



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

The Canadian Environmental Assessment Act

RESPONSIBLE AUTHORITY'S GUIDE



Canada

**PART II:
THE PRACTITIONER'S GUIDE**

Part II: The Practitioner's Guide

Purpose and Organization

The **Practitioner's Guide** provides detailed guidance on conducting environmental assessments in compliance with the *Canadian Environmental Assessment Act (Act)*. It is written for practitioners who must prepare, review, or contribute to federal EAs. It focuses on the procedures for conducting an EA under the Act. It also provides, where appropriate, guidance on "how-to" techniques for conducting EAs.

The guide is organized into two chapters and a set of appendices:

Chapter 1: The Self-Directed Environmental Assessment is a detailed look at the procedures to follow in conducting a screening or comprehensive study in compliance with the Act.

Chapter 2: The Public Review provides an overview of the scope, nature, and procedures of mediation and panel reviews, focusing on the role and obligations of the responsible authority.

Appendices include the four key inclusion and exclusion lists for the Act, and will be provided when the Act and its regulations come into effect.

CHAPTER 1
THE SELF-DIRECTED
ENVIRONMENTAL ASSESSMENT:

SCREENING
AND
COMPREHENSIVE STUDY

Chapter 1: The Self-Directed Environmental Assessment: Screening and Comprehensive Study

1.1 The Self-directed Environmental Assessment

This chapter provides guidance on conducting a self-directed environmental assessment (EA) in the form of a screening or comprehensive study, in compliance with the *Canadian Environmental Assessment Act* (Act). It describes the obligations of the responsible authority (RA) at each step, and summarizes the roles and responsibilities of the major participants.

The majority of federal projects requiring an EA will undergo either a screening or comprehensive study. Both can be considered self-directed environmental assessments, in the sense that the RA determines the scope of the EA and the scope of the factors to be considered, directly manages the EA process, and ensures that the EA report is prepared. In practice, the project proponent may actually conduct the EA and prepare the report, but the RA alone remains directly responsible for ensuring that the screening or comprehensive study is carried out in compliance with the Act.

A self-directed EA usually consists of eight major steps (see Figure 1-1).

1.1.1 Screening

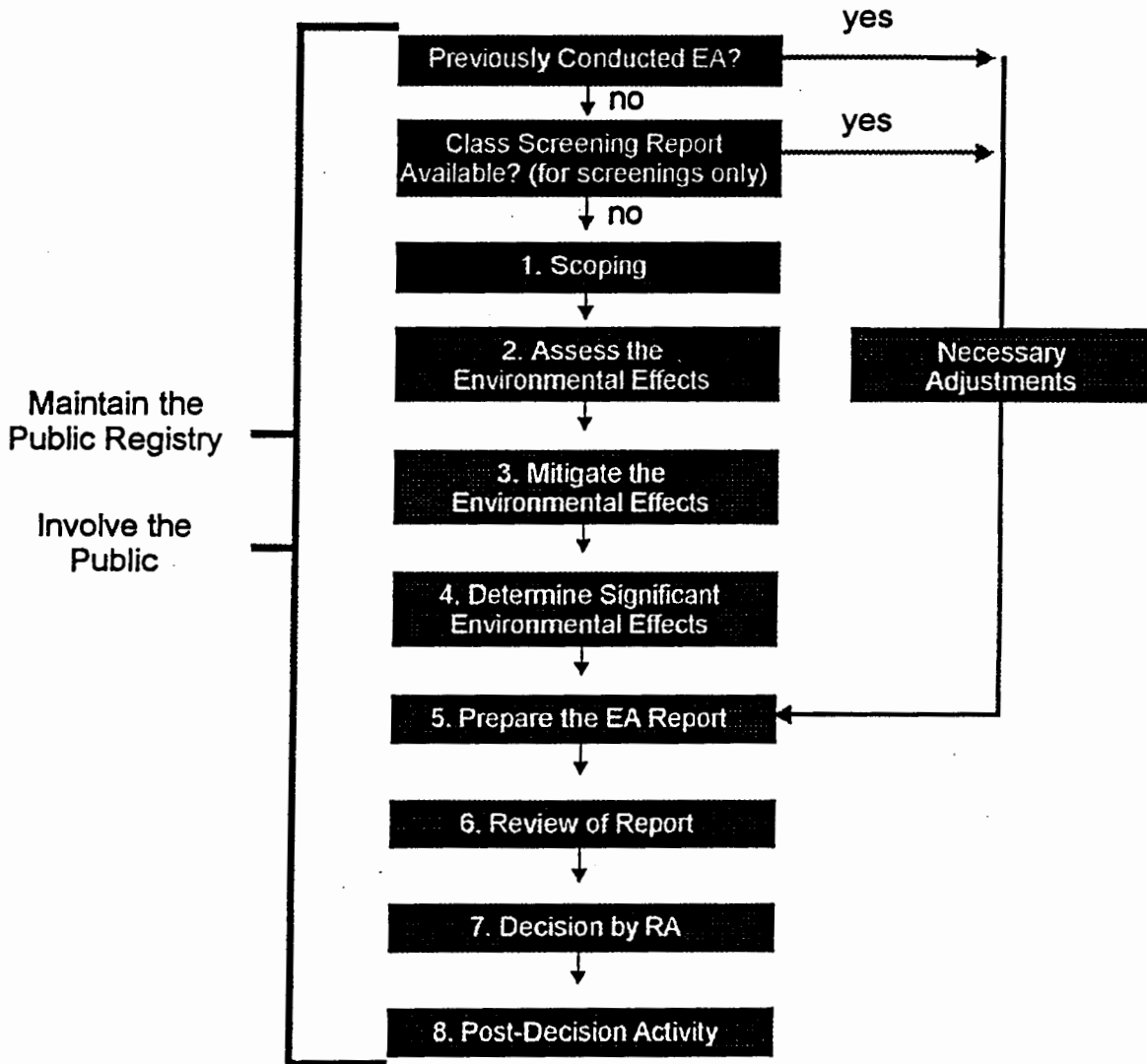
Most projects involving the federal government will be assessed through screening. Under the Act, screening is a systematic, documented assessment of the environmental effects of a proposed project. Screening will determine whether or not the RA may provide federal support for the project (that is, take action that enables the project to proceed). Specifically, screening will identify the need to

- mitigate environmental effects;
- modify the project plan;
- carry out further assessment of the environmental effects of the project through mediation or panel review.

RAs have considerable flexibility in conducting screenings. Screenings will vary in time, length, and depth of analysis, depending on the circumstances of the proposed project, the existing environment and the likely environmental effects. Some screenings may require only a brief review of the available information and a one- or two-page report; others may be as thorough and rigorous as a comprehensive study.

Figure 1-1:

Key Steps of the Self-Directed Environmental Assessment



In a screening, the RA must

- determine the scope of the project, scope of the assessment, and scope of the factors to be considered;
- determine whether a project has already been assessed or whether a class screening report is available for the project;
- determine whether mitigation measures are required to eliminate or reduce significant environmental effects, and ensure implementation of these measures;
- determine whether the project is likely to cause any significant adverse environmental effects;
- ensure that a screening report is prepared;
- make a determination, based on the screening report's conclusions, about whether it may provide federal support to the project;
- maintain all publicly available documents related to the assessment in a public registry;
- monitor expressions of public concern about the project and, if appropriate, provide opportunities for public review and comment.

By one measure, screening is the most important EA track under the Act. The majority of federal projects -- perhaps 95% or more -- can be expected to be assessed through a screening or class screening.

Different levels of screening

A screening is the most flexible EA track, accommodating a wide range of projects. A railway crossing, for example, may require only a simple screening without the involvement of outside experts, the public, or the Minister of the Environment. The RA for a proposed gold mine in an environmentally sensitive area may, on the other hand, decide that the assessment needs to

- *consider the project's purpose and any alternative means of carrying out the project*
- *collect additional information*
- *involve the public and outside experts.*

1.1.2 Class screening

Under the Act, an RA can apply to the Agency to have a report (or reports) declared as a class screening report for future projects. A class screening report presents the accumulated knowledge about the environmental effects of a given class or type of project and identifies the known measures to mitigate those environmental effects.

A class screening report is considered acceptable for any class of projects where there is a sound knowledge of the environmental effects and appropriate mitigation measures, such as classes of projects that are routine and repetitive. In applying a class screening report to a project, however, the RA must still take into account site-specific circumstances and cumulative environmental effects.

Once approved by the Agency, a class screening report can be used by any RA as a model in conducting screenings of other projects within the same class.

*Examples of possible project classes
for class screening declaration*

- *dredgings*
- *culvert installations*
- *highway maintenance*
- *rail-and-tie replacement*
- *shoreline stabilization*
- *building construction*

Federal authorities with specialist information and expertise have a special role to play in the preparation of a class screening report. Under the Act, expert departments must provide specialist information and expertise related to the class screening when requested by the RA. Expert federal authorities include Agriculture Canada, Department of Natural Resources Canada, Environment Canada, Fisheries and Oceans Canada, Health Canada, Heritage Canada, and Indian Affairs and Northern Development.

To ensure that all scientific or technical matters have been adequately addressed in the class screening report prior to submitting it to the Agency, the RA should make certain that all relevant expert federal departments have had an opportunity to provide specialist information or expertise, and comment on the draft class screening report, as appropriate.

The class screening report submitted to the Agency for review should include a record of consultation with the expert federal departments as well as a discussion of any unresolved scientific or technical concerns.

In seeking to designate a report (or reports) as a class screening report, the RA must provide the following information to the Agency:

- a description of the class of projects for which the declaration is sought;
- the potential environmental effects of the class of projects;
- the information required to conduct the screening, including necessary site- and situation-specific data;
- appropriate mitigation measures to eliminate or reduce adverse environmental effects that would normally be expected to occur;
- specific conditions under which a project of this class should undergo more detailed review;
- terms and conditions under which the project may proceed;
- documentation of a technical review by expert federal departments;
- any other information required by the Agency.

Having received the proposed class screening report from the RA, the Agency must make it available for public comment. The Agency must then consider any public comments received in determining whether to designate the report a class screening report.

A class screening report is not a substitute for an EA. It does not exempt the RA from the need to conduct a screening. The RA will still need to factor site-specific issues and cumulative environmental effects into the assessment, and will still need to prepare a screening report for the project. A class screening can greatly simplify and streamline the screening process, however. For example, a screening may be streamlined by using any or all of the descriptions in the class screening report such as the

- project's activities;
- type of information needed;
- environmental components to be addressed;
- nature of environmental effects;
- scope of issues to be considered; or
- mitigation measures.

If the project falls into a class but does not meet all the requirements outlined in the report (for example, a dredging project at a different location), further assessment will be needed. Studies may be required to take account of site-specific circumstances or cumulative effects, or to identify appropriate mitigation measures.

1.1.3 Comprehensive study

Although the majority of projects covered by the Act will undergo an EA through a screening, some projects will require a more intensive and rigorous assessment of their environmental effects through a comprehensive study. Conducting such a study may eliminate the need for further review by mediation or review panel.

The Comprehensive Study List, established by regulation, deals with those projects experience suggests have the potential to result in significant environmental effects no matter where they are located. Such projects tend to be large-scale and often generate considerable public concern. Examples include

- large oil and natural gas developments;
- major electrical generation projects;
- large mining projects;
- major pipelines;
- nuclear power facilities, including uranium mines;
- large industrial plants.

In a comprehensive study, the RA retains a primary management role over the EA, although it has more obligations than in a screening. These include the need to consider a wider range of factors, submit the comprehensive study report to the Agency and the public for review, take public comments into account, and look at the need for a follow-up program. In addition (as opposed to a screening), the Minister of the Environment is responsible for determining the next step in the EA process when the comprehensive study report has been completed.

Compared to projects that will undergo a screening, projects requiring a comprehensive study are generally large-scale, complex, and environmentally sensitive. The scope and depth of the analysis must be correspondingly greater as well, and will demand highly specialized skills and experience. There may be a need for

- gathering environmental baseline data;
- commissioning new studies on specific issues;
- considering highly technical, one-of-a-kind, site-specific mitigation measures;
- extensive public consultation.

Public concerns

Public concerns, if not addressed sufficiently in the screening or comprehensive study, can warrant a referral to a public review either through mediation or panel review. Public concerns can be expressed in many ways:

- *correspondence and telephone calls to the Minister, local MPs, the Agency, or the department*
- *media coverage of public concerns*
- *community events, such as demonstrations or meetings about the project;*
- *formal interventions*
- *informal communication*

RAs should not necessarily rely on numbers when judging the importance of public concerns. Even a few letters or calls may express public concerns, particularly if they are from people who will be most directly affected by a project.

Again, as opposed to a screening, a comprehensive study involves the establishment of a working relationship between the RA and the Canadian Environmental Assessment Agency (CEAA/Agency). The Agency has a direct role to play in reviewing the comprehensive study report for procedural compliance with the Act, providing opportunities for public comments on the comprehensive study report, and advising the Minister of the Environment of the next steps in the EA process. Thus, the RA should keep the CEAA informed at all steps of the comprehensive study.

The Agency also provides procedural advice, and can use its independent position to help resolve disputes before they lead to delays in the assessment or necessitate a referral to a mediator or review panel.

As in the case of a class screening report, federal authorities with specialist information and expertise have a special role to play in a comprehensive study. Under the Act, expert departments must provide specialist information and expertise related to the project when requested by the RA.

To ensure that all scientific or technical matters have been adequately addressed in the comprehensive study report prior to submitting the report to the Agency, the RA should make certain that all relevant expert federal departments have provided specialist information or expertise, and have commented on the comprehensive study report, as appropriate.

The comprehensive study report submitted to the Agency for review should include a record of consultation with the expert federal departments as well as a discussion of any unresolved scientific or technical concerns.

If a project is undergoing a comprehensive study, then neither the RA nor any other federal authority may provide federal support to the project until the completion of the comprehensive study or subsequent public review.

1.2 Roles and Responsibilities

Depending on the circumstances of the self-directed EA, there can be up to seven major participants in a screening or comprehensive study:

- the RA;
- the proponent;
- the Agency;
- the Minister;
- expert federal departments;
- other federal authorities;
- the public.

Tables 1-1 and 1-2 summarize the roles and responsibilities of these participants in a screening and comprehensive study, respectively.

**Table 1-1
Roles and Responsibilities of Participants
in a Screening**

The RA	<ul style="list-style-type: none"> ● determines whether project has been previously assessed; ● ensures that a screening is conducted on a project not described on the Comprehensive Study List or Exclusion List as early as is practicable in the planning stages and before irrevocable decisions are made (may delegate conduct of EA and preparation of the report); ● must not provide federal support to the project until completion of the EA; ● determines the scope of the EA (that is, the scope of the project, the scope of the assessment, and the scope of the factors to be considered); ● may use or permit the use of all or part of any class screening report, ensuring that adjustments are made to take into account local circumstances and any cumulative environmental effects; ● determines whether public participation is appropriate and, if so, provides the public an opportunity to comment on the screening report; ● establishes and maintains the public registry; ● makes a determination on the impact of the project; ● makes a decision, based on the results of the screening report and taking into account any public comments, about whether to provide federal support to the project; ● provides public notice of its course of action; ● ensures that for any project that is proceeding, all appropriate mitigation measures are implemented; ● ensures that, if appropriate, a follow-up program is designed and implemented; ● may request that the Minister refer the project for a public review through mediation or a panel review.
The Proponent	<ul style="list-style-type: none"> ● prepares screening report and all other necessary documentation (if RA not proponent); ● follows all conditions of licences imposed by the RA; ● implements mitigation measures; ● develops and implements a follow-up program, if appropriate.

