Government of Canada
Gouvernement du Canada

Environmental and Regulatory Reviews

Discussion Paper

June 2017

Canada

Purpose

Our Government is committed to deliver environmental assessment and regulatory processes that regain public trust, protect the environment, introduce modern safeguards, advance reconciliation with Indigenous peoples, ensure good projects go ahead, and resources get to market.

We made this commitment because we share common concerns about the ability of Canada's environmental assessment and regulatory processes to protect and sustain the natural environment while getting resources to market and creating good, middle class jobs for Canadians. In the current system:

- There is a need for greater transparency around the science, data and evidence supporting decisions and to ensure Indigenous knowledge is sufficiently taken into account;
- Protections to Canada's fisheries and waterways are insufficient; and,
- Indigenous peoples and the public should have more opportunities to meaningfully participate.

This discussion paper outlines the changes our Government is considering for Canada's environmental assessment and regulatory processes that will:

- Regain public trust;
- Protect the environment;
- Advance reconciliation with Indigenous peoples; and,
- Ensure good projects go ahead and resources get to market.

Progress to Date

Interim Approach

In January 2016, the Minister of Environment and Climate Change and the Minister of Natural Resources announced Interim Principles to strengthen government decisions on major projects until legislative, policy and program changes to the environmental assessment and regulatory review system are in force. There will be a transition phase outlined as these changes take effect, including maintaining the principle that no project will be asked to go back to the starting line.

Interim Principles (January 2016)

1. No project proponent will be asked to return to the starting line.
2. Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence.
3. The views of the public and affected communities will be sought and considered.
4. Indigenous peoples will be meaningfully consulted and where appropriate, impacts on their rights and interests will be accommodated.
5. Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.

The Reviews

In June 2016, the Government of Canada launched a comprehensive review of federal environmental and regulatory processes, including a review of federal environmental assessment processes, modernizing the National Energy Board and restoring lost protections and incorporating modern safeguards under the *Fisheries Act* and the *Navigation Protection Act*.

Consultation has been at the core of these reviews. The expert panels and parliamentary committees that undertook the reviews heard from provincial and territorial authorities, Indigenous peoples, industry representatives, scientists, academics and the public from coast to coast to coast. They heard views on what does and does not work in our current environmental assessment and regulatory processes.

Thanks to the advice and recommendations delivered by the expert panels and parliamentary committees and through additional inputs to government directly, we are ready to shape a path to deliver on our commitments.

By the Numbers. . .

Review of Environmental Assessment Processes

Expert Panel *(September – December 2016)*

- **21** CITIES
- **1035** IN PERSON PARTICIPANTS
- **866** ON-LINE + WRITTEN COMMENTS
- **397** PRESENTATIONS

Government Engagement *(April – June 2017)*

- **75** MEETINGS
- **1152** COMMENTS ON-LINE
- **163** SUBMISSIONS

Modernizing the National Energy Board

Expert Panel *(December 2016 – March 2017)*

- **10** CITIES
- **1200** IN-PERSON PARTICIPANTS
- **400** ON-LINE + WRITTEN COMMENTS
- **200** PRESENTATIONS

Government Engagement *(May – June 2017)*

- **24** MEETINGS
- **1737** COMMENTS ON-LINE
- **121** SUBMISSIONS

Restoring Lost Protections to the *Fisheries Act*

Standing Committee on Fisheries and Oceans *(October 2016 – February 2017)*

- **10** MEETINGS
- **50** WITNESSES
- **188** WRITTEN SUBMISSIONS

Government Engagement *(August 2016 – June 2017)*

- **90** MEETINGS
- **1682** COMMENTS ON-LINE
- **193** SUBMISSIONS

Restoring Lost Protections to the *Navigation Protection Act*

Standing Committee on Transport, Infrastructure and Communities *(October 2016 – March 2017)*

- **6** MEETINGS
- **17** WITNESSES
- **256** WRITTEN SUBMISSIONS

Government Engagement *(October 2016 – June 2017)*

- **35** MEETINGS
- **92** SUBMISSIONS

Call to Action

In addition to input received through the reviews, our government has benefitted from feedback from Canadians provided to Government through on-line engagement, face-to-face meetings, views submitted directly to departments, comments from provinces, territories and Indigenous peoples, and practical lessons learned over the past 18 months.

