely manner.

For example, the Parties have adopted and are applying an Interim Approach for Determining Scope of Project for Major Development Proposals with Specific Regulatory Triggers under the *Canadian Environmental Assessment Act* (Annex 2) and an Approach for Engaging with Aboriginal Peoples in the Environmental Assessment of Projects (Annex 3).

Implementation of these two initiatives is providing valuable experience in addressing the key issues outlined in Clause 12 of the Directive. As this experience is monitored and evaluated, the Parties will modify these initial efforts as appropriate and will develop additional tools, approaches and direction, as required.

Part 7 - Project-Specific Environmental Assessment Work Plans

Clause 1 of the CEAA Directive emphasizes the importance of establishing and adhering to time lines,

Responsible authorities and federal authorities with specialist or expert information or knowledge will cooperate with the federal environmental assessment coordinator when the coordinator is setting time lines for assessments, adhere to those time lines once established and comply with requests and determinations made by the federal environmental assessment coordinator in support of timely, predictable and efficient preparation of high quality environmental assessments.

Clause 2 of the CEAA Directive requires that for the purposes of federal coordination,

For those projects where the Canadian Environmental Assessment Agency (the Agency) is the federal environmental assessment coordinator (subsection 12.4 (1)) or where there is more than one responsible authority (paragraph 12.4 (2) (b)), the roles and responsibilities of responsible authorities and federal authorities in supporting the federal environmental assessment coordinator throughout the environmental assessment process lifecycle are to be documented and agreed to in a project work plan to be prepared and monitored by the federal environmental assessment coordinator with progress reports provided to the Canadian Environmental Assessment Agency.

To provide a framework for applying these approaches, in support of the responsible authority(ies)' duties, functions and discretionary authority under the Act, the Parties may enter into project-specific EA work plans to address issues including:

- Fostering coherent and effective communication with the proponent, stakeholders, Aboriginal communities, and other interested parties;
- Facilitating cooperation and coordination with another jurisdiction;
- Seeking agreement among responsible authorities on a single scope of project that will be addressed through a single federal EA;
- Identifying the respective roles and responsibilities of each party in ensuring the completion of the assessment; and
- Working with the Major Projects Management Office to coordinate the EA process with other aspects of the regulatory process for major resource projects.

The environmental assessment work plans will be tailored to the needs of each project; however, each must include the following provisions:

- Any required legal advice related to the application of the Act to the project will be sought on a collective basis through the EAPC and will be shared with all members;
- The roles and responsibilities of the Agency, responsible authorities and federal authorities in completing the EA process, including addressing any non-trigger components included in the scope of project through the application of the Interim Approach to Scoping;
- Time lines for the completion of the EA;
- A committee structure to ensure the conduct of the EA process in accordance with the project specific work plan; and
- Agreed-to approaches for the EA including the assignment of responsibility for specific elements of the EA process including preparation of documentation (e.g. project work plan, scoping document, communication plan, comprehensive study or screening report), coordination of intergovernmental cooperation and coordination of consultations with the public and engagement of Aboriginal communities.

In the event that any Party is subject to litigation stemming from a decision made in accordance with a project specific work plan, all Parties will provide any required expertise in support of the litigation and share legal costs. The EAPC has signed an Agreement on Sharing Legal Costs Related to Application of the Interim Approach to Scoping to assist in applying this provision.

Part 8 - Review and Amendment

The Parties will review this MOU following the first year of its application, and on a periodic basis thereafter. It can be reviewed at any time at the request of a Party.

This MOU may only be amended with the written consent of all the Parties. Unless otherwise indicated, an amendment will become effective upon its execution by the Parties.

The Parties may, from time to time, jointly develop guidance documents, operational procedures, or terms of reference to assist in the interpretation and implementation of this MOU.

Part 9 - Executive in Counterparts

The Parties hereto agree that this MOU may be executed and dated in counterparts, each of which counterpart when taken together will constitute the original MOU. The Parties further agree that the MOU shall become effective on the date on which the last counterpart is executed.

Signatures:

President, Canadian Environmental Assessment Agency

Deputy Minister, Environment Canada

Deputy Minister, Fisheries and Oceans Canada

Deputy Minister, Health Canada

Deputy Minister, Natural Resources Canada

Deputy Minister, Transport Canada

Annex 1

CABINET DIRECTIVE ON IMPLEMENTING THE *CANADIAN ENVIRONMENTAL ASSESSMENT ACT*

The Government of Canada is committed to ensuring that the administration of the *Canadian Environmental Assessment Act* (the Act) results in a timely and predictable environmental assessment process that produces high quality environmental assessments so that federal decisions about projects safeguard the environment and promote sustainability.