**Table 1-1
Roles and Responsibilities of Participants
in a Screening
(cont'd)**

- The Agency**
 - provides procedural advice to RA as required;
 - provides advice to the Minister if project is to be referred to a public review.

- The Minister**
 - refers a project to a public review at the request of the RA, or at own initiative.

- Expert Federal Departments**
 - make expert information or knowledge available upon request;
 - review proposed class screening reports as appropriate for scientific and technical accuracy prior to the RA's submission of the report to the Agency.

- Other Federal Authorities**
 - may not provide federal support for a project where an RA has concluded that the project will cause significant adverse environmental effects that are not justified in the circumstances.

- The Public**
 - comments on the class screening report;
 - comments on the screening report, if the RA determines that public participation is appropriate.

**Table 1-2
Roles and Responsibilities of Participants
in a Comprehensive Study**

The RA	<ul style="list-style-type: none"> ● determines whether project has been previously assessed; ● ensures that a comprehensive study is conducted on a project described on the Comprehensive Study List as early as is practicable in the planning stages and before irrevocable decisions are made (may delegate conduct of study and preparation of the report); ● must not provide federal support to the project until completion of the comprehensive study or public review. ● determines the scope of the EA (that is, the scope of the project and the scope of the assessment); ● ensures that all relevant federal expert departments have been consulted; ● provides an opportunity for public consultation during preparation of the report, if appropriate; ● ensures that a comprehensive study report is prepared (or prepares the report, if RA is the proponent); ● establishes and maintains the public registry; ● makes a determination on the impact of the project; ● submits the comprehensive study report to the Agency for review by the Agency and the public; ● in the case of a project referred back by the Minister, makes a decision about whether to provide federal support to the project, based on the results of the comprehensive study report and taking into account any public comments; ● provides public notice of its course of action; ● ensures that for any project that is proceeding, all appropriate mitigation measures are implemented; ● ensures that, when appropriate, a follow-up program is developed and implemented; ● may request that the Minister refer the project for a public review through mediation or a panel review.
The Proponent	<ul style="list-style-type: none"> ● prepares comprehensive study report and all other necessary documentation (if RA not proponent); ● follows all conditions of licences imposed by the RA; ● implements mitigation measures; ● designs and implements a follow-up program, if appropriate.

**Table 1-2
Roles and Responsibilities of Participants
in a Comprehensive Study
(cont'd)**

- The Agency**
 - provides procedural advice to RAs, as appropriate;
 - provides public notice of the availability of the comprehensive study report to facilitate public comment;
 - reviews the comprehensive study from a procedural perspective;
 - provides recommendations to the Minister about the next step in the EA process, taking into account the report and comments from the public and expert federal departments.

- The Minister**
 - refers the project either back to the RA for action or to a public review in the form of mediation or panel review, taking into consideration the comprehensive study report and any public comments received;
 - may refer the project to a public review at any time at the request of the RA or at own initiative.

- Expert Federal Departments**
 - make expert information or knowledge available upon request;
 - review comprehensive study report as appropriate for scientific and technical accuracy prior to the RA's submission of the report to the Agency.

- Other Federal Authorities**
 - must not provide federal support to the project until the comprehensive study or public review is completed;
 - may not provide any support for a project where an RA has concluded that the project will cause significant adverse environmental effects that are not justified in the circumstances.

- The Public**
 - provides input and comments during preparation of the comprehensive study report, if the RA has implemented a public involvement program;
 - comments on the comprehensive study report after report submitted to the Agency.

1.3 Start-up

Before starting a self-directed EA, an RA must address five key questions:

- Does the Act apply to its project?
- Should the project undergo a screening or comprehensive study?
- Has a public registry been established for the project?
- Is the project likely to cause public concerns?
- Is the EA of the project covered by an agreement with another government?

This section reviews each of these questions as they apply to a screening and comprehensive study.

1.3.1 Does the Act apply?

To determine whether the Act applies, the RA must determine that the proposal

- is a "project" for the purposes of the Act;
- is not excluded by the Act or by a regulation under the Act;
- involves a federal authority;
- involves an action that triggers the need for an EA under the Act.

See Figure 1-2 for a summary.

Is the proposal a "project" according to the Act?

Figure 1-3 summarizes the decisions required in determining whether the RA has a project as defined in the Act.

A project can be either

- an undertaking in relation to a physical work, such as any proposed construction, operation, modification, decommissioning, or abandonment; or
- any proposed physical activity not relating to a physical work that is set out in the regulations to the Act.

Figure 1-2:

Does the Act Apply?

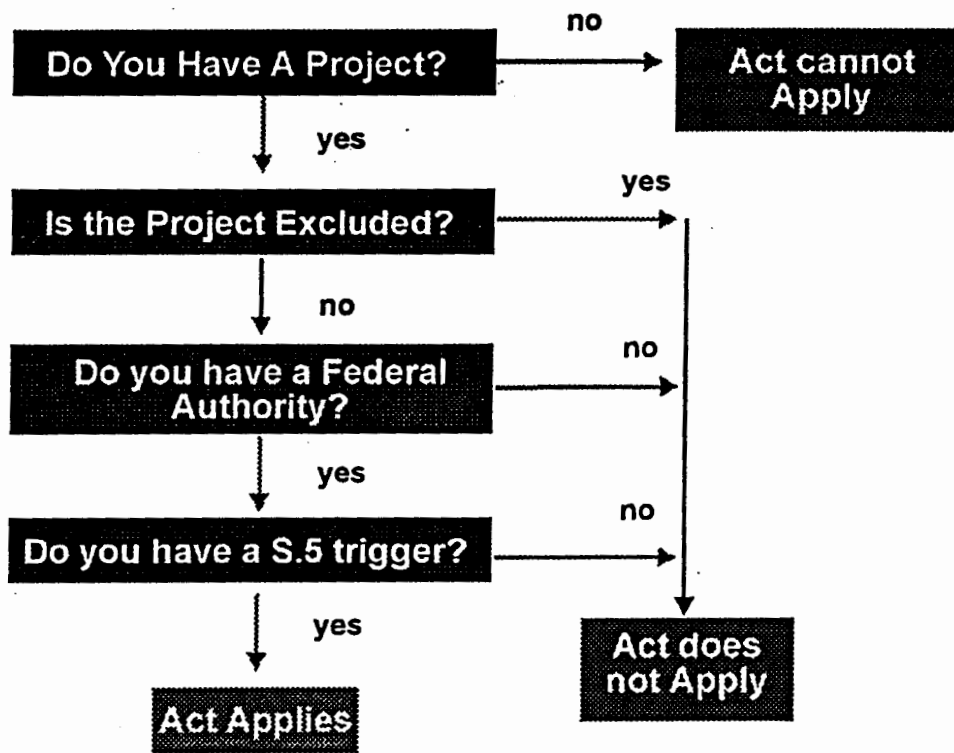
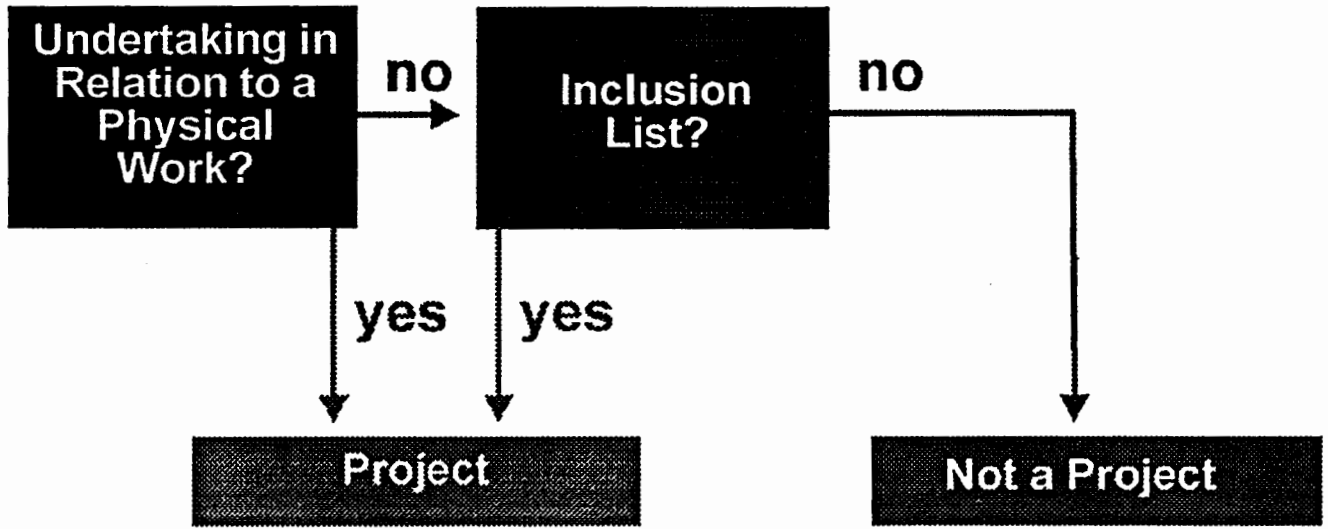


Figure 1-3:

Is the Proposal a "Project" under the Act?



The first category covers most projects. The second category is designed to bring into the EA process certain activities that could result in significant adverse environmental effects. A proposed physical activity will fall under the Act only if it is described on the Inclusion List (Appendix C; in preparation) prepared under the regulations to the Act.

Examples of project definition

Undertakings in relation to a physical work

- *dredging as part of constructing a bridge*
- *construction of a fish ladder*

Physical activities not relating to a physical work

- *the movement of CFCs out of Canada*
- *the harvesting of marine plants in coastal waters*
- *low-level flying over the back country of a National Park*
- *ocean dumping of substances prescribed by the Canadian Environmental Protection Act*

Is the project excluded?

A project may be excluded from the need to undergo an EA under the Act when it is

- carried out in response to a national emergency for which special temporary measures are being taken under the *Emergencies Act*;
- carried out in response to an emergency and carrying out the project is in the interest of preventing damage to property or the environment or is in the interest of public health or safety;
- carried out for national security reasons;
- described on the Exclusion List, which are undertakings in relation to a physical work considered to have an insignificant impact on the environment, such as simple renovations and routine operations.

Does the project involve a federal authority?

An EA under the Act must be triggered by an action of a federal authority. A federal authority is

- a federal Minister of the Crown;
- an agency or other body of the federal government that is ultimately accountable to Parliament through a federal Minister of the Crown;

- any federal department or departmental corporations set out in Schedule I or II to the *Financial Administration Act*;
- any other body prescribed in the regulations to the Act.

The following are not federal authorities under the Act:

- the governments of the Yukon or Northwest Territories;
- a council or band under the Indian Act;
- certain harbour commissions;
- Crown corporations within the meaning of the *Financial Administration Act*.

Does the project involve an action that triggers the need for an EA?

An EA is required before a federal authority exercises one or more of the following duties, powers or functions in relation to a project:

- proposes a project;
- grants money or other financial assistance to a project;
- grants an interest in land to enable a project to be carried out (that is, sells, leases, or otherwise transfers control of land); or
- exercises a regulatory duty in relation to a project, such as issuing a permit or licence, that is covered under the Law List Regulation.

The EA must be completed before the federal authority exercises any of these powers, duties, or functions.

Not every federal licensing or permitting action relates to projects that may cause environmental effects, however. Therefore, only those regulatory duties covered under the Law List will be considered as federal triggers for an EA.

With respect to the second factor, if a federal authority or the Government of Canada enters into an agreement with a province to provide financial support and the essential details of the project are **not** specified at that time, the federal authority or the Government of Canada must ensure that the agreement provides for an EA of that project as early as possible in the planning stage and before any irrevocable decisions are made.

If the agreement is with a foreign government (for projects to be carried out both outside Canada and outside federal lands), the same conditions apply in so far as is practicable and subject to any other agreements to which the Government of Canada or the federal authority is party.

If the essential details of the project are known, or will be known before the federal authority provides financial support, the federal authority must conduct the EA before such support is given.

In addition to the four triggering factors listed above, the Act also applies in the following special case: When the Governor in Council is responsible for issuing a licence or other authorization listed on the Law List that would allow a project to proceed, an EA must be conducted before that decision is taken. The federal authority recommending that the Governor in Council take action with respect to a project must ensure an EA is done early in the planning stages and before irrevocable decisions are made. This federal authority has the same duties as an RA, except for the responsibility for making a decision with respect to the project.

Is the project likely to involve transboundary effects?

The transboundary provisions of the Act give the Minister of the Environment the authority to refer a project directly to a mediator or panel, if the Minister believes that the project may cause significant adverse transboundary environmental effects in cases when the project would otherwise not require an EA, and no other federal Act or regulations apply.

Transboundary effects under the Act refer to adverse effects that are likely to occur

- on federal lands because of projects carried out outside these lands;
- off federal lands (because of projects carried out on these lands);
- across provincial boundaries; or
- across international boundaries.

Special EA procedures may be required if a project is likely to have significant adverse environmental effects across Canada's international boundaries. Canada is a signatory to the *Convention on Environmental Assessment in a Transboundary Context*. The Convention seeks to ensure that countries take measures to prevent, reduce, and control significant adverse transboundary environmental effects from proposed activities. Signatory countries must

- notify an affected country of any proposed activities likely to cause a significant adverse transboundary impact (guidelines are listed in the Convention);
- provide information on the project to the affected country;
- allow the public in the affected country an opportunity to comment on the proposed project, if requested to do so;
- conduct an EA of the project before making any decision on providing federal support to the project;
- inform the affected country of its decision on the project.

There is a need to ensure that projects with possible significant transboundary impacts are assessed according to the requirements of the Convention while avoiding unnecessary duplication, delays, and confusion that could arise from separate assessments. Under the **Framework for Environmental Assessment Harmonization**, adopted by the Canadian Council of Ministers of the Environment in November 1992, federal, provincial and territorial governments agreed to adhere to the provisions of the Convention. Bilateral Agreements for Environmental Assessment Cooperation, under the harmonization framework, will establish the broader principles and context for coordination and cooperation on environmental assessment. Specific procedures related to the assessment of transboundary impacts under the Convention will be established through subsidiary agreements to the bilateral harmonization agreements.

For more information on Canada's obligations under the Convention, RAs should contact the Agency.

Has the project been previously assessed?

When a proponent proposes to carry out all or part of a project for which a screening or comprehensive study has already been conducted, it can 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 in relation to 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 licence, permit, approval, or other action under a prescribed provision is sought.

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

More than one RA

The same project may have two or more RAs. To ensure that only one EA is conducted for each project, rather than each RA conducting its own EA, one of the RAs could be designated as the lead RA, or the RAs could coordinate their assessment in a team or working group structure.

1.3.2 Selecting the environmental assessment track

Once the RA has determined that the Act applies to its project, it must then determine which EA track must be followed. In most cases, the EA will be conducted through either a screening or a comprehensive study. If further investigation is needed, the project will be subjected to a public review in the form of a mediation or panel review (see Figure 1-4).

The project will undergo a screening when it

- is not on the Comprehensive Study List regulation;
- has not been previously assessed; and
- has not been referred directly to a mediation or panel review.