In total, it is evident we need to make changes to our environmental assessment and regulatory processes because:

- Opportunities for Canadians to meaningfully participate are limited, particularly in project planning and monitoring of construction and operation
- Information is difficult to access for the public and Indigenous peoples, making meaningful participation a challenge
- Concern that not all expertise, science, evidence and Indigenous knowledge is fully considered, and that information presented by proponents is not adequately validated
- Individual projects are often reviewed without an understanding of the broader environmental and development context in an area
- Decisions are not sufficiently explained so that Canadians can understand why a choice was made
- Reconciliation must guide consultation and recognition of Indigenous peoples' rights and interests and the role of government in those processes needs to be clear and consistent
- Proponents and investors need a predictable and fair process to support their decisions

Our government recognizes that some elements of the current system are working and should continue to form part of improved environmental assessment and regulatory processes, including decisions with enforceable conditions, legislated timelines, tools for federal-provincial cooperation and a strong role for expert regulators in energy transmission, nuclear and offshore oil and gas.

Path Forward

This discussion paper outlines a series of system-wide changes our government is considering to strengthen Canada's environmental assessment and regulatory processes. We are seeking feedback on the proposed approach so that we can bring forward a comprehensive suite of changes this fall.

Our objectives moving forward are to ensure we honour our commitment to regain public trust in environmental assessment and regulatory processes in a manner that advances reconciliation with Indigenous peoples, protects the environment and allows resources to get to market.

The Government of Canada is interested in your views to inform our decision making as we consider what policy, program and legislative changes to make to improve environmental assessment and regulatory systems.

Guiding Principles

From the outset, the changes that we make will be guided by the following principles:

1. **Fair, predictable and transparent environmental assessment and regulatory processes that build on what works**
2. **Participation of Indigenous peoples in all phases that advances the Government's commitment to the United Nations Declaration on the Rights of Indigenous Peoples and reconciliation**
3. **Inclusive and meaningful public engagement**
4. **Timely, evidence-based decisions reflecting the best available science and Indigenous knowledge**
5. **One project – one assessment, with the scale of assessment aligned with the scale and potential impacts of the project**

Rebuilding Trust in the Project Assessment System

This section outlines proposed changes to the project assessment system.

Our proposal recognizes constitutional jurisdiction and the strength of regimes that are in place among provincial, territorial and Indigenous partners, as well as existing co-management frameworks used in the North and Canada's offshore regions.