In support of this commitment, the Government has embarked on consolidation of the federal environmental assessment process.

Until legislative amendments to achieve consolidation take effect, the Government will administer the Act in a manner that places a priority on the delivery of high quality environmental assessments in a predictable, certain and timely manner.

This Directive creates a framework within which federal authorities can exercise their respective powers, duties and function established under the *Canadian Environmental Assessment Act* and its regulations. This Directive does not, however, fetter the powers, duties, functions or discretion of federal authorities, the federal environmental assessment coordinator or the Canadian Environmental Assessment Agency.

PART 1: MAKING THE FEDERAL ENVIRONMENTAL ASSESSMENT PROCESS MORE PREDICTABLE, CERTAIN AND TIMELY

Federal Coordination

Predictable, certain and timely application of the federal environmental assessment process requires a high degree of collaboration and cooperation among federal authorities. All parties must understand and perform their roles and responsibilities in a manner that facilitates the efficient preparation of a high quality environmental assessment that will support federal decision making.

Under section 12.1 of the *Canadian Environmental Assessment Act*, the role of the federal environmental assessment coordinator is to coordinate the participation of federal authorities in the environmental assessment of a project.

Under section 12.2, the federal environmental assessment coordinator has a duty to ensure the identification of responsible authorities and federal authorities with specialist or expert information or knowledge, to coordinate the involvement of those federal authorities and to ensure that they fulfil their obligations under the Act in a timely manner.

Under section 12.3, the federal environmental assessment coordinator, after consultation with responsible authorities and federal authorities, has the power to establish time lines in relation to the assessment.

Under section 12.5, federal authorities are required to comply in a timely manner with requests and determinations made by the federal environmental assessment coordinator in the course of carrying out its duties or functions.

1. Responsible authorities and federal authorities with specialist or expert information or knowledge will cooperate with the federal environmental assessment coordinator when the coordinator is setting time lines for assessments, adhere to those time lines once established and comply with requests and determinations made by the federal environmental assessment coordinator in support of timely, predictable and efficient preparation of high quality environmental assessments.
2. For those projects where the Canadian Environmental Assessment Agency (the Agency) is the federal environmental assessment coordinator (subsection 12.4 (1)) or where there is more than one responsible authority (paragraph 12.4 (2) (b)), the roles and responsibilities of responsible authorities and federal authorities in supporting the federal environmental assessment coordinator throughout the environmental assessment process lifecycle are to be documented and agreed to in a project workplan to be prepared and monitored by the federal environmental assessment coordinator with progress reports provided to the Canadian Environmental Assessment Agency.

The *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements* (the *Federal Coordination Regulations*) contain time lines for a federal authority to determine if an environmental assessment is likely to be required for a proposed project or if the federal authority has specialist or expert information or knowledge that is necessary to conduct the environmental assessment.

1. Responsible authorities and federal authorities with specialist or expert information or knowledge will adhere to the time lines in these regulations.

The provision of an adequate project description by the proponent is critical to enabling federal authorities to determine whether a federal environmental assessment is required and, if one is required, facilitating its efficient conduct. The quality and completeness of the project description have a direct bearing on the ability of responsible authorities and federal authorities with specialist or expert information or knowledge to meet the time lines set out in the *Federal Coordination Regulations*. Incomplete or inadequate information will lead to delays in initiating the environmental assessment process.

1. The Agency, responsible authorities and federal authorities will ensure that adequate guidance is available to proponents on the preparation of project descriptions that contain sufficient information to determine the need for a federal environmental assessment and, when required, to initiate efficient conduct of the assessment.

Determining scope of project and scope of factors to be considered

Determination of the scope of the project and the scope of the factors to be considered as part of the assessment in a timely and appropriate manner is critical to providing certainty to project proponents, to enabling coordination with other jurisdictions and to ensuring a high quality environmental assessment.

Section 4 sets out the following related purposes of the Act:

To ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects.

To ensure that responsible authorities carry out their responsibilities in a coordinated manner with a view to eliminating unnecessary duplication in the environmental assessment process.

Subsection 12(1) states that:

Where there are two or more responsible authorities in relation to a project, they shall together determine the manner in which to perform their duties and functions under this Act and the regulations.

Section 15 sets out the responsible authority's responsibility and discretion in determining the scope of the project.