Most projects will fall into this category.

All or part of a class screening report may be used when the project

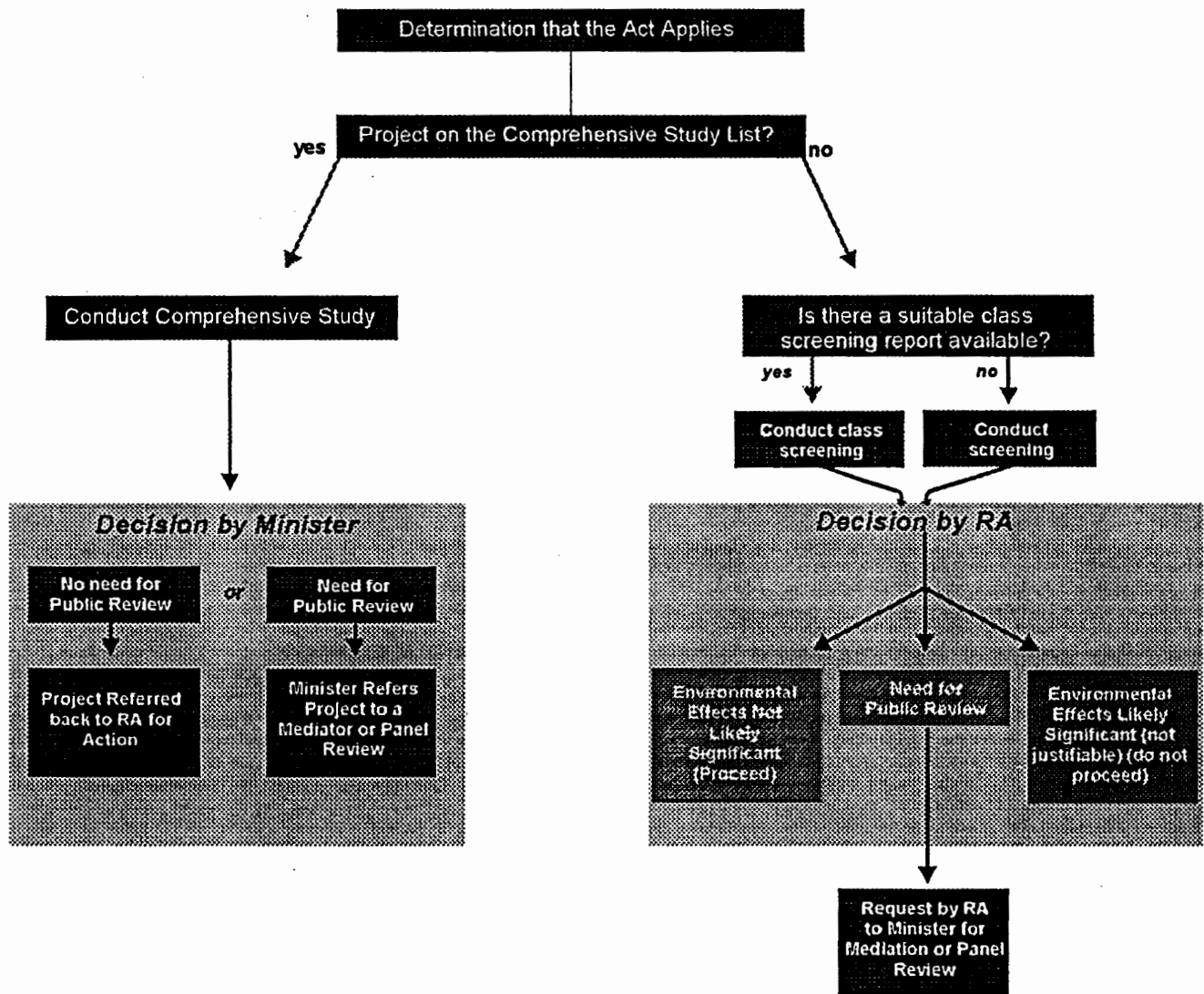
- is of a class of projects for which a class screening report has been designated by the Agency;
- is not on the Comprehensive Study List regulation; and
- has not been referred directly to a mediation or panel review.

The project will undergo a comprehensive study when it

- is on the Comprehensive Study List regulation; and
- has not been referred directly to a mediation or panel review.

Figure 1-4:

Determining the EA Track



1.3.3 The public registry

The Act is based, in large part, on the principle of public participation. To help realize this objective, public access to information upon which EAs are based is provided through a public registry.

Obligations

The Act imposes two main obligations on RAs with respect to the public registry:

- to establish a public registry for the purpose of facilitating public access to the records relating to EAs;
- to operate such a registry in a manner to ensure convenient public access.

A public registry must be maintained in respect of every project for which an EA is conducted, regardless of whether the project undergoes a screening, comprehensive study, panel review, or mediation.

Organization

The Agency has established a public registry framework within which all RAs can function. The framework seeks to provide all Canadians convenient access to complete information about EAs carried out under the Act. It will also ensure consistency across the federal government, and assist RAs in meeting their public registry obligations in an efficient and convenient manner.

The framework consists of three components:

- **The Federal EA Index**

The Federal EA Index is an electronic listing of all EAs conducted by all RAs under the Act. The index provides "one-window" access to information on the who, what, when, where, and why of any EA conducted under the Act, regardless of the RA. It also directs the public to contacts and document listings related to specific EAs.

- **RA document listings**

The second component of the public registry system is the listing of all publicly available documents relating to each EA. The RA maintains such a listing (in electronic or hardcopy form) for each of its respective EAs. The RA has three key responsibilities with respect to its listings:

- determining whether each document should be placed in the public registry;
- maintaining a current list of documents for all active EAs;
- ensuring the document listing is available to the public upon request.

- **EA documents**

The third component of the public registry system consists of the EA documents produced by, collected by, or submitted to the RA with respect to an EA. Key issues are

- responding to requests in a timely manner;
- determining the need to translate documents into the other official language;
- applying cost recovery guidelines, when applicable.

Benefits

The public registry system provides several important benefits to RAs:

- The framework allows all RAs to meet their registry obligations in a consistent, cost-effective manner that ensures convenient, low, or no-cost public access to information.
- RAs do not have to develop their own procedures for operating the public registry.
- RA tasks are streamlined so as to minimize workload requirements.
- Many of the tasks build on current practices so as to minimize costs and workload requirements for RAs.
- Procedures make practical and effective use of technology whenever possible, further reducing the RA's workload and costs.

"The Public Registry" reference guide in Part III of the guide provides details on the organization of the public registry system, as well as guidelines in five key areas:

- coordination with other RAs;
- document clearing;
- responding to requests;
- cost recovery;
- official language considerations.

1.3.4 Public concerns

Public concerns play an important role at all steps of the self-directed EA.

At any time before completion of the screening or comprehensive study -- or even before the EA begins -- the RA can ask the Minister of the Environment to refer the project directly to a public review if it is clear that public concerns about the project's environmental effects are unlikely to be adequately addressed in a self-directed EA.

Public concerns, if not resolved through public involvement in a self-directed EA, can also warrant a public review by a mediator or review panel. The RA (following completion of the screening report) or Minister (following a comprehensive study report) must explicitly address the question of whether there are public concerns about the project that justify a public review.

Given the importance of public concerns, the RA should try to be aware of them and respond to them from the outset of a self-directed EA.

The public is not a single entity, but rather comprises varied interests: local residents, local environmental groups, small-business owners, and many others. Public concerns can be expressed in several ways, as well.

The public can also be a valuable source of information to the RA. Local community residents and indigenous peoples can provide critical information at all steps of an EA. Public input will also be appropriate when there are public concerns about a proposed project, and when the RA needs to build a consensus among different groups. Thus, the RA should determine as early as possible when and to what extent public input should be sought.

A public involvement program goes beyond allowing the public to comment on a completed screening report or comprehensive study report. Rather, it seeks to provide the public with a variety of opportunities to be informed at all stages of the EA, to offer ideas and information, to react to proposals in order to influence recommendations and decisions, and to be informed of all decisions.

Communication needs will change over the course of a screening or comprehensive study. The RA (or proponent) may need to

- provide information so that people can be informed and participate effectively;
- receive information and comments from the public;
- discuss issues and clarify positions and concerns;
- build consensus among key groups or individuals particularly affected by the project; or
- inform participants of results or decisions.

A wide range of public involvement activities can meet these changing needs. For more information on developing an effective public involvement program, review the reference guide "Public Involvement" (in preparation) in Part III.

Who is the public?

The public represents a complex mix of interests. RAs should be aware of the range of public interests in the region or community affected by the project. These could include

- ***residents living near the project***
- ***aboriginal persons***
- ***local and regional government officials***
- ***community organizations, such as homeowner groups, senior citizen organizations, service clubs and environmental groups***
- ***professional and business associations***
- ***small-business operators***
- ***educational institutions***
- ***public-interest groups***
- ***the media***

Screening

Public involvement is discretionary in a screening. When the RA believes that public involvement in the screening is appropriate, it should provide the public with an opportunity to examine and comment on the screening report before making any decision on whether to provide federal support to the project. It may also choose to provide opportunities for public involvement during the screening, before the preparation of the screening report.

In addition, the public will be given an opportunity to review and comment on all proposed class screening reports.

Comprehensive study

From a practical perspective, public input is an essential component of a comprehensive study. The RA's task is to determine the most effective approach to ensuring public involvement in the EA. Public input can be sought at any step in the comprehensive study process: from scoping issues, collecting data, assessing environmental effects, and identifying mitigation measures, to commenting on a draft report, and participating in a follow-up program. An effective public involvement program identifies and links these opportunities so as to meet the overall needs of the comprehensive study.

Upon receiving the comprehensive study report from the RA, the Agency will publish a public notice about the opportunity to review and comment on the report. Any person may file comments with the Agency within the specified time period. The scope for public comment is broad, and can cover the conclusions, recommendations and other aspects of the report. These comments will be considered by the Minister in arriving at a decision about the need for a public review.

1.3.5 Working with other governments

A key question of the start-up stage is to identify whether the EA of the project is covered by an EA harmonization agreement between the federal government and a province or territory.

Some projects require authorization from both the federal government and a provincial or territorial government. Without close cooperation, a project might need to undergo separate EAs, resulting in unnecessary duplication, confusion, and excessive costs for all parties.

Harmonization of Canada's various EA processes is essential if the environmental effects of projects are to be assessed in an effective and consistent way across the country. Harmonization also helps create a more favourable atmosphere for private-sector decision-makers by streamlining regulatory approval processes and reducing planning uncertainties and delays.

Given the potential for overlapping EAs, the Act allows the Minister of the Environment to enter into agreements with provincial and territorial governments relating to the EA of projects where both governments have an interest.

The bilateral agreements provide guidelines for the roles and responsibilities of each government in the EA of such projects. The agreements cover cooperation in such areas as joint panels, mediation, screening, comprehensive studies, notification, cost-sharing, and time frames.

In 1992 the Canadian Council of Ministers of the Environment (CCME) approved the *Framework for Environmental Assessment Harmonization*. The framework serves as the foundation for bilateral agreements. Governments committed themselves to establishing appropriate mechanisms for consultation and cooperation at every stage of an EA.

The framework

- confirms each government's jurisdictional responsibilities for EA;
- recognizes that federal, provincial, and territorial EA practices are consistent in

- principle and intent;
- acknowledges the need for clear and consistent rules that eliminate unnecessary duplication and are sensitive to the needs of proponents and to concerns for a timely and fair process;
- affirms the need for a "single-window" approach to EA that provides all proponents with the information they may require;
- establishes the mechanisms to allow for intergovernmental cooperation at all steps of the federal EA process.

The Canada-Alberta Agreement for Environmental Assessment Cooperation, the first bilateral agreement under the framework, includes provisions for

- early notification of projects of shared interest to allow for cooperative EAs;
- establishment of designated "single-window" offices in Alberta;
- coordination of decision-making by both parties with mutually agreeable time frames;
- guidelines for the establishment of joint review panels consistent with federal and provincial legal and operational requirements.

1.4 Step 1: Scoping

In the first step of a self-directed EA, the RA should establish the boundaries of the screening or comprehensive study, and focus the analysis on directly relevant issues and concerns. Scoping can reduce delays, improve the quality of the EA, and enhance its credibility by involving all interested parties.

It is assumed here that the RA itself is conducting the EA. In many cases, of course, the proponent will conduct the EA. Although the RA can delegate the preparation of the screening report or comprehensive study report to the proponent or a consultant, it alone is responsible for ensuring that the EA is conducted in compliance with the Act, and it alone can make a decision on the course of action with respect to the project following the screening or comprehensive study.

1.4.1 Scope of the environmental assessment

The scope of the project and the scope of the assessment define the components of a proposed development and the environmental effects that should be included in an EA conducted under the Act.

Scope of the project

Under the Act, the RA must determine the scope of the project in a screening or comprehensive study. The scope of the project refers to those components of the

proposed development that should be considered part of the project for the purposes of the EA.

In determining the scope of the project, therefore, the RA must consider:

- . which physical works fall within the scope of the project, and which undertakings in relation to those physical works fall within the scope of the project;

or

- . which physical activities not in relation to a physical work (identified in the Inclusion List regulation) fall within the scope of the project.

The "principal project/accessory" test

The Act does not provide direction to RAs in determining which physical works should be included within the scope of a project. To ensure consistency in scope of the project determinations, RAs should consider applying the "principal project/accessory" test. This test consists of two steps.

First, what is the principal project? The principal project is always either the undertaking in relation to a physical work or the physical activity for which a power, duty, or function is being exercised (therefore triggering the need for an EA under the Act). The principal project must always be included as part of the scoped project.

Second, are other physical works or physical activities accessory to the principal project? If so, then these may be included as part of the scoped project. Those physical works or physical activities not accessory to the principal project may not be included as part of the scoped project. To determine what is accessory to the principal project, the RA should apply the following two criteria:

- . **Interdependence:** If the principal project could not proceed without the undertaking of another physical work or activity, then that other physical work or activity may be considered as a component of the scoped project.
- . **Linkage:** If the decision to undertake the principal project makes the decision to undertake another physical work or activity inevitable, then that other physical work or activity may be considered as a component of the scoped project.

Same EA for related projects

Under the Act, the RA can 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 making this determination, RAs should apply the following three criteria:

- . **Interdependence:** If the principal project could not proceed without the undertaking of another project, the two may be considered to form a single project.
- . **Linkage:** If the decision to undertake the principal project makes the decision to undertake another project inevitable, the two may be considered to form a single project.
- . **proximity:** If the geographic study areas developed in relation to the scope of the assessment for the individual projects overlap, the two may be considered to form a single project.

Not all criteria must be met in every case. Each case must be considered on its own merit. However, the **proximity** criterion on its own will rarely be sufficient cause for the RA to combine two or more projects into the same EA.

Undertakings in relation to a physical work

Finally, under the Act, the RA must include in the EA all undertakings or activities in relation to a physical work, and all activities in relation to a physical work that are proposed or, in its opinion, are likely to be carried out. These undertakings could include, for example, the construction, operation, modification, decommissioning, or abandonment of a physical work. Such proposed undertakings or undertakings that are likely to be carried out must be included in the scope of the project even if there is no specific trigger for them. The assessment of all proposed undertakings or undertakings that are likely to be carried out in relation to a physical work should be conducted as early in the planning stages of the physical work as is practicable.