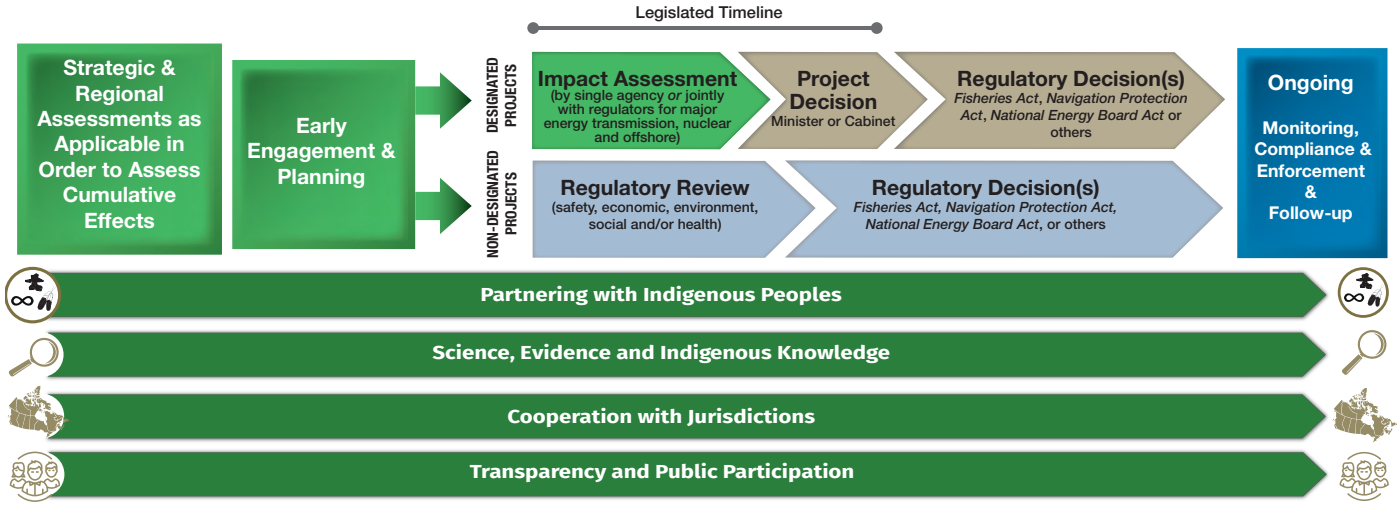
Our proposal builds on the strengths of the existing system and includes seven crosscutting areas of change:

- Addressing Cumulative Effects
- Early Engagement and Planning
- Transparency and Public Participation
- Science, Evidence and Indigenous Knowledge
- Impact Assessment
- Partnering with Indigenous Peoples
- Cooperation with Jurisdictions

We are also considering focused changes to strengthen environmental assessment; energy regulation under the National Energy Board; the protection of fish and fish habitat; and safeguarding navigation on our waterways.

Impact Assessment and Regulatory Processes

The following diagram outlines proposed changes to Canada's environmental assessment and regulatory processes, building on positive features of the current system.



- The early planning and engagement, impact assessment, and regulatory phases are closely linked.
- A project's potential impacts are identified during early planning and impact assessment phases and additional conditions are applied to support regulatory compliance during the regulatory phase.
- To promote a seamless transition between these phases and inform and align regulatory decision making, regulatory agencies engage in the early planning and impact assessment phases.

Addressing Cumulative Effects

Indigenous peoples, stakeholders and the public more broadly were clear that we should not be trying to resolve complex policy issues within the time-bound framework of individual project reviews. Enabled by science, evidence, Indigenous knowledge and technology, as well as by collaborative processes with provinces and territories, Indigenous peoples and stakeholders, we need to understand the state of the environment regionally and nationally, including the cumulative effects of development. We need to start with an understanding of the "big-picture" so we can consider impacts of development in the early planning stages and make evidence-based choices to guide the path forward.

Project reviews delayed by broader policy discussions within regulatory context

Policy frameworks for complex issues

Project assessments start with better information

Our current system can be improved:

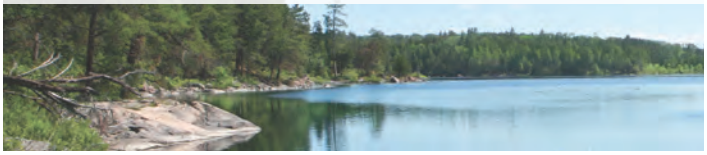
- The quality and consistency of data on the state of our environment varies by jurisdiction
- Proponents are challenged to plan for and mitigate cumulative effects associated with a project in the absence of regional environmental assessments that consider all activities on the landscape or in a region

We are considering a deliberate approach to the assessment and management of **cumulative effects**, working collaboratively with provinces, territories and Indigenous peoples to develop and implement it. The proposed approach includes:

- Developing and strengthening **national environmental** frameworks to inform regional assessments (e.g. Pan-Canadian Framework for Clean Growth and Climate Change; Air Quality Management System)
- **Conducting strategic assessments** that explain the application of environmental frameworks to activities subject to federal oversight and regulation, starting with one for climate change
- **Regional assessments** to guide planning and management of cumulative effects (e.g. biodiversity and species at risk), identify the potential impacts on the rights and interests of Indigenous peoples, and inform project assessments
- Making use of a proposed **integrated open science and data platform** to inform environmental frameworks and regional assessments and to enable ongoing additions to the knowledge base (See the Science, Evidence and Indigenous Knowledge section).