1. There will be a timely and coordinated determination of the scope of the project, the factors to be considered and the scope of the factors.
2. To support coordination and the administration of a timely, predictable and efficient process, responsible authorities will apply the Policy set out in Part 2 of this Directive to determine the scope of a project.

Ensuring the Implementation of Mitigation Measures

Implementation of mitigation measures identified through the environmental assessment process is a prerequisite to ensuring that projects do not cause significant adverse environmental effects. Clarity on roles and responsibilities is required to ensure that mitigation measures are identified, implementation plans specified and applied and follow-up programs undertaken as appropriate.

Subsections 20(2.1) and 37(2.3) state that:

A federal authority shall provide any assistance requested by a responsible authority in ensuring the implementation of mitigation measure on which the federal authority and the responsible authority have agreed.

1. A federal authority that proposes or agrees to the examination of an issue as part of an environmental assessment, or that is otherwise responsible under its departmental mandate for issues to be addressed in the environmental assessment, will, at the time it initiates examination of the issue, commit to identifying at the time a course of action is taken by the responsible authority, the means the federal authority will use to ensure the implementation of any mitigation measures that are agreed to by the responsible authority and the federal authority.
2. A federal authority that proposes or agrees to the examination of an issue as part of an environmental assessment, or that is otherwise responsible under its departmental mandate for issues to be addressed in the environmental assessment, will, at the time it initiates examination of the issue, commit to identifying at the time a course of action is taken by the responsible authority, the means the federal authority will use to ensure the implementation of any follow-up program requirements that are agreed to by the responsible authority and the federal authority.

Canadian Environmental Assessment Agency

The Canadian Environmental Assessment Agency has a key facilitation role to play in the administration of the Act and in encouraging the application of the federal environmental assessment process in a manner that supports timely, predictable and efficient preparation of high quality environmental assessments.

Under section 63, the Canadian Environmental Assessment Agency (the Agency) has the power to assist parties in building consensus and resolving disputes.

1. The Agency will assist parties in building consensus and resolving disputes in a manner that supports the predictable, timely and efficient administration of the federal environmental assessment process, especially where there are disputes between federal authorities on determining an appropriate scope of project or scope of the factors to be considered in an assessment.
2. The Agency will, in cooperation with responsible authorities and federal authorities, review existing environmental assessment policies and procedures and proactively develop new policies and procedures in support of consistent application of the federal environmental assessment process.

Under section 62, the Agency has a role to promote, monitor and facilitate compliance with the Act and its regulations. It is also required to promote and monitor the quality of assessments. Section 63 requires that the Agency establish and lead a quality assurance program for assessments.

1. The Agency will administer the quality assurance program in a manner that will encourage timely, predictable and efficient preparation of high quality environmental assessments. This will include the development of performance measures to track and evaluate success in achieving these objectives and public reporting on the results in a timely manner.

Accountability and Reporting

Collaboration and cooperation will be required among all federal authorities that engage in the environmental assessment process to achieve the objectives of making that process more predictable, certain and timely. Identifying the specific means that will be used to implement this Directive and public reporting on the results achieved will be central to encouraging improved performance.

1. The President of the Agency and the deputy heads of federal authorities identified in Annex A to this Directive will enter into a Memorandum of Understanding (MOU) setting out the specific actions that will be taken to implement this Directive. The MOU will set out the respective roles and responsibilities of the Agency and the federal authorities in working together to ensure timely, predictable and efficient preparation of high quality environmental assessments. The MOU will provide specific direction on key issues such as identification of each department's federal interest based on its legislative or policy mandate, determination of triggers, determination of scope of project and scope of the factors to be considered in an assessment, implementation of mitigation measures, implementation of follow-up programs and incorporating species at risk considerations into environmental assessments.
2. The President of the Agency and the deputy heads of federal authorities not identified in Annex A to this Directive should consider the opportunity of similar MOUs and, as appropriate, enter into such MOUs.
3. The Minister of the Environment's annual report to Parliament on the implementation of the Act will include a summary of the results achieved in improving the timely, predictable and efficient preparation of high quality environmental assessments through implementation of this Directive.

PART 2: POLICY FOR DETERMINING AN APPROPRIATE SCOPE OF PROJECT FOR ENVIRONMENTAL ASSESSMENTS

To achieve the key objective of ensuring that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, Ministers will support scope of projects determinations that correspond to the scenarios described below.