(Note that this applies only to undertakings in relation to a physical work and not to physical activities.)

Scope of the assessment

Once the RA has determined the scope of the project, it must then address the question of the scope of assessment. The scope of assessment includes a determination of the environmental effects to be addressed, the scope of the environmental effects to be assessed, and the effects to be considered in making decisions regarding the project.

Effects to be assessed

An RA exercising any power, duty or function under section 5 of the Act must include in the assessment all factors that are relevant to the decision that the RA must make:

- all the factors that the Act requires an RA to consider, including all effects that fall within the Act's definition of "environmental effect", regardless of whether the effect falls within an area of federal jurisdiction. Section 1.4.2 below, addresses the statutory provisions in the Act for the scoping of environmental effects in greater detail.

and

- any factors that are relevant to the assessment of effects of the project in the environment that any other federal law or regulation require or permit the RA to consider. Where the RA is acting as a regulator this includes the factors that the law creating the RA's decision-making authority states must or may be considered.

Additionally, where the RA is:

- the project proponent;
- asked to provide financial assistance; or
- asked to sell, lease or transfer its interest in lands;

it may also assess beyond the statutory requirements to the extent that it considers necessary in the circumstances. The RA may broaden the scope of assessment for these decisions because they relate to the operation of the Government itself or its property; matters which are within exclusive federal jurisdiction.

Effects to be considered in making decisions

If a factor is considered relevant to the decision that the RA must make (see "Effects to be Assessed" above), the RA must take it into account in making its decision whether to provide federal support for a project.

Attaching conditions

Where the RA is

- the project proponent;
- asked to provide financial assistance; or
- asked to sell, lease or transfer its interest in lands

it may attach any condition or require any mitigation measure it considers appropriate in the circumstances. Where the RA takes a regulatory action that supports the project (that is, where the RA decides to issue an authorization under a statutory or regulatory provision on the Law List regulation), the conditions it attaches to the approval must pertain to the factors which are relevant to its decision:

- the factors that the Act requires the RA to consider, and
- any factors that the RA must or may consider pursuant to the triggered federal law or regulation.

This analysis is based on recent decisions of the Supreme Court of Canada relating to the permitted scope of assessment under the EARP Guidelines Order. However, it is expected that the principles enunciated by the Court with respect to the Order will apply to the Act as well.

**Scope of the Assessment for
EA Triggered by Federal Permit Decision**

Project:

- . **Construction of a pulp-and-paper mill to be situated on a navigable river in the Yukon Territory**
- . **As part of the mill, construction of:**
 - . **intake and outflow pipes to be installed in the river for the purposes of supplying water and removing process wastes from the mill**
 - . **new access road**
 - . **new dedicated waste storage facilities**
 - . **construction camp**

EA Trigger:

- . **Licence under section 5 of the Navigable Waters Protection Act (NWPA) for intake and outflow pipes**
- . **Licence under subsection 14(1) of the Yukon Waters Act (YWA) for water use**

Scope of the assessment:

- . **As a minimum, EA must include consideration of environmental effects as defined in the Act for a comprehensive study (project subject to the comprehensive study list regulation)**
- . **Scope of assessment can also be broadened through powers given to Minister of Transport under the NWPA and the Yukon Water Board under the YWA. For example, the Minister of Transport could decide to include the effects of changes in water levels, flow rates, and obstructions in navigable waters (such as adverse effects on wildlife habitat as a result of changes in water levels). The Yukon Water Board must assess the effects of the mill's water uses on other water uses. These effects may be strictly economic and include the potential economic losses to individuals already using the water.**

**Scope of Project for
EA Triggered by Federal Funding**

Project:

- . **Construction of an oil refinery in southern Saskatchewan by an oil company**
- . **An extension of a pipeline is required to the new refinery.**

EA Trigger:

- . **Funding contribution from Natural Resources Canada.**

Scope of the project:

(i) Principal project:

- . **construction of oil refinery**

(ii) Accessory physical works:

- . **under the linkage principle, the construction of the pipeline can be considered an accessory work of the construction of the refinery**

(iii) Other undertakings in relation to the physical work:

- . **operation, planned modifications, and decommissioning of refinery**
- . **operation of pipeline**

**Scope of Project for
Two Related Projects**

Projects:

- . **Construction of an oil refinery in southern Saskatchewan by an oil company; and**
- . **Extension of a pipeline to the new refinery**

EA Triggers:

- . **Funding contribution from Natural Resources Canada; and**
- . **Permit for construction of pipeline**

Scope of the project:

(i) Principal project:

- . **principles of linkage and proximity apply to the two projects**
- . **construction of the two can be considered so closely related that they can be considered to form a single project**
- . **that is, principal project is construction of oil refinery and construction of pipeline**

(ii) Accessory physical works:

- . **none**

(iii) Other undertakings in relation to the physical work:

- . **operation, planned modifications, and decommissioning of refinery**
- . **operation of pipeline**

**Scope of Project for
Physical Activity on Inclusion List**

Project:

- . *Dredging operation on federally-owned canal*
- . *Temporary access road across a field is required to move the dredge material to an existing privately-owned disposal area*

EA Trigger:

- . *Permit for dredging*

Scope of the project:

- (i) **Principal project:**
 - . *dredging operation*
- (ii) **Accessory physical works:**
 - . *principle of interdependence can be applied to the dredging and access road thus, construction of the access road can be considered as an accessory work*
- (iii) **Other undertakings in relation to the physical work:**
 - . *not applicable to Inclusion List activities*
 - . *thus, consideration of the operation and closure of the disposal site and road are not required*

**Scope of Assessment for
EA Triggered by Federal Funding**

Project:

- . *Construction of an oil refinery in southern Saskatchewan by an oil company; an extension of a pipeline is required to the new refinery*
- . *Proposed site is adjacent to an deer breeding ground and a migratory bird sanctuary*

EA Trigger:

- . *Funding contribution from Natural Resources Canada*

Scope of the assessment:

- . *The federal government is exercising its spending power in relation to a project. Thus, there is no limit to the environmental effects or to the range of factors listed in section 16 of the Act that can be taken into consideration in the EA. The EA can include consideration of the environmental effects of the refinery and pipeline extension on the deer as well as on the migratory birds. The RA can impose conditions on the project funding, such as mitigation measures to reduce any adverse environmental effects on the deer.*
- . *The RA will still need to consider the scope of the factors listed in section 16 of the Act. For example, if other refineries are located near the proposed site or there are new refineries proposed in the area, the RA will need to determine which of those projects should be considered in assessing the project's cumulative environmental effects.*

1.4.2 Factors to be considered

Both screening and comprehensive study

The following factors must 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;
 - . 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;
- public comments, if applicable or received in accordance with the regulations (under current regulations, providing opportunities for public comment is mandatory for comprehensive studies and public reviews, but not for screenings);
- technically and economically feasible measures that would mitigate any significant adverse environmental effects of the project;
- any other matter relevant to the assessment that the RA may require, such as the need for and alternatives to the project.

The RA must also identify those environmental effects (including any directly related to human health, heritage, socioeconomic conditions, and other factors) relevant to the assessment requiring further investigation.

Comprehensive study only

In addition to the factors listed above, a comprehensive study must also consider the following:

- the purpose of the project;
- technically and economically feasible alternative means of carrying out the project as well as the environmental effects of these 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 RA must also determine the scope of the factors to be considered in the screening or comprehensive study. This refers to the geographic boundaries and time frame of the effects.

Alternatives

The CEAA distinguishes between "alternative means" and "alternatives to"

"Alternative means" of carrying out the project are methods of a similar technical character or methods that are functionally the same. "Alternative means" with respect to a nuclear power plant, for example, includes selecting a different location, building several smaller plants, and expanding an existing nuclear plant. "Alternative means" that are technically and economically feasible must be considered in a comprehensive study, mediation, and panel review, but are discretionary under a screening.

In contrast, "alternatives to" the project are functionally different ways of achieving the same end. For example, "alternatives to" the nuclear power plant include importing power, building a hydroelectric dam, conserving energy, and obtaining the energy through renewable sources. Consideration of "alternatives to" the project is at the discretion of the RA in screening, or of the Minister in consultation with the RA in a comprehensive study, mediation, or panel review.

1.4.3 Interested parties

The third aspect of scoping is to determine who is interested in the project, what their concerns are, and how they should be involved in the assessment. At this step, the RA can begin a program of communication and consultation that can provide benefits later in the EA (for example, through early response to public concerns in order to minimize time delays and increases in project costs).

Interested parties will typically fit into one of five categories: expert federal departments; other federal authorities; provincial, municipal, and territorial governments; private sector organizations; and the public.

Expert federal departments

Some federal authorities may be a source of baseline data, knowledge, or expertise relevant to the EA. These federal authorities, or expert federal departments, have a special role to play in the EA process. Under the Act, these departments must

provide specialist information and expertise relevant to the project when requested by the RA.

Expert federal authorities include Agriculture Canada, Department of Natural Resources Canada, Environment Canada, Fisheries and Oceans Canada, Health Canada, Heritage Canada, and Indian Affairs and Northern Development.

Expert federal departments may be involved at every stage of the EA process, from reviewing terms of reference at the scoping step, and providing data during preparation of the EA report, to reviewing the report and appearing as an expert witness during a panel review. The independent review function is of particular importance, because it helps ensure the scientific and technical quality of EA reports prepared under the Act.

The following general guidelines should apply to the RA when involving an expert department:

- The RA should try to identify and involve the relevant expert federal departments at the early stages of an EA.
- The RA's request for information or advice should relate directly to its EA, and should be clear and concise, in order to use the expert department's time most effectively.
- Expert departments should be expected to provide reasonably available (that is, "off-the-shelf") information, but not to undertake lengthy or costly research to obtain the information.
- The "proponent pays" principle should apply in cases where the expert department undertakes new work, at the request of the RA, to provide necessary information or analysis.
- Prior to submitting an EA report for Agency and public review, the RA should ensure that all relevant expert federal departments have reviewed it for scientific and technical accuracy, and that any concerns raised by these departments have been addressed.

Other federal authorities

Other federal departments and agencies may have an interest as another RA of the project, such as a regulator, owner or administrator of lands, or source of funds for the project.

If another federal authority is involved through funding, granting an interest in federal land, or granting of a licence or permit, then the two RAs need to determine which will be the lead RA for the screening. The Agency can advise the RAs on this determination, if necessary.

Provincial, municipal, and territorial governments

Provincial, municipal, and territorial government departments and agencies may be directly involved in the project in one or more ways. Another level of government could be the proponent, or could be involved as a regulator, landowner, or source of funds for the project. If a province is involved, the RA should determine whether there is a federal-provincial agreement in place on EA procedures. If so, the project could be assessed through a joint EA procedure that satisfies both the federal and the provincial requirements. In such a case, the RA should review that agreement for its applicability to the proposed project.

In addition, another level of government could be a source of baseline environmental information, expertise, or specialist knowledge for the screening.

Federal-Provincial Agreements

Some projects may require authorization by both provincial or territorial governments and the federal government. To avoid the duplication and excessive costs of separate EAs, the Act gives the Minister the power to enter into agreements or arrangements with any jurisdiction for the purpose of assessing the environmental effects of projects where both parties have authorization responsibilities.

These bilateral agreements provide guidelines for cooperating on EAs, including roles and responsibilities relating to joint panels, mediation, screening, notification, and cost-sharing. By promoting cooperation and "harmonization" of EA procedures among governments, the agreements help achieve more effective and consistent EA processes in Canada.

Private-sector organizations

A private-sector company or organization may need or want to be involved in the screening as the proponent, as a source of environmental information or expertise about the project, or because it is affected directly or indirectly by the project.

The public

Public concerns about a project can justify its referral to a public review at any time during a screening or comprehensive study. The RA should be aware of, and respond to, public concerns at every step of the assessment, and not only when the screening or comprehensive study report is completed.

Public interest will vary depending on the nature of the project and the site. The RA should contact those who have expressed an interest in the project in the past, as well as those who are likely to be directly or indirectly affected (whether or not they have expressed an interest). Members of the public may also provide the RA with local knowledge and expertise about the project's environmental setting.

1.4.4 Appropriate level of effort

The fourth aspect of scoping is to determine the appropriate level of effort for the screening or comprehensive study. Depending on the project, the environmental setting, the likely environmental effects, the availability of information, and uncertainty about the environmental effects or mitigation measures, a self-directed EA may vary in time, effort and documentation. A decision about the appropriate level of analysis and effort is therefore an important element of the scoping step, and can lead to significant savings in both time and cost.

After having determined the scope of the issues and identified the interested parties, the RA will be in a better position to determine the appropriate level of effort. The wider the range of relevant issues, the greater the information needs, the higher the level of uncertainty about the environmental effects or mitigation measures, and the greater the number of interested parties, the greater will be the required effort and analysis.

1.5 Step 2: Assessing Environmental Effects

Once scoping has been completed, the second step in a self-directed EA is to assess the environmental effects of the project. This consists of three tasks:

- description of the project;
- description of the existing environment;
- identification of project-environment interactions.

The RA has the option of involving others -- the public, outside experts, other federal government departments and other governments -- in any of these tasks if it believes such information could be helpful.

1.5.1 The project

The project's components or activities should be described. For a project that is in relation to a physical work, for example, the description should include

- location;
- physical layout and design;
- construction plans and scheduling;
- standard control procedures and mitigation measures;
- operating procedures and decommissioning plans;
- the federal power, duty, or function required or requested (such as funding, an interest in federal lands, or federal permit or licence).

In the case of an industrial project, it is essential to specify the quantity and quality of all emissions (solids, liquids, and gases), as well as any pollution-control devices to be used.

Describing a dredging project

The information needed to assess a dredging project should include

- *data on the volume and composition of the material to be dredged (e.g., sand, silt, metals, organics, etc.)*
- *the type of dredging equipment to be used*
- *the extent and duration of dredging activity*
- *the project's expected completion date*

Knowing where and when the dredging will be done, how much and what kind of material is involved, and how it will be collected and transported will help determine environmental effects if any material must be dumped into water or onto land.

Project descriptions

Depending on the nature of the project and its site, the project description could include

- ***name of proponent and contact person***
- ***brief discussion of the size, scope, and phasing of activity***
- ***legal description of the project***
- ***proposed location on a map at an appropriate scale, showing boundaries of the proposed site, major existing infrastructure, adjacent land uses, and any important environmental features (such as rivers)***
- ***site plan of the project illustrating location of existing buildings and facilities, proposed components of the project, and any infrastructure required to service the project (such as utilities, rail and road access)***
- ***where appropriate, schematic drawing and discussion of the project's production processes and technology***
- ***estimates of the type of solid waste, liquid effluent, and gaseous emissions expected from the project, and a brief discussion of plans for their treatment and disposal***
- ***identification of the expected volume of water required for the project, and an indication of its source and availability***
- ***biophysical description of the site, having regard for soil, topography, vegetation, wildlife, and surface and ground water***
- ***an estimate of the start and completion of construction, and the number of construction and operational employees***

1.5.2 The existing environment

Relevant and reliable information on the environmental components of the study area's existing environment should be collected and described. The description should identify the most important environmental elements of the region being examined and explain the reasons for the boundaries of the study area. Only elements of the biophysical environment within the study area that are relevant to the project need be identified and evaluated.