Cumulative Effects are changes to the environment caused by a variety of activities over time.

Managing the impacts of these changes goes beyond a single project. For example, the contribution of a project to climate change is best assessed in the context of the Pan-Canadian Framework for Clean Growth and Climate Change and the commitment to meet our 2030 target; a strategic assessment of the Pan-Canadian Framework would provide guidance on how to determine how life-cycle greenhouse gas emissions associated with individual projects are assessed.



Seeking Your Views

Addressing cumulative effects will have benefits beyond environmental assessment.

- *What are the gaps in our national environmental frameworks and what geographic areas should first be examined for regional assessments?*

Cumulative Effects – Strategic Assessments
"A strategic IA should be conducted to generate guidance and direction for these types of initiatives to help implement their goals and objectives in project and regional IA."

Building Common Ground, p.82

Early Engagement and Planning

Indigenous peoples, stakeholders and the public more broadly want to be aware of, and have the opportunity to be involved earlier in, project planning activities. We agree that assessments should begin with a planning phase that occurs before project design elements are finalized in order to develop effective engagement strategies and foster greater collaboration between proponents, Indigenous peoples, stakeholders, the public and the government. We must also work together so that early engagement provides clarity and certainty to support efficient review processes.

Our current system can be improved:

- No formal requirement for proponents to engage early on project plans, alternatives, benefits and challenges
- Formal engagement processes start after project planning is well underway – making it difficult for the public and Indigenous peoples to influence projects and the proponent to respond
- Many proponents understand the importance of early engagement, but it is not standard practice. This is why we need to recognize and build upon current best practices to ensure that early planning and engagement is done in all reviews, while retaining flexibility for the diversity of projects.

Seeking Your Views

Early planning and engagement will bring everyone to the table to build a common understanding of interests and issues, from which environmental assessment and regulatory processes could proceed.

- *What should be the process and outcome of an early planning phase?*

We are considering:

- A new requirement for an **early planning and engagement phase, led by proponents with clear direction from government**, to support better-designed project proposals and more effective assessments and to **seek consensus** on the project assessment process
- **Direct engagement between Crown representatives and Indigenous peoples** to discuss and understand potential project impacts to facilitate early planning and issue identification
- Making public and seeking feedback on an **initial list of issues** to consider in an assessment, based on input from the early planning and engagement phase
- Developing clear guidance to industry, as an outcome of the early engagement phase, on:
  - What will be assessed and how, including the scale of assessment required
  - Information required for both project assessment and regulatory requirements
  - How to incorporate the interests of multiple stakeholders and consider Indigenous rights and interests
  - Expected timeline for getting to a decision

Early Engagement
"The purpose of this early engagement is … to develop the best possible conceptual design and engagement strategies, and – most importantly – to establish stronger, good faith relationships between the regulator, the Crown, industry, Indigenous peoples, and interested parties."

Forward, Together, p. 21

Transparency and Public Participation

We heard about the importance of transparency in all aspects of environmental assessment and regulatory processes, from making data and science accessible to clearly communicating the basis for decisions.

Our goal is to design a system where Canadians can influence decision making through open access to information, meaningful public participation, and transparent decision making. We believe that better processes, better information, and better-informed decisions will help to restore trust in the system.