1. If the power, duty or function referred to in section 5 of the Act is to be exercised in relation to the entire proposal as described by the proponent, a scope of project determination that reflects the entire proposal.
2. If there is more than one power, duty or function referred to in section 5 of the Act that is to be exercised in relation to the proposal, scope of project determinations that result in one federal environmental assessment being conducted in respect of the proposal. Through consultation, this may be accomplished by agreeing to the same scope of project or considering separate projects in a single environmental assessment.
3. If components of the proposal other than the component directly related to the powers, duties or functions referred to in section 5 of the Act might cause adverse environmental effects on areas of federal jurisdiction, a scope of project determination that includes as much as possible these other components, so that the potential adverse environmental effects on areas of federal jurisdiction can be considered.
4. If the proposal or any component of it is subject to the environmental assessment process of another jurisdiction, a scope of project determination that facilitates cooperation and coordination with the other jurisdiction. This does not require that the federal and provincial scopes of project be the same but that they be complementary and facilitate an efficient and timely environmental assessment.

ANNEX A TO THE DIRECTIVE FEDERAL AUTHORITIES COVERED BY A MEMORANDUM OF UNDERSTANDING ON IMPLEMENTING THE *CANADIAN ENVIRONMENTAL ASSESSEMENT ACT*

- Environment Canada
- Fisheries and Oceans Canada
- Health Canada
- Natural Resources Canada
- Transport Canada

Annex 2 Environmental Assessment Projects Committee Interim Approach for Determining Scope of Project for Major Development Proposals with Specific Regulatory Triggers under the *Canadian Environmental Assessment Act*

Background

The *Cabinet Directive on Implementing the Canadian Environmental Assessment Act* (November 2005) sets out a Policy for Determining an Appropriate Scope of Project for Environmental Assessments.

That policy provides a framework for determining the scope of project within the *Canadian Environmental Assessment Act's* overarching context of ensuring the careful and precautionary identification of potential adverse environmental effects and means of mitigating them prior to federal decisions that would allow a project to proceed. In doing so, the policy supports federal authorities in exercising their respective powers, duties and functions under the Act.

Section 3, Part II of the Directive, which is of particular relevance to this interim approach, states:

If components of the proposal other than the component directly related to the powers, duties or functions referred to in section 5 of the Act might cause adverse environmental effects on areas of federal jurisdiction, a scope of project determination that includes as much as possible these other components, so that the potential adverse environmental effects on areas of federal jurisdiction can be considered.

Purpose

The purpose of this interim approach is to provide guidance, for a specific category of development proposals, for applying the Cabinet Directive's scoping policy. It is aimed at facilitating consistency and timeliness for a type of scoping decision that, historically, has tended to be difficult and time-consuming.

The interim approach includes structured processes for identifying components of a development proposal for inclusion in the project scope, obtaining the information required to support federal environmental assessment decisions, and ensuring implementation of mitigation measures and follow-up programs.

Application

As with the Cabinet Directive, this interim approach does not fetter the powers, duties, functions or discretion of federal authorities, the federal environmental assessment coordinator or the Canadian Environmental Assessment Agency. The interim approach sets out a framework for members of the Environmental Assessment Projects Committee (EAPC) to apply when determining the scope of project for any major development proposal with components that may require an environmental assessment under subsection 5(1)(d) of the Act. In other words, the interim approach is intended for major development proposals likely to have one or more of the following "regulatory triggers":

- subsection 35(2) of the *Fisheries Act*;
- paragraph 5(1)(a) of the *Navigable Waters Protection Act*;
- subsection 7(1) of the *Explosives Act*; and/or
- subsection 127(1) of the *Canadian Environmental Protection Act, 1999*.

Major development proposals are generally considered to be proposals that may be subject to comprehensive study and those large scale projects subject to screening that trigger the EA requirements of more than one jurisdiction.

If RAs other than EAPC members are also involved in assessing the proposed development, agreement must be obtained from the other RAs in order to apply the interim approach.

The effectiveness of the interim approach will be assessed by EAPC after it has been applied to a range of development proposals for a period of not more than one year. Performance measures will be identified to determine whether the interim approach is contributing to the Cabinet Directive objective of a predictable, certain and timely environmental assessment process that produces high quality environmental assessments. Revisions or adjustments to strengthen the approach will be considered at that time. The interim approach may eventually be superseded by a comprehensive scoping policy.

Principles

The *Canadian Environmental Assessment Act*, as well as the courts in decisions relating to its application, gives RAs broad discretion in determining the scope of projects to be assessed.