The description must identify the physical, biological, and social characteristics of the environment, including

- relevant physical features and characteristics, such as landscape features, dynamics, and patterns;

- biological characteristics such as ecological processes and functions, species presence and seasonality, species interrelationships, and habitat;
- social characteristics such as patterns of land use and resource use;
- present land uses;
- patterns of other human disturbance.

Gathering environmental information

- ***Existing sources of information:***
 - . *previously conducted EAs*
 - . *reports*
 - . *databases*
 - . *expert departments*
 - . *indigenous peoples*
 - . *members of local communities*
 - . *industry*
 - . *academia*
 - . *aerial photos and satellite imagery*
- ***Collecting new information:***
 - . *field investigations and surveys*
 - . *monitoring*
 - . *aerial photography*

Traditional ecological knowledge

Traditional ecological knowledge (TEK) (also known as indigenous knowledge) is the knowledge base acquired over hundreds of years by indigenous peoples through direct experience and contact with the environment. It takes several forms: an intimate and detailed knowledge of the environment, including plants, animals, and natural phenomena; the development and use of appropriate technologies for hunting, fishing, agriculture, and forestry; and a holistic world view that parallels the scientific discipline of ecology.

1.5.3 Project-environment interactions

Using the basic information on the project and the existing environment, the assessment should then identify any potential links between them: how, where, and when could the project's activities interact and affect environmental components? It should compare the location and timing of project activities with the location, sensitivity, seasonal presence, and abundance of the environmental components.

Project-environment interactions can often be identified by using map overlays and matrix tables. The interactions are not always apparent, however. In some cases, such as the disposal of toxic substances, it may take years for an effect to be recognized. In other cases, such as the transport of pollutants by air or water, the project-environment interaction occurs far from the project site itself.

*Methods for
identifying project-environment interactions*

- *overlay maps*
- *matrix tables*
- *expert groups*

Cumulative environmental effects (for both a screening and comprehensive study)

In a self-directed EA, whether a screening or comprehensive study, the assessment must consider any cumulative environmental effects likely to result from the project in combination with existing or planned projects or activities.

Environmental effects are often seen as isolated or separate from one another. In reality, however, they interact over time and space. Therefore, to address cumulative environmental effects requires analysts to "think cumulatively," taking into account

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

The assessment should consider the following points with respect to cumulative environmental effects:

Examples of cumulative environmental effects

- ***decline in water quality resulting from discharge of various chemicals by different industrial plants***
- ***decline in air quality resulting from NO_x and SO_x emissions from automobiles, industrial plants, and coal and oil-fired generating stations***

- Only "environmental effects" as defined in the Act are considered.
- The legislation does not define "activity"; hence, any relevant past or future activity must be taken into account.
- Only future projects that **will** be carried out need to be considered (that is, not those that "may" or "could" be).
- Only **likely** cumulative environmental effects must be taken into account.
- The significance of the cumulative environmental effects must be determined.

For more information on cumulative environmental effects, review the reference guide "Addressing Cumulative Environmental Effects" in Part III.

Sustainable use of renewable resources (mandatory for a comprehensive study; optional in a screening)

A comprehensive study must also consider the effect of the project on the capacity of those renewable resources that are likely to be significantly affected to meet present and future needs.

This capacity -- sustainable use -- is based on a range of ecological considerations, such as

- the integrity of the ecosystem (that is, its complexity, diversity, stability, and resilience);
- the productive capacity of the resource;
- the carrying capacity of the ecosystem;
- the assimilative capacity of the ecosystem.

The sustainable use of renewable resources is closely linked to the consideration of cumulative environmental effects. For example, an adverse effect on the sustainable use of a renewable resource, such as a fishery, may be caused by a cumulative environmental effect of a project, or it may be a cumulative environmental effect in its own right.

As with cumulative environmental effects, assessing sustainable-use effects requires consideration of temporal and geographic boundaries and scales. When assessing sustainable-use effects, the RA should consider

- only those environmental effects as defined in the Act;
- only those renewable resources likely to be affected in a significant way by the project;
- the significance of the sustainable use effects.

For more information on sustainable use effects, review the reference guide "Determining the Capacity of Renewable Resources to Meet Present and Future Needs" (in preparation) in Part III.

1.5.4 Other factors

The RA must also ensure that the screening or comprehensive study considers the full range of environmental effects as defined in the Act. These effects include not only the direct changes to the biophysical environment, but also effects in several socioeconomic and cultural areas that flow directly from the environmental effects of the project, including

- effects on human health;
- effects on socioeconomic conditions;
- effects on physical and cultural heritage, including effects on things of archaeological, paleontological, or architectural significance;
- effects on the current use of lands and resources for traditional purposes by aboriginal persons.

In addition, the screening or comprehensive study must consider the effects of any change to the project that may be caused by the environment. Several of these factors are briefly discussed below.

Effects on human health

The self-directed EA must consider the effects on human health caused by a change in the environment due to the project. For the purposes of the Act, effects on health include effects at the population or community level on

- physical health, including death and disease rates;
- psychological, emotional, spiritual, or mental health and well-being.

In addition, the assessment must consider

- cumulative environmental effects on health;

- the significance of the effects on health;
- technically and economically feasible measures that would mitigate any significant adverse effects on health.

For more information, review the reference guide "Assessing the Effects on Health" (in preparation) in Part III.

Example of effects on health conditions

- *toxicological effects of human consumption of fish contaminated by toxic chemicals*

Effects on socioeconomic conditions

The screening or comprehensive study can consider only effects on socioeconomic conditions caused by a change in the environment due to the project. For the purposes of the federal EA process, socioeconomic conditions include effects at the population or community level on

- the quality of life or "way of life";
- the economy, commercial opportunities, or employment;
- the availability of recreational opportunities or amenities;
- home life or personal security;
- future land uses;
- the future use or future production of commercial species or resources;

In addition, the following effects must be considered

- cumulative environmental effects on socioeconomic conditions;
- the significance of the effects on socioeconomic conditions;
- technically and economically feasible measures that would mitigate any significant adverse effects on socioeconomic conditions.

For more information, review the reference guide "Assessing the Effects on Socioeconomic Conditions" (in preparation) in Part III.

Effects on physical and cultural heritage

The self-directed EA must consider the potential environmental effects on physical and

Example of effects on socio-economic conditions

- *closure of commercial or recreational fishery because of contaminated fish*

cultural heritage and to any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance that would result from environmental changes associated with the project.

In assessing for effects on heritage, the EA should

- ensure the preservation and protection of sites and objects formally recognized at the international, national, provincial, and municipal levels;
- ensure that the consideration of heritage resources in the EA is consistent with existing laws and policies on heritage relevant within the project area;
- recognize that a heritage site may have a cultural value greater than the apparent value of the site's physical components;
- take into account the unique cultural interests and values of aboriginal peoples.

In addition, the assessment must consider

- cumulative environmental effects on physical and cultural heritage resources;
- the significance of the effects on these resources;
- technically and economically feasible measures that would mitigate any significant adverse effects on these resources.

For more information, review the reference guide "Determining Environmental Effects on Physical and Cultural Heritage" (in preparation) in Part III.

Examples of effects on heritage

- *loss of an archaeological site because of excavation or site preparation for an industrial park or plant*
- *damage to a historic burial site during pipeline construction*

Examples of effects of the environment on the project

- *river flooding causing washout of a bridge*
- *iceberg damage to a small-craft harbour*

Examples of effects on the current use of lands and resources for traditional purposes by aboriginal persons

- *flooding of traditional trapping lines by a hydroelectric dam*
- *reduction in subsistence fishing as a result of a river-dredging project*

1.6 Step 3: Mitigating Environmental Effects

The third step in a self-directed EA is to identify technically and economically feasible measures that will mitigate a project's likely environmental effects. Mitigation is the elimination, reduction, or control of a project's adverse environmental effects, including restitution for any damage to the environment caused by such effects through replacement, restoration, compensation, or any other means.

The Act requires that mitigation measures be developed to address significant effects. As well, mitigation measures are considered part of the project when determining the significance of any adverse environmental effects under the Act.

More generally, mitigation is used to address all adverse environmental effects, whether or not subsequent analysis determines that the effects are significant. In practice, the development of mitigation measures should not begin after the assessment of environmental effects. Rather, mitigation measures are typically part of the project design, developed during a project's feasibility study, defined in the project plan, and refined as the assessment progresses and the project's likely environmental effects become clear. Mitigation measures are often part of the industry's or department's code of good practice.

Mitigation measures can be identified and developed in a variety of ways. Some kinds of projects, such as road construction, have well-established mitigation measures, although practitioners must take into account site-specific circumstances. Other projects may require a more formalized approach to developing mitigation measures, such as involving specialists or obtaining information from local residents through public consultation.

Common mitigation measures for road construction

- *scheduling culvert installations to avoid sensitive life cycles of fish and wildlife*
- *avoiding migratory bird staging and nesting areas*
- *avoiding fish spawning areas*
- *housing work crews in camps*
- *prohibiting work crews from hunting and fishing*

1.7 Step 4: Determining the Significance of Adverse Environmental Effects

The fourth step in a screening or comprehensive study is to determine whether or not the project is likely to cause significant adverse environmental effects, taking into account mitigation measures. This determination directly affects whether the RA can take a course of action with respect to the project, or whether further review is needed through mediation or a panel review.

1.7.1 The question

Taking into account the implementation of any mitigation measures the RA considers appropriate, the question is whether the project is likely to result in significant adverse environmental effects. This means that the screening or comprehensive study must determine whether

- the environmental effects are adverse;
- the adverse environmental effects are significant; and
- the significant adverse environmental effects are likely.

In addressing these three points, the RA should keep in mind that only those environmental effects as defined in the Act and included in the scope of the assessment can be considered in the determination.

1.7.2 The role of the public

The conclusions with respect to the determination of significant adverse environmental effects must be based on sound scientific evidence and analysis (including traditional ecological knowledge). But that is not to say that public input has no role to play or

that significance is an issue for scientists alone. On the contrary, public input can play an important role in the determination, as well as in the overall EA process.

By its nature, scientific analysis, although objective, is frequently open to different interpretations. The public perspective on these interpretations is an entirely valid one. Public input into the determination of significant adverse environmental effects must, however, limit itself to questions related to scientific analysis and interpretation. The public, for example, could provide new evidence, offer a different interpretation of the facts, or question the credibility of the conclusions.

Issues that are not directly linked to the scientific analysis of environmental effects, such as long-term unemployment in a community or fundamental personal values, cannot be introduced into the determination at this step. Such public concerns and values are given prominence elsewhere in the EA process. Under the Act, serious public concerns can warrant referral of the project to a public review through either mediation or a public panel review. That is, public concerns -- that may or may not have to do with scientific issues -- can prompt the EA process to take a closer look at the project. Only after a public review can it be determined whether significant adverse environmental effects are justified in the circumstances, a determination that may well look at such factors as unemployment and public values.

Objective conclusions

The conclusions of the screening report and comprehensive study report with respect to the significance of the adverse environmental effects are "objective" in the sense that they are based on scientific evidence and analysis, and do not stem from the opinion of either the Minister or the RA.

1.7.3 Applying the criteria

Practitioners must apply different sets of criteria to determine whether the environmental effect is adverse, significant, and likely.

(For more information on the three sets of criteria and their application, review the reference guide "Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects" in Part III.)

Are the environmental effects adverse?

The most common way of determining whether the environmental effects are adverse is to compare the quality of the environment before the project with the predicted quality of the environment with the project in place, using relevant criteria from the list. This approach requires information on baseline environmental conditions.

Criteria for determining adverse effects include

- loss of rare or endangered species;
- reductions in species diversity;
- loss of critical/productive habitat;
- transformation of natural landscapes;
- toxicity effects on human health;
- reductions in the capacity of renewable resources to meet the needs of present and future generations;
- loss of current use of lands and resources for traditional purposes by aboriginal persons;
- foreclosure of future resource use or production.

Are the adverse environmental effects significant?

Environmental standards, guidelines, and objectives are commonly used to establish significance. They typically specify threshold levels, such as maximum acceptable ground-level concentrations of air pollutants. Where no such threshold standards or guidelines exist, other methods, such as risk assessment, may need to be applied.

Criteria for determining significance include

- magnitude;
- geographic extent;
- duration and frequency;
- irreversibility;
- ecological context.

Are the significant adverse environmental effects likely?

Criteria for determining likelihood include

- probability of occurrence;
- scientific uncertainty.

Whenever possible, the assessment should try to apply statistical methods to determine significance. Where such methods are not feasible, practitioners will need to use a qualitative approach to determining likelihood, based on professional judgement.

*Factors used in determining whether or not
environmental effects are adverse*

Environmental changes:

- *negative effects on the health of biota including plants, animals, and fish*
- *threat to rare or endangered species*
- *reductions in species diversity or disruption of food webs*
- *loss of, or damage to, habitats, including habitat fragmentation*
- *discharges or release of persistent and/or toxic chemicals, microbiological agents, nutrients (e.g., nitrogen, phosphorus), radiation or thermal energy (e.g., cooling wastewater)*
- *population declines, particularly in top predator, large, or long-lived species*
- *the removal of resource materials (e.g., peat, coal) from the environment*
- *transformation of natural landscapes*
- *obstruction of migration, or passage of wildlife*
- *negative effects on the quality and/or quantity of the biophysical environment (e.g., surface water, groundwater, soil, land and air)*

Effects on people resulting from environmental changes:

- *negative effects on human health, well-being, or quality of life*
- *increase in unemployment or shrinkage in the economy*
- *reduction of the quality or quantity of recreational opportunities or amenities*
- *detrimental change in the current use of lands and resources for traditional purposes by aboriginal persons*
- *negative effects on historical, archaeological, paleontological, or architectural resources*
- *decreased aesthetic appeal or changes in visual amenities (e.g., views)*
- *loss of, or damage to, commercial species or resources*
- *foreclosure of future resource use or production*
- *loss of, or damage to, valued, rare, or endangered species or their habitats*

1.8 Step 5: Preparing the Environmental Assessment Report

In the fifth step of a self-directed EA, the RA must prepare (or ensure the preparation of) a screening report or comprehensive study report based on the results of the EA. The report should sufficiently explain how the assessment arrived at its conclusion. It should also provide a clear description of any proposed mitigation measures, and outline any requirements for follow-up that the RA believes are necessary.

Sample outline for an EA report

The RA can develop its own simple format for a screening report or comprehensive study report. Following is a sample outline:

- *Name of proposal*
- *Brief description (location, cost, etc.)*
- *Nature of effects identified*
- *Proposed mitigation measures*
- *Federal/provincial agencies consulted*
- *Public advised (list methods as applicable)*
- *Approximate date of implementation*
- *Conclusion and rationale*
- *Departmental/agency contact (name and telephone number)*

1.8.1 The screening report

The screening report must be included in the public registry established for the project.

As a minimum, the screening report should include

- **description of project activities:** a list of activities and their locations, scheduling details, and estimates of their magnitude or scale (quantified, if possible);
- **description of the environment:** identification of the environmental components in the study area, their interrelationship, and documentation or discussion of their sensitivity to disturbance;
- **environmental effects:** a summary of the effects, including cumulative environmental effects and the effects of malfunctions or accidents, of project activities on those components of the environment considered at risk;
- **proposed mitigation measures:** a list and description of any mitigation measures, referenced to the environmental effects they are designed to eliminate or reduce, that in the opinion of the RA, are required to prevent or

- reduce significant adverse environmental effects;
- **determination of significance:** a statement of whether the adverse environmental effects, taking into account appropriate mitigation measures, are significant or uncertain;
- **screening conclusion:** a statement and rationale of the screening conclusion;
- **departmental/agency contact:** name and telephone number of person to contact for more information.