Inconsistent access to information and limited public participation → **Open by default**

Our current system can be improved:

- On-line information on environmental and regulatory processes is not consistent and often difficult to navigate
- Limited public participation at key stages in the process
- The government does not consistently communicate the reason for federal decisions – making it difficult for Canadians to see how they have had an impact

We are considering:

- **Open opportunities for meaningful public participation** in assessments and regulatory reviews
- **Eliminating the "standing"** test previously used by the National Energy Board for those wishing to participate in assessments
- Improving **participant funding programs** for Indigenous peoples and the broader public to streamline applications and expand eligible activities
- **Increasing user-friendly on-line public access** to project information generated during environmental and regulatory reviews, including follow-up, monitoring, compliance and enforcement
- **Providing easy, on-line access** so that Canadians can track companies' progress as they address the conditions required to advance their project
- Engaging Canadians in a **two-way dialogue** on environmental assessment and regulatory processes through better use of social media, websites and other on-line platforms, as well as face-to-face and informal meetings
- Greater transparency on **reasons for environmental assessment and regulatory decisions** and timely feedback on how public input was considered
- **Clearer transparency requirements** for more projects (e.g. assessments of projects on federal lands, notice of proposed works on navigable waters)
- **Inclusive monitoring and compliance activities**, so that life-cycle regulators and permitting departments work closely with Indigenous peoples, communities, and landowners

Transparency
"Transparency is a broadly accepted feature of good governance…of course, balanced against privacy (particularly of proprietary and competitive information) and security, but as a guiding principle we feel that a new spirit of transparency can and should be imbued into all of the NEB's operations and decisions wherever possible."

Forward, Together, p.13

Seeking Your Views

Information is currency in our modern world. We are committed to ensuring Canadians can access what they need to understand the choices we are making.

- *What tools can we use to facilitate your participation and help you access the information you need in a user-friendly way?*

Science, Evidence and Indigenous Knowledge

We heard that some of the biggest challenges could be overcome with better information, early awareness, and improved transparency. Science, evidence and Indigenous knowledge should inform project planning, assessment and decision making, and be open, accessible and transparent.

Our current system can be improved:

- The science, evidence and Indigenous knowledge that underpins project reviews and informs project planning rests with multiple parties and can be difficult to access
- Information is not always in an appropriate form (e.g. data is not digitized for use by experts or, by contrast, is not presented in plain language for non-experts)
- Government does not effectively communicate how science and data are weighed or contribute to federal decision making
- Indigenous knowledge is not consistently considered alongside other evidence, and Indigenous peoples have expressed concerns that sensitive Indigenous knowledge is not appropriately protected

To ensure equal and open access to high quality information for everyone, ***we are considering:***

- Moving toward an **open science and data platform** to access and integrate the available science, evidence and Indigenous knowledge that supports environmental assessment and regulatory processes. This will:
  - Provide industry with better information to inform planning decisions
  - Provide Canadians with better information to understand and influence the impact of development on their communities
- Incorporating **Indigenous knowledge** alongside other sources of evidence:
  - Co-develop tools, guidance, and capacity with Indigenous peoples to better support and systematically consider Indigenous knowledge;
  - Protect the confidentiality of Indigenous knowledge where appropriate (e.g. sacred site locations)
- Reinforcing rigour through **peer reviews of science** and evidence in the assessment phase
- **Making science accessible** to all Canadians, not just the experts – by providing plain language summaries of the facts that support assessments

Seeking Your Views

Our vision is based on the understanding that better evidence drives better decisions and that evidence should be easily accessible.

- *How do we respectfully and meaningfully incorporate Indigenous knowledge?*
- *How do we provide greater confidence in the science behind project assessments?*

Science, Evidence - "In our view, decision making … must be transparent and guided by legislated principles based on science and Indigenous traditional knowledge."