The Cabinet Directive, consistent with the existence of these discretionary powers, provides a framework to ensure that project scoping decisions can be made in a manner that allows for the consideration of all environmental effects relating to matters within federal jurisdiction that may be associated with a development proposal.

A principles-based approach will be used to ensure that the decisions on the scope of project and subsequent environmental assessments advance the purposes of the Act -- i.e., the careful and precautionary identification of potential adverse environmental effects and means of mitigating them prior to final decision-making that would allow a project to proceed - and are consistent with federal jurisdiction as established in the Constitution of Canada and clarified through Court decisions.

Given concurrent federal and provincial jurisdiction for the environmental assessment of most large scale projects, cooperation with other jurisdictions is required to meet the objective of ensuring, in as efficient a fashion as possible, that projects do not result in adverse environmental effects.

Approach

A scope of project determination developed under this interim approach will provide the basis for a single comprehensive study or screening in response to a development proposal. To the extent possible, this will be achieved through a single scope of project determination as agreed by all RAs.

At the earliest opportunity after a major development proposal comes to the attention of the federal government, a Project Committee will be established and chaired by the Federal Environmental Assessment Coordinator (FEAC) from the Agency, in order to discuss project scoping. The Project Committee will include representatives of all RAs likely to have a regulatory trigger covered by this approach (this reflects the "in until out" policy) and other federal entities likely to serve as expert Federal Authorities (FAs). The Project Committee will also engage, as early as possible, in gathering necessary information from the proponent and discussing cooperation with other jurisdictions.

Under this approach, the scope of project will include:

- any component of the development proposal directly related to a regulatory trigger(s) (trigger components); and

- any other components of the development proposal that should be included in the scope of the project in consideration of their potential to cause adverse environmental effects related to matters within federal jurisdiction (non-trigger components).

A trigger component can generally be described as the physical work or activity for which one or more regulatory approvals is/are required. It should usually be defined to include elements physically linked together; for instance, a bridge as opposed to only its pier footings.

Determination of which non-trigger components should be included in the project scope will be based on a balanced, risk-management approach and consideration of three criteria:

- the nature of the federal interests in question and potential environmental risk to them;
- the operational inter-connectedness between the non-trigger components in question and the trigger components; and
- the extent to which the potential adverse environmental effects related to matters within federal jurisdiction to be caused by the component will be considered and mitigated through other regulatory and environmental assessment processes.

The determination will also take into account any available information regarding public concern with respect to the potential adverse environmental effects of the additional project components related to matters within federal jurisdiction.

The determination will be made in a timely manner, to facilitate cooperation and coordination with environmental assessments undertaken by other jurisdictions.

Once the project scope is established, RAs and FAs will have primary responsibility for those components of a development proposal which they suggested for inclusion in the scope of project. This entails taking the lead on:

- assessing the likely environmental effects of those components;
- identifying mitigation measures to reduce those effects;
- drafting relevant text for inclusion in any report or written document, such as Scoping Document, EA Track Report, Comprehensive Study Report or Screening Report; and
- ensuring the implementation of appropriate mitigation and follow-up measures. For FAs, these measures will have been agreed to with the RA.

A written agreement among the parties will be established which outlines the roles and responsibilities of each RA and FA based on a standard template, modified as required by the particular facts associated with the assessment.

Where an FA has suggested the inclusion of a particular component of the development proposal in the scope of project and lacks its own regulatory instruments to ensure directly the implementation of mitigation measures and/or follow-up requirements, it may use any other approaches appropriate in the circumstances to achieve this goal, such as:

- having the mitigation measures and/or follow-up requirements included in provincial permits or authorizations and receiving monitoring reports from the province or proponent;
- entering into an agreement with the proponent, supported by a letter of credit or security bond, where appropriate, and receiving monitoring reports from the proponent; or
- having the mitigation measures and/or follow-up requirements included in RAs' permits or authorizations and receiving monitoring reports from the RA or proponent.