The RA also has the discretionary power to require consideration of other factors appropriate to the nature and complexity of the project, including

- **the need for the project;**
- **alternatives to the project;**
- **alternative means of carrying out the project:** a description of the alternative means, the environmental effects of any such alternative means, and a rationale explaining why the alternatives were rejected;
- **expert department consultation:** a record of consultations with expert federal departments, and a discussion of any unresolved issues raised during these consultations;
- **public consultation:** a description of any public consultation during the screening, the results of the consultations, and an outline of any future consultation program;
- **follow-up programs:** details on monitoring programs to evaluate the effectiveness of mitigation measures as well as to determine the accuracy of the EA;
- **supporting information:** a summary and interpretation of technical and environmental studies, maps, or other information used in making the screening decision;
- any other matter relevant to the screening.

Future use of a screening report

Besides forming the basis of the decision on the project, an RA's screening report will become a source of information on environmental effects and mitigation for future screenings, and eventually may be used as a class screening report. Some departments may want to establish a database of completed screening reports that is easily accessible to those responsible for screening.

1.8.2 The comprehensive study report

The comprehensive study report must be included in the public registry established for the project. As a minimum, the report must include

- **description of project activities:** a statement of the purpose, a list of activities and their locations, scheduling details, and estimates of their magnitude or scale (quantified, if possible);
- **alternative means of carrying out the project:** a description of any technically and economically feasible alternative means, the environmental effects of any such alternative means, and a rationale explaining why the alternatives were rejected;
- **discussion of the scope of the environmental assessment:** a discussion of how the scope of the project and scope of the assessment were determined;
- **description of the environment:** identification of the environmental components in the study area, their interrelationship, and documentation or discussion of their sensitivity to disturbance;
- **environmental effects:** a summary of the effects of project activities on those components of the environment considered at risk, including a consideration of cumulative environmental effects and the effects of malfunctions or accidents that may occur;
- **effects on sustainable use of renewable resources:** a consideration of the capacity of renewable resources likely to be significantly affected by the project to meet present and future needs;
- **proposed mitigation measures:** a list and description of any mitigation measures, referenced to the environmental effects they are designed to eliminate or reduce, that, in the opinion of the RA, are required to prevent or reduce significant adverse environmental effects;
- **determination of significance:** a statement of whether the adverse environmental effects, taking into account appropriate mitigation measures, are significant or uncertain;
- **conclusion:** a statement and rationale of the conclusion;
- **expert department consultation:** a record of consultations with expert federal departments, and a discussion of any unresolved issues raised during these consultations;
- **public comments:** an identification of the public groups with an interest in the project, comments received from the public during the course of the EA, a discussion of how those comments have been incorporated into the comprehensive study report and a discussion of why some of those comments may not have been incorporated, a description of any public consultation during the EA as well as the results of the consultations, and an outline of any future consultation program;
- **follow-up programs:** a discussion of the need for and the requirements of a follow-up program to evaluate the effectiveness of mitigation measures and to

- determine the accuracy of the EA;
- **supporting information:** a summary and interpretation of environmental studies, maps, or other information used in the EA;
- **departmental/agency contact:** name and telephone number of person to contact for more information.

The RA also has the discretionary power to require a consideration of other factors appropriate to the nature and complexity of the project, such as the **need for and alternatives** to the project.

*Record of consultation
with expert federal departments*

- *evidence that the comprehensive study has been reviewed with all relevant expert federal departments and agencies*
- *should include a summary of the expertise provided by these departments and agencies, together with a discussion of any remaining technical concerns or issues that they have raised, or any unresolved issues*

1.9 Step 6: Review of the Environmental Assessment Report

When a self-directed EA is completed, the report may be subject to an outside review. In a screening, the RA has the option of allowing public review and comment on the screening report. In a comprehensive study, however, the Agency must ensure that the comprehensive study report is reviewed and available for comment.

1.9.1 The screening report

The RA will want to ensure that all relevant expert federal departments have had an opportunity to provide specialist information and expertise during the screening or to comment on the scientific and technical accuracy of the report.

Public involvement is discretionary in a screening. When the RA believes that public participation is appropriate, however, it should provide the public with an opportunity to examine and comment on the screening report before making any decision on whether to provide federal support to the project. In addition, the public will be given an opportunity to review and comment on all proposed class screening reports.

For more information on public involvement, review the reference guide "Public Involvement" (in preparation) in Part III.

1.9.2 The comprehensive study report

As in the case of a screening, the RA should ensure that all relevant expert federal departments have had an opportunity to provide specialist information and expertise during preparation of the comprehensive study report, and comment on the scientific and technical accuracy of the report.

The completed comprehensive study report must then be submitted to the Minister of the Environment and the Canadian Environmental Assessment Agency.

Review by the public

When it has received the comprehensive study report, the Agency must publish a notice setting out

- when the report will be available to the public;
- where copies of the report may be obtained;
- the deadline for filing comments on the conclusions and recommendations of the report.

Prior to the deadline set out in the notice, any person may file comments with the Agency about the conclusions, recommendations, and any other aspect of the comprehensive study report. The RA must ensure that the comprehensive study report and public comments are filed in the public registry.

Review by the Agency

The Agency has several responsibilities with respect to the comprehensive study report. These include

- ensuring the report is reviewed;
- publishing a notice to facilitate public comment on the report;
- receiving and reviewing any public comments forwarded to the Agency;
- making recommendations to the Minister, based on the Agency's review of the report and public comments.

The Agency's review will address such issues as:

- Was the comprehensive study undertaken and conducted in accordance with the procedural requirements and intent of the Act?
- Were all the relevant expert federal authorities consulted and all concerns adequately resolved?
- Were there appropriate and sufficient opportunities for public involvement in the comprehensive study and are there any outstanding public concerns?

When the Agency has reviewed the report and all comments received from the public and expert federal departments, it must provide a recommendation to the Minister concerning the next step in the EA.

1.10 Step 7: Decision by the Responsible Authority and the Minister

When the review of the EA report is completed, a determination must be made whether the RA can provide federal support to the project (that is, whether to proceed as proponent, or to grant the funds, licence, or interest in lands needed by the project). In the case of a screening, this determination is made by the RA. Upon completion of a comprehensive study, however, the Minister determines the next step in the EA process.

1.10.1 Public concerns

Public concerns about a project can trigger a public review. Therefore, they must be explicitly addressed upon completion of the self-directed EA report. Ideally, public involvement programs conducted during the scoping and assessment steps will have identified public concerns and helped identify ways in which they can be resolved.

In the case of a screening, the RA must consider whether public concerns warrant referral to mediation or a panel review. In a comprehensive study, the Minister will make the determination, on the advice of the Agency and RA. (From a practical perspective, the RA can ask the Minister to refer the project directly to a public review at any time before completion of the screening or comprehensive study if it is clear from the outset that public concerns about the project are unlikely to be adequately addressed in a self-directed EA.)

The *Point Aconi* decision of the Federal Court of Canada has provided guidance to RAs in using their discretionary powers in response to public concerns. (*Cantwell and others v. Minister of the Environment and others* (1991), 41 F.T.R. 18). In reviewing a decision by a federal Minister not to refer a project to a review panel, even though there was (in the Court's words) "widespread" public concern about the project, the Court noted factors that are likely to be relevant and irrelevant in deciding whether public concerns warrant a referral to a mediator or panel.

As a general guide, the Court stated that discretion with respect to interpreting the phrase must be exercised "reasonably and in good faith taking into account relevant considerations (and) having regard to the purposes of the legislation."

Relevant factors identified in the decision included

- the level and extent of public concern about the project;
- the general conclusion of the EA that expressly refers to public concerns;
- the evidence of widespread public concern about the project and interest in a public review, as reflected in the EA report and other documents;
- advice to the Minister that environmental effects over which members of the public have expressed concern are considered to be insignificant or mitigable with known technology;
- lack of likely effectiveness of a panel in recommending changes in the project that would address concerns expressed by the public.

Factors that were found to be irrelevant in determining the need for a referral included

- considerations of expediency or practicality;
- the fact that construction had begun on the project;
- that a provincial government, having concluded its own assessment, would be unlikely to agree to participate in a public review.

Public concerns

Public concerns, if not addressed sufficiently in the screening or comprehensive study, can warrant a referral to a public review either through mediation or panel review. Public concerns can be expressed in many ways:

- *correspondence and telephone calls to the Minister, local MPs, the Agency, or the department*
- *media coverage of public concerns*
- *community events, such as demonstrations or meetings about the project;*
- *formal interventions*
- *informal communication*

RAs should not necessarily rely on numbers when judging the importance of public concerns. Even a few letters or calls may express public concerns, particularly if they are from people who will be most directly affected by a project.

1.10.2 Screening

In the case of a screening, one of three decisions by the RA is possible, taking into account appropriate mitigation measures:

- the RA may provide federal support to the project if the project is not likely to cause significant adverse environmental effects;
- the RA must not provide federal support to the project if the project is likely to cause significant adverse environmental effects that cannot be justified;
- the RA must request that the Minister 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;
 - public concerns warrant a public review.

If the Minister refers the project to a public review, then the RA must not provide federal support to the project until the public review is completed.

1.10.3 Comprehensive Study

The possible decisions under a comprehensive study are identical to those under a screening, except for the important difference in the role of the Minister of the Environment. Upon completion of a comprehensive study, it is the Minister who is responsible for determining the next step in the EA process, based on the findings of the comprehensive study report and public comments received.

The Minister will refer the project back to the RA for action, if, taking into account appropriate mitigation measures

- the project is not likely to cause significant adverse environmental effects, in which case the RA may provide federal support to the project; or
- the project is likely to cause significant adverse environmental effects that cannot be justified, in which case it may not provide any federal support to the project.

The Minister will refer the project to a mediator or review panel, if, again taking into account appropriate mitigation measures

- 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;

- public concerns warrant the referral.

If the Minister refers the project to a public review, then neither the RA nor any other federal authority may provide federal support to the project until the public review is completed.

1.11 Step 8: Post-Decision Activity

The final step in the self-directed EA process addresses the RA's obligations following completion of the screening report or comprehensive study report and its determination about whether to provide federal support to the project. These obligations fall into three general categories:

- providing public notice about the course of action;
- deciding whether a follow-up program is appropriate;
- ensuring the implementation of appropriate mitigation measures.

1.11.1 Public notice

The RA must provide public notice regarding its course of action, regardless of whether it determines that it may provide federal support to the project.

If it does not provide federal support, the RA must file a notice of that course of action in the public registry. If it does provide federal support, the RA must advise the public of

- the RA's course of action;
- any mitigation measures to be implemented with respect to the project's adverse environmental effects;
- any follow-up program that is implemented;
- any results of the follow-up program.

The type of public notice should be appropriate to the circumstances of the project and reflect the public involvement effort that has been undertaken. Examples include newspaper advertisements, news releases, community bulletin boards, and public meetings. All documents should be included in the public registry. At this time, public notification cannot be achieved by filing the EA on the federal EA index. The index may be enhanced in future, however, to include this function.

The RA's obligation to advise the public of the above information is a service designated for the use, benefit and information of the public. As a result, an RA has responsibilities to communicate this information to the public in accordance with the *Official Languages Act (OLA)*.

The public notice must be in both official languages when the EA is administered in an area designated as bilingual. These designations include

- the RA's head office, which, as the central office of a federal institution, is designated bilingual under the *OLA*;
- an office or facility located within the National Capital Region;
- an office or facility located in a region designated as bilingual under the *OLA* under Treasury Board's "significant demand" criterion.

Written notices may be bilingual, or produced in separate but equal versions. In the latter case, each version must clearly indicate the availability of the information in the other official language.

1.11.2 Follow-up program

Under the Act, a follow-up program

- verifies the accuracy of the EA; and/or
- determines the effectiveness of any mitigation measures that have been implemented.

When a follow-up program may be appropriate

The RA should develop a follow-up program for a project when the circumstances warrant. Examples include situations where

- *the project involves a new or unproven technology*
- *the project involves new or unproven mitigation measures*
- *an otherwise familiar or routine project is proposed for a new or unfamiliar environmental setting*
- *the assessment's analysis was based on a new assessment technique or model, or there is otherwise some uncertainty about the conclusions*
- *project scheduling is subject to change such that environmental effects could result*

Screening

The need for and requirements of a follow-up program need not be considered during preparation of the screening report. If, on completion of the report, however, the RA determines that it may provide federal support to the project, it must make a decision about whether a follow-up program is appropriate. If so, it must ensure that one is designed and implemented.

Comprehensive study

A comprehensive study must explicitly consider the need for and requirements of a follow-up program during preparation of the report. If the RA determines it may provide federal support to the project, it must then decide whether to implement the follow-up program.

The critical question regarding implementation of a follow-up program is one of uncertainty or unfamiliarity -- in either the analysis and predictions of the environmental assessment, or in the mitigation measures. The assessment must consider, for example, whether a new modelling technique or an untried mitigation measure introduces a level of uncertainty into the project and, if so, what are the corresponding risks of an inaccurate analysis or ineffective mitigation measure?

1.11.3 Mitigation measures

If the RA has determined that it may provide federal support to the project, and that the proponent is proceeding, the RA must ensure that any mitigation measures it considers appropriate are implemented.

RAs have powers other than those given under the Act that allow them to ensure implementation of mitigation measures -- for example through the issuance of conditional approvals, the holdback provisions of funding arrangements, and contractual arrangements. The RA should determine the most appropriate means of ensuring the implementation of mitigation measures.

Examples of ensuring compliance with mitigation measures

- *compliance statement or conditions of approval in contract with project proponent*
- *performance bond by proponent*
- *site visits*

1.12 The Self-directed Environmental Assessment Checklists

This section provides checklists for RAs in conducting a self-directed EA under the Act. Tables 1-3 and 1-4 summarize the key obligations and decisions related to a screening and comprehensive study, respectively.

