



# Operational Policy Statement

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## Establishing the Scope of the Environmental Assessment

### 1. PURPOSE OF SCOPING

- Scoping establishes the boundaries of an environmental assessment (what elements of the project to consider and include and what environmental components are likely to be affected and how far removed those components are from the project) and focuses the assessment on relevant issues and concerns.
- Good scoping reduces the risk of including inappropriate components in an environmental assessment or excluding components which should be assessed.

(what is the purpose of project and why is it proposed?) and other physical works that are inevitable or that are physically linked to or are inseparable from the proposed project or will occur as a result of federal support for the proposed project;

- the involvement of other federal departments in the proposed project (e.g. the existence of multiple Responsible Authorities);
- the nature of Responsible Authority involvement (whether the Responsible Authority(ies) involvement is in relation to the principal project or is related to physical works or activities that are in support of or are accessory to the principal project);

### 2. CONSIDERATIONS

The determination of the scope of the project and the environmental assessment must be made on a case-by-case basis. However, in making such a determination, all of the following issues should together be considered:

- the proponent's project description (what is the project and is it the principal project?) and justification for the project

- whether the proposed project is or has been the subject of an assessment of environmental effects by others (e.g. other environmental assessments, provincial environmental protection requirements, forest management plans, resource management plans, regional land use plans);



where other review processes have occurred or are occurring, the results may provide assistance in establishing the boundaries of the assessment, from both a project (what elements of the project to consider and include) and an assessment (what environmental components and how far removed from the project to consider and include) perspective;

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- the availability and use of existing policy, technical and scientific information (e.g. the assessment should make use of the best available information and undertake analyses to address gaps in information as required, to define significant environmental effects);
- the expectations of stakeholders including proponent, public, other jurisdictions, interest groups and aboriginal groups;
- a focus on those potential environmental effects on valued ecosystem components that are likely to be adverse and significant, following the application of mitigation. Valued ecosystem components are identified through consultation with the stakeholders and government experts; and,
- mitigation measures that are directed to the proposed project (e.g. mitigation measures must be applied to the effects resulting from the project that is being assessed and not to other existing or planned projects).



## Excerpt

### Canadian Environmental Assessment Act The Responsible Authority's Guide, pp. 68-74

#### 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.