Whichever option(s) is/are chosen, where an FA is taking the lead with respect to certain mitigation measures and follow-up requirements, RAs will provide appropriate support to FAs' efforts in a manner consistent with the RAs' obligation to ensure the implementation of mitigation measures and follow-up. An

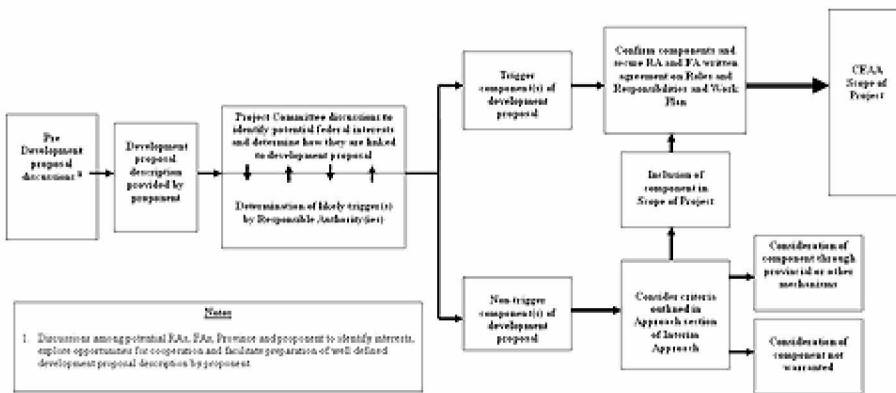
RA may, for example, include as a condition of its permitting the successful conclusion of an agreement between an FA and a proponent.

Federal Interest and Federal Jurisdiction

In some circumstances, the relationship between federal interest and federal jurisdiction may have a bearing on determining the scope of project and the scope of assessment. For the purpose of informing the implementation of this interim approach, federal jurisdiction should be used in its broadest sense, i.e. within a federal constitutional head of power. Federal interest should be used to refer to elements or activities that are expressly connected to that jurisdiction.

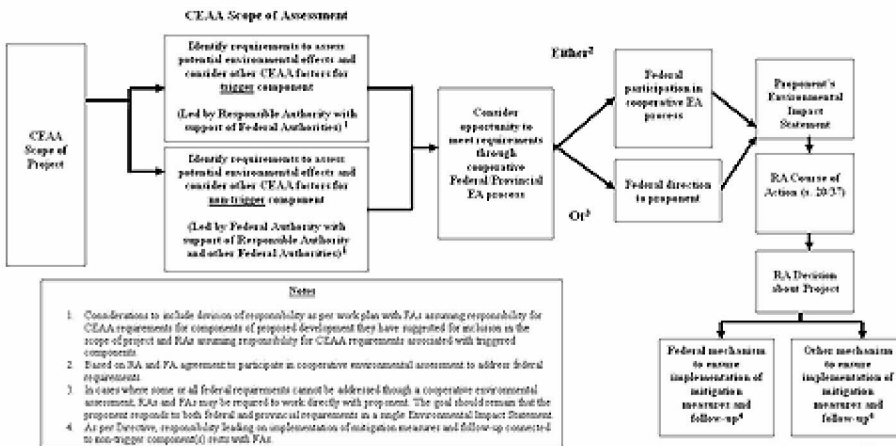
For example, if wetlands might be affected by a proposed development, the federal interest in wetlands would stem from impacts on the wetlands which may have a subsequent impact on migratory bird habitat and subsequently migratory birds, which pertain to federal jurisdiction.

Process for Reaching and Applying Scope of Project Determinations under the Canadian Environmental Assessment Act for Major Development



(Description: Process for Reaching and Applying Scope of Project Determinations under the Canadian Environmental Assessment Act for Major Development - Steps 1-6)

Process for Reaching and Applying Scope of Project Determinations under the Canadian Environmental Assessment Act for Major Development



(Description: Process for Reaching and Applying Scope of Project Determinations under the Canadian Environmental Assessment Act for Major Development - Steps 7-11)

Annex 3 Environmental Assessment Projects Committee

Approach for Engaging Aboriginal Peoples During the Environmental Assessment of Proposed Projects Adopted January 2007