**Table 1-3
Screening Checklist**

Have you		Yes	No
1.	Reviewed your obligations under the Act?	0	0
2.	Established a public registry for the project?	0	0
3.	Determined the scope of the project?	0	0
4.	Determined the factors to be considered in the EA?	0	0
5.	Determined the scope of the assessment?	0	0
6.	Determined whether the project has been previously assessed?	0	0
7.	Determined whether all or part of a class screening report can be applied to the assessment?	0	0
8.	Identified all RAs involved?	0	0
9.	Identified a lead RA, if required?	0	0
10.	Determined, if a provincial government is involved, whether there is a federal-provincial agreement in place?	0	0
11.	Reviewed your information needs and identified any gaps?	0	0
12.	Determined how any information gaps will be filled?	0	0
13.	Identified whether public input is appropriate?	0	0
14.	If yes, developed a public involvement program?	0	0
15.	Considered all environmental effects?	0	0
16.	Identified appropriate mitigation measures?	0	0
17.	Monitored public concerns about the project?	0	0
18.	Prepared a screening report in full compliance with the Act?	0	0
19.	Made a determination about whether the RA may provide federal support to the project?	0	0
20.	Provided public notice of the course of action on the project?	0	0
21.	Determined how the implementation of any mitigation measures, if appropriate, will be ensured?	0	0
22.	Filed all relevant documents and materials in the public registry?	0	0
23.	Considered the need for a follow-up program if the project is proceeding?	0	0
24.	Ensured the design and implementation of a follow-up program, if appropriate?	0	0

Table 1-4

Comprehensive Study Checklist

Have you		Yes	No
1.	Reviewed your obligations under the Act?	<input type="radio"/>	<input type="radio"/>
2.	Established a public registry for the project?	<input type="radio"/>	<input type="radio"/>
3.	Determined the scope of the project?	<input type="radio"/>	<input type="radio"/>
4.	Determined the factors to be considered in the EA?	<input type="radio"/>	<input type="radio"/>
5.	Determined the scope of the assessment?	<input type="radio"/>	<input type="radio"/>
6.	Determined whether the project has been previously assessed?	<input type="radio"/>	<input type="radio"/>
7.	Identified all RAs involved?	<input type="radio"/>	<input type="radio"/>
8.	Identified a lead RA, if required?	<input type="radio"/>	<input type="radio"/>
9.	Determined, if a provincial government is involved, whether there is a federal-provincial agreement in place?	<input type="radio"/>	<input type="radio"/>
10.	Reviewed your information needs and identified any gaps?	<input type="radio"/>	<input type="radio"/>
11.	Determined how any information gaps will be filled?	<input type="radio"/>	<input type="radio"/>
12.	Consulted with all relevant expert federal departments?	<input type="radio"/>	<input type="radio"/>
13.	Developed a public involvement program?	<input type="radio"/>	<input type="radio"/>
14.	Considered all environmental effects?	<input type="radio"/>	<input type="radio"/>
15.	Identified appropriate mitigation measures?	<input type="radio"/>	<input type="radio"/>
16.	Monitored public concerns about the project?	<input type="radio"/>	<input type="radio"/>
17.	Considered the need for a follow-up program?	<input type="radio"/>	<input type="radio"/>
18.	Prepared a comprehensive study report in full compliance with the Act?	<input type="radio"/>	<input type="radio"/>
19.	Submitted the report to the Minister and Agency for review?	<input type="radio"/>	<input type="radio"/>
20.	Made a determination about whether the RA may provide federal support to the project?	<input type="radio"/>	<input type="radio"/>
21.	Provided public notice of the course of action on the project?	<input type="radio"/>	<input type="radio"/>
22.	Determined how the implementation of any mitigation measures, if appropriate, will be ensured?	<input type="radio"/>	<input type="radio"/>
23.	Ensured the design and implementation of a follow-up program, if appropriate?	<input type="radio"/>	<input type="radio"/>
24.	Filed all relevant documents and materials in the public registry?	<input type="radio"/>	<input type="radio"/>

CHAPTER 2

THE PUBLIC REVIEW: MEDIATION AND PANEL REVIEW

Chapter 2: The Public Review: Mediation and Panel Review

2.1 The Public Review

In a public review, members of the public are given a greater opportunity to participate in the conduct of the environmental assessment (EA). The *Canadian Environmental Assessment Act* (Act) provides three options for the public review of projects: mediation, panel review, or a combination of the two. The Minister of the Environment can order a public review at any time during a screening or comprehensive study. The responsible authority (RA) may also request such a review from the Minister at any time.

Mediation and panel reviews are advisory rather than decision-making procedures, and the RA must still determine whether it may provide federal support to the project.

A referral to a public review is made because

- 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 about the project and its possible environmental effects warrant further investigation of the project.

A project can be referred to mediation or a panel review in any one of the following situations:

- after a screening;
- after a comprehensive study;
- at any time before completion of a screening or comprehensive study (in the case of a screening, a project can be referred to a public review only when the RA believes that the project is likely to cause significant adverse environmental effects or that public concerns warrant a referral);
- **before** the screening or comprehensive study actually begins, if it is clear from the outset that a public review will be necessary.

The Minister decides whether the project will proceed to either mediation or a panel review.

Where mediation is inappropriate or unsuccessful, the EA review is conducted by an independent panel. In certain cases, a panel review may be conducted jointly with another jurisdiction.

2.1.1 Mediation

Mediation is a voluntary process of negotiation in which an independent and impartial mediator helps the interested parties resolve their issues. It is a formal step in the EA process, applied either on its own or to support a panel review. It is characterized by a non-adversarial, collaborative approach to solving problems and generating agreements where consensus is possible. It may also help to identify and clarify the issues where agreement is not possible.

In mediation, members of the public participate as representatives of interested parties, along with representatives of the RA, the proponent, and other groups as appropriate. Meetings or hearings open to the general public, as are held in a panel review, usually are not part of a mediation.

Mediation is an appropriate choice whenever all of the interested parties are willing to participate and a consensus appears possible. It is particularly effective where the issues involve a small number of interested parties and the environmental issues are limited in scope and number. It can be sensitive to local concerns and less costly than a panel review in terms of time and resources. Participants also gain a sense of having contributed to the resolution of a problem.

In this process, a mediator is appointed by the Minister after consulting with the RA and the other parties to the mediation. The mediator assists the participants in reaching a consensus, but does not make decisions for them.

Mediation can address all or part of an EA. For example, it may be used to resolve specific issues that may not be suitable for resolution by a review panel, such as determining the most effective mitigation measure.

Successful mediation reflects the following guiding principles:

- Participation must be voluntary; participants must see the value of such an approach.
- All legitimate stakeholders must be allowed to participate.
- The mediator must be independent and impartial.
- The mediator must be acceptable to all the parties involved.

If the mediation is successful in reaching an agreement, the RA must make a determination, based on the mediator's report, about whether it may provide federal support to the project.

2.1.2 Panel review

Where mediation is not appropriate or successful, the public review is conducted by an independent panel. The panel review, however, like mediation, is an advisory process and not binding on the RA.

The Minister appoints the panel and establishes its terms of reference after consulting with the RA. In certain cases, a panel review may be conducted jointly with another jurisdiction. (For a discussion on harmonization of federal and provincial EA systems, refer to section 1.3.5.)

Panel reviews are conducted in compliance with the Act and according to the following guiding principles:

- Information available to the panel is also made available to the public, with the exception of information that must remain confidential due to privacy or security concerns.
- Parties with a legitimate interest are encouraged to participate.
- Panel reviews involve informal but structured meetings.

In conducting a public review, the panel must

- ensure that the information required for the EA is obtained and made available to the public;
- convene hearings in a manner that offers the public an opportunity to participate;
- prepare a report setting out the rationale, conclusions, and recommendations of the panel, including any mitigation measures and follow-up program, as well as a summary of comments received by the public;
- submit the report to the Minister and the RA.

The Minister may also allow another federal process to be used as a substitute for a review panel under the Act. If the Minister determines that an EA process used by a federal authority under another federal Act or used by a body established under a lands claim agreement would be an appropriate substitute, a review panel may not be appointed under the Act.

Before allowing the substitution, the Minister must be satisfied that

- the substitute process includes a consideration of those factors required under the Act for a panel review;
- the public will be given an opportunity to participate in the EA;
- a report will be submitted to the Minister at the end of the EA;

- the report will be published;
- the process meets any other relevant criteria for the substitution established by the Minister.

When the panel's report is completed, the Minister refers the project back to the RA for action. The RA must then make a determination, based on the report of the review panel, about whether it may provide federal support to the project.

2.2 Roles and Responsibilities

There may be as many as nine key participants in a public review:

- the RA;
- the proponent;
- the mediator;
- the panel;
- the Agency;
- the Minister;
- expert federal departments;
- other federal authorities;
- the public.

Tables 2-1 and 2-2 summarize the roles and responsibilities of these participants in mediation and a panel review, respectively.

2.3 Key Steps

The public review process consists of seven basic steps (see Figure 2-1).

**Table 2-1
Roles and Responsibilities of Participants
in a Mediation**

The RA •	<ul style="list-style-type: none"> • must not provide federal support to the project until completion of the EA; • advises the Minister on the terms of reference for the mediator; • provides background information; • participates in the mediation process; • maintains a public registry prior to the referral to a mediator and from the time the mediator's report has been submitted to the Minister and the RA until the completion of any follow-up program; • determines, after a successful mediation, and taking the recommendations of the mediator's report into account, whether it may provide federal support to the project; • provides public notice of its course of action, including the extent to which the mediator's recommendations have been adopted; • ensures that all appropriate mitigation measures are implemented for any project that is proceeding; • ensures that, when appropriate, a follow-up program is developed and implemented.
The Proponent	<ul style="list-style-type: none"> • provides, at the mediator's request, background information and detailed project proposal; • participates in the mediation process; • follows all conditions imposed by the RA, such as those related to the implementation of mitigation measures and a follow-up program, should the project proceed.
The Mediator	<ul style="list-style-type: none"> • oversees and manages the mediation process; • may allow additional interested parties to participate; • prepares and submits a report to the Minister and to the RA.

Table 2-1 (cont'd)

The Agency	<ul style="list-style-type: none"> • recommends to the Minister whether mediation is an appropriate option; • provides advice to the Minister at all steps of the mediation process, • provides administrative support to the mediator, as required; • maintains a public registry for the project from the appointment of the mediator, until the mediator's report is submitted to the Minister and the RA; • provides procedural advice to the RA and other participants, as required.
The Minister	<ul style="list-style-type: none"> • determines whether mediation is appropriate; • establishes the terms of reference for the mediator, including the scope of the project, the scope of the assessment, and the scope of the factors to be considered, after consulting with the RA and other participants; • appoints a mediator, after consulting with the RA and other interested parties; • receives the mediator's report and makes it available to the public; • refers all or part of the project to a panel review if the parties are unable to reach an agreement in mediation, or when one party to the mediation process decides against continuing the process.
Expert Federal Departments	<ul style="list-style-type: none"> • make expert information or knowledge available; • participate in the mediation process, when required; • must not provide federal support to the project until the EA has been completed.
Other Federal Authorities	<ul style="list-style-type: none"> • must not provide federal support to the project until the EA has been completed.
The Public	<ul style="list-style-type: none"> • representatives of parties having an interest in the project may participate in the mediation.

**Table 2-2
Roles and Responsibilities of Participants
in a Panel Review**

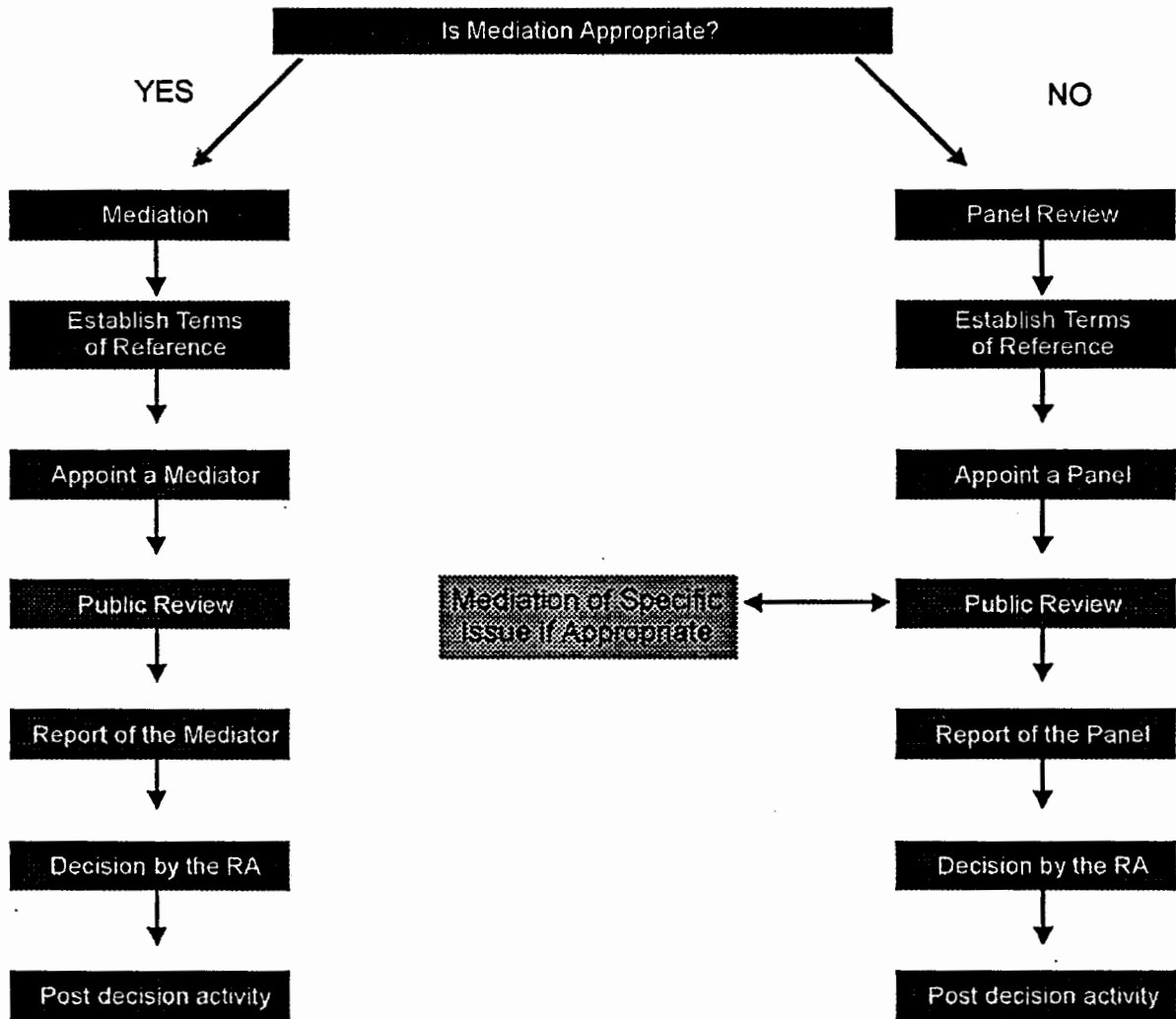
The RA •	<ul style="list-style-type: none"> • must not provide federal support to the project until completion of the EA; • ensures that an environmental impact statement (EIS) is prepared in accordance with the guidelines established by the panel (if the screening report or comprehensive study report has not been prepared, or if additional information is requested); • ensures that any information deficiencies in the EIS, identified by the panel, are addressed by the proponent; • participates in the panel's public hearings; • maintains a public registry from the time the panel's report has been submitted to the Minister and the RA until the completion of any follow-up program; • determines, based on the recommendations of the panel, whether it may provide federal support to the project; • provides public notice of the course of action, including the extent to which the recommendations of the review panel have been adopted; • ensures that all necessary mitigation measures are implemented for any project that is proceeding; • ensures that, when appropriate, a follow-up program is developed and implemented.
The Proponent	<ul style="list-style-type: none"> • provides, at panel's request, background information and detailed project proposal; • prepares the necessary documentation for the EA (such as the EIS); • participates in the panel's public hearings; • follows any and all conditions imposed by the RA; • implements any mitigation measures and follow-up program.
The Panel	<ul style="list-style-type: none"> • develops the guidelines for the EIS; • prepares an EIS deficiency statement, if necessary; • provides opportunities for public involvement throughout the panel review; • convenes public hearings; • reviews the EIS; • prepares and submits a report, with recommendations, to the Minister.