Purpose and Application

- This approach has been agreed upon by Environmental Assessment Projects Committee (EAPC) members to guide their work pending the development of more comprehensive policies on Aboriginal engagement in environmental assessments (EAs) under the *Canadian Environmental Assessment Act* (the Act) and consultation on potential adverse impacts on Aboriginal rights or title. [1](#)
- The approach has been developed in light of a number of considerations, including:
 - An upsurge in the number of proposed projects in areas which Aboriginal communities have traditionally used and/or where they have recognized or asserted rights or title;
 - Heightened expectations among Aboriginal communities with regard to early and meaningful involvement in the review of proposed projects in these areas, in part because of recent jurisprudence related to the duty to consult; and
 - Requests from project proponents that the government adopt a more concerted and consistent approach to the engagement of Aboriginal communities, to reduce the risks of litigation and delays in review processes.
- The approach will be applied to comprehensive study and large-scale screening EAs of major project proposals south of 60° on a case-by-case basis. In general, it will be applied where:
 - The project as scoped under the Act has the potential to cause environmental effects warranting the engagement of Aboriginal peoples in the EA;
 - The Canadian Environmental Assessment Agency (Agency) acts as the Federal Environmental Assessment Coordinator (FEAC); and
 - Responsible authorities (RAs) involved in the project are EAPC members.
- If RAs other than the EAPC members are also involved in the project, their agreement must be obtained in order to apply this approach.
- The effectiveness of the approach will be assessed by EAPC after it has been applied to a range of development proposals for a period of not more than one year. Qualitative performance measures will be identified to determine whether the approach is contributing to more efficient and effective Aboriginal engagement in environmental assessments (EAs) under the Act and associated consultations on potential adverse impacts on Aboriginal rights or title. Revisions or adjustments to strengthen the approach will be considered at that time.
- The approach may eventually be superseded by a comprehensive policy on coordination of Aboriginal engagement in EA and associated consultations on potential impacts of proposed projects on Aboriginal rights or title.

Approach

- Project Committees - which are chaired by the Agency in its role as FEAC and include the RAs and expert federal authorities (FAs) for a proposed project -- will agree as early as possible on project-specific Aboriginal engagement plans based on the guidance provided in this document.
- For each EA to which this approach is applied, an Aboriginal engagement team will be established. This team may be the Project Committee itself, or a sub-committee of the Project Committee.
- The team will be responsible for organizing coordinated, single-window, meaningful federal engagement with Aboriginal communities that could be affected by the potential environmental effects of the project.
- As part of this process, the team will seek to coordinate federal actions with any provincial or territorial engagement activities and, where possible, will seek to establish a joint federal-provincial/territorial team to provide a one-window approach to engagement. Where appropriate,

proponents may also be invited to participate in and contribute to discussions with Aboriginal communities.

- Where multiple projects are being proposed in the same area and affecting some or all of the same Aboriginal communities, appropriate opportunities will be sought to reduce the demands on the those communities while respecting the interests of individual proponents. Under these circumstances, Project Committees will strive to ensure consistency of approach and continuity of engagement to assist in relationship building with the Aboriginal communities.
- Initially, the team's work will focus on EA-related issues; namely, the possible effects of any change the project may cause in the environment on the current use of lands and resources for traditional purposes and the integration of traditional knowledge into the EA.
- To the extent possible, all RAs and relevant expert FAs should be present at the first meetings with Aboriginal communities; participation in subsequent meetings can be determined as discussions proceed and the interests and concerns of the Aboriginal communities are identified.
- As appropriate, the work of the engagement team may evolve to include section 35 consultations on behalf of the Crown where it is determined Canada has a legal duty to consult, consistent with Supreme Court of Canada jurisprudence in Taku River, Haida, and Mikisew Cree. A decision to proceed in this way will be informed by consideration of the specific circumstances of the project and advice from the Department of Justice,
- Expanding the discussions to include section 35 consultations should appear as seamless as possible to the participating Aboriginal communities while making it clear that the nature and substance of the dialogue has shifted to section 35 consultations. Given that section 35 findings will inform subsequent decision-making by RAs, the chair of the team will be assumed by a designated RA representative agreed to by the team, if an Agency official has been chairing up to that point.
- The team will obtain advice from the Department of Justice on the approach to any section 35 consultations.
- The results of the team's efforts that are relevant to the EA of the project will be reflected in the Comprehensive Study or Screening Report and, to the extent that discussions also entail section 35 consultations, those findings will be considered in any subsequent decision-making by RAs.
- Throughout the environmental assessment engagement process and any associated section 35 consultations, a detailed record of all correspondence and discussions with Aboriginal communities and the nature and intent of those interactions will be maintained.

Aboriginal Engagement and Consultation on Projects Subject to EA by Review Panel, Joint Panel or Designated Substituted Process

- EAPC will consider, on a case-by-case basis, the need to apply a concurrent coordinated approach to engaging and consulting with aboriginal communities on projects that are subject to an environmental assessment by a review panel, joint panel or designated substituted process under the Act.
- Where EAPC determines that such an approach would be appropriate, it will be designed and implemented in a manner that fully respects the role of the review panel, joint panel or designated substituted process.

Resources

- It should be noted that departments and agencies are funding aboriginal engagement in the environmental assessment process and any associated section 35 consultations through the re-allocation of existing program funds.
- Opportunities to supplement those resources will be pursued individually and collectively by EAPC members to address increasing demands as a result of high volumes of projects and better understanding of the effort required to undertake these activities.
- The costs of the Aboriginal engagement team's work will be absorbed by all participating organizations on the basis of a cost-sharing formula to be established as part of the Aboriginal

engagement plan. Where agreement cannot be reached by the Aboriginal engagement team, the matter will be brought to the EAPC for decision.

- Departments and agencies will cover costs directly related to the engagement process, such as room rentals and travel to meetings. In addition, Aboriginal communities will be able to apply for support through the Participant Funding Program where a comprehensive study or panel review is under way, except in cases where a panel-level EA has been substituted to another review process. However, because of budgetary limitations, departments and agencies will rarely if ever be in a position to make further capacity funding available to Aboriginal interlocutors.

¹ For the purpose of this approach, the word "engagement" is used to refer to the participation of Aboriginals in environmental assessments conducted under the Act to assess the likelihood that a project cause significant adverse environmental effects, as defined in the Act, and to identify measures to mitigate any such effects. The term "consultation" is used to refer to the process to be used by the Crown to fulfill any legal obligation it may have to consult on potential adverse impacts on rights or title protected under section 35 of the *Constitution Act, 1982*.

Date Modified: 2010-06-18



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Process for Reaching and Applying Scope of Project Determinations under the *Canadian Environmental Assessment Act* for Major Development Proposals with Regulatory Triggers

Steps 1 to 6:

The following outlines steps 1 to 6 to be followed to determine the scope of project for a major development proposal with specific regulatory triggers under the *Canadian Environmental Assessment Act* and reach a decision about the project, as illustrated in the flowcharts contained in Annex 2 of the Cabinet Directive. [Steps 7 to 11](#) are illustrated in a separate flowchart and are described below.

1. Pre-development proposal discussions

Hold discussions among potential responsible authorities (RAs), federal authorities (FAs), the Province and proponent to identify interests, explore opportunities for cooperation and facilitate preparation of a well-defined development proposal description by the proponent.

2. Development proposal description provided by proponent

3. Project Committee discussions

Hold Project Committee discussions to:

- identify potential federal interests and determine how they are linked to development proposal; and
- enable determination of likely trigger(s) by RA(s).

4. Identify trigger component(s) of development proposal

5. Identify non-trigger component(s) of development proposal

Identify non-trigger components in consideration of the criteria outlined in the "Approach" section of the Interim Approach. Non-trigger components would not be included in the scope of project if they will be considered through provincial or other mechanisms or if consideration of the component is not warranted. Otherwise they may be included in the scope of project.

6. Determine CEAA scope of project

Confirm components and secure RA and FA written agreement on roles and responsibilities and work plan.

Steps 7 to 11:

The following outlines steps 7 to 11 to be followed to determine the scope of project for a major development proposal with specific regulatory triggers under the *Canadian Environmental Assessment Act* and reach a decision about the project, as illustrated in the flowcharts contained in Annex 2 of the Cabinet Directive. [Steps 1 to 6](#) are illustrated in a separate flowchart and are described above.

7. Determine CEAA scope of assessment

Identify requirements to assess potential environmental effects and consider other CEAA factors. For trigger components this is led by the RA with support of FAs. For non-trigger components this is led by the FA with support of the RA and other FAs. Considerations are to include the division of responsibility as per the work plan, with FAs assuming responsibility for CEAA requirements for components of the

proposed development that they have suggested for inclusion in the scope of project, and RAs assuming responsibility for CEAA requirements associated with triggered components.

8. Consider opportunity to meet requirements through cooperative Federal/Provincial EA process

Determine if requirements can be met through federal participation in a cooperative EA process (this will be based on RA and FA agreement to participate in a cooperative environmental assessment to address federal requirements), or if separate federal direction to the proponent is required.

In cases where some or all federal requirements cannot be addressed through a cooperative environmental assessment, RAs and FAs may be required to work directly with the proponent. The goal should remain that the proponent responds to both federal and provincial requirements in a single Environmental Impact Statement.

9. Proponent's Environmental Impact Statement

10. RA course of action (s. 20/37)

11. RA decision about project

Determine the mechanism (federal or other) to ensure implementation of mitigation measures and follow-up. As per the Directive, responsibility for leading on implementation of mitigation measures and follow-up connected to non-trigger component(s) rests with FAs.

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