Table 2-2 (cont'd)

The Agency	<ul style="list-style-type: none"> • provides administrative support and procedural advice to the panel; • maintains a public registry for the project from the appointment of the panel until the panel's report is submitted to the Minister and the RA; • provides financial support to eligible participants through the Participant Funding Program; • provides procedural advice to the RA and other participants, as required; • provides procedural advice to the Minister at all steps of the panel review.
The Minister	<ul style="list-style-type: none"> • determines whether a joint panel or substitute process is applicable, if an agreement was not reached in mediation, or if mediation is not appropriate; • establishes the terms of reference for the panel, including the scope of the project, the scope of the assessment, and the scope of the factors to be considered, after consulting with the RA; • establishes a public review panel for the project, if neither a joint panel nor substitute process is applicable; • appoints the chair and panel members, after consulting with the RA; • refers to a mediator, as appropriate, any issue or issues before the panel that may be resolved by mediation; • receives the panel's report and makes it publicly available.
Expert Federal Departments	<ul style="list-style-type: none"> • make expert information or knowledge available; • review the EIS; • participate in public hearings as required by the panel; • must not provide federal support to the project until the EA has been completed.
Other Federal Authorities	<ul style="list-style-type: none"> • must not provide federal support to the project until the EA has been completed; • may not provide any federal support for a project where an RA has concluded that the project will cause significant adverse environmental effects that cannot be justified in the circumstances.
The Public	<ul style="list-style-type: none"> • provide input and comments throughout the panel process; • participate in public hearings convened by the panel.

Figure 2-1:

Key Steps of the Public Review



2.3.1 Step 1: Determining whether mediation is appropriate

The Minister of the Environment determines whether mediation is appropriate for the project. In reaching this determination, the Minister will seek the advice of the RA and the Agency. Key questions in determining the appropriateness of mediation include:

- What are the potential sources of uncertainty or disagreement? For example, do the disputes involve fundamental opposition to the proposed project, technical issues, the determination of environmental effects and their significance, or the effectiveness of mitigation measures?
- Are these disagreements negotiable? Is there room for compromise and consensus?
- Who are the main parties involved?
- Do the parties agree on the areas of uncertainty or disagreement?
- Are there representatives who can speak on behalf of the interests?
- Are the parties willing to participate in mediation?

The RA should inform the Agency as early as possible if it is considering mediation. The Agency can provide guidance in determining appropriate issues for mediation to address as well as in identifying the interested parties and their willingness to participate.

Using a facilitator

The RA may want to engage the services of a skilled and impartial facilitator in the pre-mediation step. The facilitator can help all parties decide whether to proceed with a voluntary dispute-resolution process, and, if so, what the nature or ground rules of the process should be. A facilitator can help

- *identify the sources of uncertainty or disagreement*
- *determine whether the interested parties are willing to give mediation a chance*
- *determine the acceptability of a mediator to all parties*
- *assist in establishing the terms of reference.*

2.3.2 Step 2: Establishing terms of reference

The Minister will establish the terms of reference for the mediator or panel review after consulting with the RA and other parties as appropriate. The terms of reference include the scope of the project, the scope of the assessment, the scope of factors to be considered, and appropriate reporting requirements.

The factors that must be considered in a mediation or panel review are the same as those for a comprehensive study:

- the purpose of the project;
- alternative means of carrying out the project as well as the environmental effects of these alternative means;
- the environmental effects of the project, including cumulative environmental effects and the effects of malfunctions or accidents that may occur in connection with the project;
- the effects on the capacity of renewable resources likely to be significantly affected by the project to meet present and future needs;
- the significance of the environmental effects;
- public comments;
- mitigation measures;
- the need for, and requirements of, any follow-up program;
- any other matter relevant to the review, such as the need for and alternatives to the project, that the Minister or RA may require.

If a screening or comprehensive study for the project has been completed, the screening report or comprehensive study report will form the basis of the proponent's EIS for the mediator or panel.

2.3.3 Step 3: Appointing a mediator or panel

Mediation

The mediator is appointed by the Minister after consulting with the RA and all those who are to participate in the mediation. The mediator may be appointed from a roster of candidates established by the Minister on the advice of the Agency. The mediator must

- be unbiased and free from any conflict of interest relative to the project;
- have knowledge or experience in acting as a mediator;
- be acceptable to all participants.

A good mediator should also have excellent interpersonal skills, such as the ability to gain and maintain trust, to listen, and to negotiate effectively.

Panel review

The Minister, in consultation with the RA, will appoint the chair and other panel members. Members may be chosen from a roster of candidates established by the Minister.

Panel members must

- be unbiased and free from any conflict of interest in the project;
- have knowledge or experience relevant to the anticipated environmental effects of the project.

2.3.4 Step 4: Public review by the mediator or panel

Mediation

Once appointed, the mediator's first task is to work with the RA and interested parties to develop protocols or "ground rules" that will govern the negotiations. For example, protocols may deal with agreements on the roles and responsibilities of the parties and the mediator, and the rules of confidentiality, including reporting back to the representative's group. Other matters to be settled include the timetable for negotiation and the requirements for a public information program.

The parties then turn to the issues and the substantive matters in dispute. The emphasis in mediated negotiations is on working through the substantive issues in an orderly, focused, and creative manner. The mediator must ensure that the discussions do not become unproductive or lapse into confrontational bargaining, and that the participating representatives maintain links with their organizations.

A mediator will typically

- establish an agenda of issues to be discussed;
- identify information requirements, sources of information, and opportunities for joint fact-finding;
- work towards a single negotiating text to focus the discussions;
- present the alternatives for mutual gain, so that important interests are considered and accommodated when formulating proposals (rather than the parties becoming deadlocked over specific issues);
- reach a final agreement with the parties.

Panel review

A panel review generally includes

- preparation of guidelines for the EIS;
- preparation of the EIS by the proponent (based on the screening report or comprehensive study report);
- review of the EIS by the panel and public;

- preparation of the EIS deficiency statement, if necessary;
- soliciting of public comments;
- convening of public hearings;
- preparation of a panel report and submission to the Minister and the RA.

The RA is a major participant in the review. It must either prepare or supervise the preparation of the draft EIS, revise it according to the guidelines issued by the panel, and appear before the panel at public hearings to answer questions.

Public involvement is a key characteristic of the panel review. Panel hearings must be public, unless the panel is satisfied that specific, direct, and substantial harm would be caused to the witness by a public hearing.

A panel may call any person as a witness and order the witness to give evidence and produce any documents or other materials the panel considers necessary for conducting its EA. The panel's summons can be enforced by turning it into an order of the Federal Court of Canada.

2.3.5 Step 5: Report of the mediator or panel

Mediation

The mediator submits a report to the Minister and the RA at the conclusion of the mediation, whether or not an agreement has been reached. The report must not divulge any confidential information, and should be limited to a brief record of any agreements and outstanding issues. The report should include an analysis of differences among the parties only if the parties have reviewed and approved the report.

Upon receiving the mediator's report, the Minister must give public notice that the report is available, stating how copies may be obtained.

The nature and effect of the mediator's report changes depending on whether the participants were able to reach an agreement. If an agreement was reached, the mediator's report becomes the final EA report for the project, and the RA takes appropriate action.

If agreement was not reached, the mediator's report becomes, in effect, the starting point for a panel review.

Panel review

The panel's report must set out

- the rationale, conclusions, and recommendations of the panel, including any mitigation measures and follow-up program;
- a summary of public comments.

Once the report is submitted to the Minister and the RA, the work of the panel is completed. The Minister must advise the public that the report is available, and state how copies may be obtained.

2.3.6 Step 6: Decision by the responsible authority

When the mediation or panel review is completed, the RA must decide whether it may provide federal support to the project (that is, whether to proceed as proponent, or to grant the funds, licence, or interest in lands needed by the project). The RA's decision must take into consideration the report of the mediator or panel.

The RA may provide federal support to the project if, taking into account appropriate mitigation measures,

- the project is not likely to cause significant adverse environmental effects; or
- the project is likely to cause significant adverse environmental effects that can be justified in the circumstances.

The RA must not, however, provide federal support to the project if the project is likely to cause significant adverse environmental effects that cannot be justified. In this case, as well, other federal authorities may not provide any support for the project.

If the RA is the proponent, then its decision will determine the fate of the project. If this is not the case, the withholding of federal funds, interest in land, or authorization by the RA may force the proponent to abandon the project. In other cases, the proponent may be able to proceed without the federal action.

Table 2-3 summarizes the RA's possible conclusions and corresponding courses of action, taking into account the report of the mediator or panel.

**Table 2-3
Possible Courses of Action by RA
following a Public Review**

RA's Conclusion	RA's Action
<p>1. The project is not likely to cause significant adverse environmental effects, or it has the potential to cause significant adverse environmental effects that can be prevented or significantly reduced by mitigation measures.</p>	<p>May exercise any power or perform any duty or function that would allow project to proceed</p> <p>Must ensure implementation of mitigation measures</p>
<p>2. The project is likely to cause significant adverse environmental effects and these effects can be justified in the circumstances.</p>	<p>May exercise any power or perform any duty or function that would allow project to proceed</p> <p>Must ensure implementation of mitigation measures</p>
<p>3. The project is likely to cause significant adverse environmental effects and these cannot be justified in the circumstances.</p>	<p>May not exercise any power or perform any duty or function that would allow project to proceed.</p>

2.3.7 Step 7: Post-decision activity

The final step in the public review process addresses the RA's obligations following the completion of a mediation or panel review and its determination about whether to provide federal support to the project. These obligations are identical to those in a comprehensive study, and fall into three categories:

- providing public notice about the course of action;
- determining whether a follow-up program is appropriate;
- ensuring the implementation of any appropriate mitigation measures.

Public notice

If it does provide federal support to the project, however, the RA must advise the public of the following:

- the RA's course of action;
- any mitigation measures to be implemented with respect to the project's adverse environmental effects;
- the extent to which the recommendations of the mediator or review panel were adopted, along with the reasons for rejecting any of them;
- any follow-up program that is implemented;
- any results of the follow-up program.

The type of public notice should be appropriate to the circumstances of the project and reflect the public involvement effort that has been undertaken. All documents should be included in the public registry.

As in the case of public notices after a self-directed EA, the RA's obligation to advise the public of the above information is a service designated for the use, benefit and information of the public. As a result, an RA has responsibilities to communicate this information to the public in accordance with the *Official Languages Act (OLA)*.

The public notice must be in both official languages when the EA is administered in an area designated as bilingual. These designations include:

- the RA's head office, which, as the central office of a federal institution, is designated bilingual under the *OLA*;
- an office or facility located within the National Capital Region;
- an office or facility located in a region designated as bilingual under the *OLA* under Treasury Board's "significant demand" criterion.

Written notices may be bilingual, or produced in separate but equal versions. In the case of the latter, each version must clearly indicate the availability of the information in the other official language.

Follow-up program

The report of the mediator or review panel may recommend that the RA develop and implement a follow-up program. Under the Act, a follow-up program should

- verify the accuracy of the EA; and/or
- determine the effectiveness of any mitigation measures that have been implemented.

The RA is not obliged to follow the recommendation for a follow-up program, but if it does not, it must justify the decision publicly. RAs should keep in mind that the report from a mediator or panel is the product of an open, fair, and rigorous review involving all key interests, and that the report's recommendations cannot be treated lightly.

A critical question in determining the need for a follow-up program is one of **uncertainty or unfamiliarity** – in either the analysis and predictions of the EA, or in the mitigation measures. The RA must consider, for example, whether a new modelling technique or an untried mitigation measure introduces a level of uncertainty into the project and, if so, whether there are corresponding risks of an inaccurate analysis or ineffective mitigation measure.

When a follow-up program may be appropriate

The RA should develop a follow-up program for a project when the circumstances warrant. Examples include situations where

- ***the project involves a new or unproven technology***
- ***the project involves new or unproven mitigation measures***
- ***an otherwise familiar or routine project is proposed for a new or unfamiliar environmental setting***
- ***the assessment's analysis was based on a new assessment technique or model, or there is otherwise some uncertainty about the conclusions***
- ***project scheduling is subject to change such that environmental effects could result***

Mitigation measures

If the RA has determined that it may provide federal support to the project, and that the proponent is proceeding, then it must ensure that all appropriate mitigation measures are implemented.

RAs have powers other than those given under the Act that will allow them to ensure implementation of mitigation measures -- for example, through the issuance of permits, the holdback provisions of funding arrangements, and contractual arrangements. The RA determines the most appropriate means of ensuring implementation of any mitigation measures.

Examples of ensuring compliance with mitigation measures

- ***compliance statement or conditions of approval in contract with project proponent***
- ***performance bond by proponent***
- ***site visits***

2.4 The Public Review Checklists

Tables 2-4 and 2-5 provide checklists for RAs of the key obligations under the Act in mediation and panel reviews, respectively.

**Table 2-4
Mediation Checklist**

		Y	N
1.	Are the sources of uncertainty or disagreement clear?	O	O
2.	Are the uncertainties or disagreements negotiable?	O	O
3.	Is it clear who the interested parties are?	O	O
4.	Are there representatives who can speak on behalf of these parties?	O	O
5.	Are the parties willing to participate in mediation?	O	O
6.	Is the number of parties to a potential mediation manageable?	O	O
7.	Have the representatives of the RA and proponent been identified?	O	O
8.	Has the Agency been informed about the possibility of a mediation?	O	O
9.	Is a facilitator needed to help determine the feasibility of mediation and develop draft terms of reference?	O	O
10.	Do the mediator and other participants require background information in order to participate effectively?	O	O
11.	Has the RA decided on a course of action, taking into account the mediator's report?	O	O
12.	Once the RA has made a decision, has public notice been provided in the public registry?	O	O
13.	Is any other public notice required?	O	O
14.	Have the mediator's recommendations been adopted?	O	O
15.	Has the public been informed of the extent to which the mediator's recommendations have been adopted and the reasons why any recommendations were not adopted?	O	O
16.	Are there mitigation measures to implement?	O	O
17.	If yes, are plans in place to ensure implementation?	O	O
18.	Is a follow-up program appropriate?	O	O
19.	If yes, has one been designed?	O	O
20.	Has the public registry been maintained up to the appointment of the mediator, and again from the time that the mediator's report was submitted?	O	O

**Table 2-5
Panel Review Checklist**

	Y	N
1. Have the significant public concerns been identified?	O	O
2. Has mediation been attempted?	O	O
3. Are there outstanding issues that mediation is not able to resolve?	O	O
4. Has the screening report or comprehensive study report been submitted to the Agency as an EIS?	O	O
5. Has the panel identified deficiencies in the EIS that need to be addressed?	O	O
6. Have the relevant sources of information been identified to meet these deficiencies?	O	O
7. Is there a need to obtain information from expert federal authorities?	O	O
8. Is there a need to obtain information from the public?	O	O
9. Is there a need to obtain information from the other levels of government?	O	O
10. Have the representatives of the RA and proponent who will participate in the panel's public hearings been identified?	O	O
11. Has the RA decided on a course of action, taking into account the panel's report?	O	O
12. Has public notice been provided of the RA's course of action?	O	O
13. Have the panel's recommendations been adopted?	O	O
14. Has the public been informed of the extent to which the panel's recommendations have been adopted and the reasons why any recommendations were not adopted?	O	O
15. Does the project require any mitigation measures, and if yes, are plans in place to ensure implementation?	O	O
16. Is a follow-up program appropriate?	O	O
17. If yes, has one been designed?	O	O
18. Has the public registry been maintained for the project after the panel's report was submitted to the Minister and the RA?	O	O