Enhancing the Protection of Fish and Fish Habitat and the Management of Canadian Fisheries, p.38

Impact Assessment

Canada's new environmental assessment system must consider impacts on more than just the environment. The economic, social and health effects associated with a project must be considered. Assessments must also include a Gender-Based Analysis Plus (GBA+)[1]. To ensure greater consistency and maintain the integrity of impact assessment processes, we propose that a single government agency be responsible for guiding and conducting impact assessments and coordinating consultation with Indigenous peoples for all designated projects, as opposed to the current model of three separate responsible authorities conducting their own reviews.

For major energy transmission, nuclear and offshore oil and gas projects, assessments would be conducted jointly by the agency and life cycle regulators, using the regulators' expert capacity and ensuring that safety and other key regulatory factors are considered as part of a single, integrated process. This approach will help to ensure that impact assessments are consistent and based on clear processes and legislated time lines that provide regulatory certainty and enable good projects to go ahead.

Assessment of environmental effects

Three separate responsible authorities, with three different processes

Single agency assesses environment, economic, social and health impacts

Joint assessments for major energy transmission, nuclear, and offshore oil and gas projects

Our current system can be improved:

- Many stakeholders have told us that having three separate agencies responsible for environmental assessment creates confusion and a lack of trust
- We heard that designated projects impact more than just the environment, and so the economic, social and health impacts of projects should also be assessed
- We also heard that projects with the greatest potential impact should be subject to federal review

We are considering:

- **Broadening the scope of assessment** to include environmental, economic, social and health to support more holistic and integrated decision making in areas of federal jurisdiction
- Consistent use of **Gender-Based Analysis Plus (GBA+) in assessments** to better understand the impacts on communities (e.g. the influx of people in a temporary work camp)
- Strengthening legislation to explicitly require assessment of impacts on **Indigenous peoples**
- **Establishing a single government agency** responsible for impact assessment and for coordinating consultations with Indigenous peoples for federally designated projects
- For major energy transmission, nuclear, and offshore oil and gas projects, the agency and life-cycle regulators would **jointly conduct impact assessments as part of a single, integrated review process**
- **Decision making retained** by Minister(s) or Cabinet based on whether projects are in the public interest, to ensure accountable government
- Reviewing the **Project List** Regulations and establishing clear criteria and a transparent process to periodically review and update the Project List to ensure that major projects with the greatest potential impacts in federal jurisdiction are assessed

"Leadership from the federal government toward improving the project assessment process across Canada would benefit every Canadian, … raise the bar on assessment processes so that effective and trusted decisions can be made, co-operation can replace dissension, and parties can be assured that assessment processes are fair."

Building Common Ground, p.7

[1] We all have multiple identities -- such as sex, gender, race, ethnicity, religion, age, and mental or physical disability -- that make us who we are. GBA+ considers all of these identities.

Seeking Your Views

Impact assessment will help to ensure that the projects are subject to review and that federal assessments are rigorous and comprehensive.

- *What criteria should be used to consider potential changes to the Project List, and how do we ensure transparency in the process?*

- Projects can still be **designated, or excluded, from assessment**, under certain conditions based on clear criteria and a transparent process
- Maintaining the authority of life-cycle regulators to **integrate enforceable conditions** under their areas of responsibility
- **Maintaining legislated timelines** to provide clarity and predictability, while allowing ministerial approval of **exceptions to legislated timelines** in special circumstances (e.g. to enable cooperation with other jurisdictions)
- Maintaining authority for **enforceable assessment conditions** and explore a mechanism to amend project conditions to support adaptive management and technological advances

Partnering with Indigenous Peoples

Reconciliation must guide partnerships with Indigenous peoples, recognizing and respecting their rights and interests, their deep connection to their lands, territories and resources, and their desire to participate as partners in the economic development of their territories. We recognize that reconciliation requires sustained government-wide action and needs to be at the centre of our consultation and accommodation activities.

Our current system can be improved:

- Indigenous peoples want a renewed relationship with the federal government, consistent with the Constitution and the United Nations Declaration on the Rights of Indigenous Peoples
- Indigenous knowledge needs to be considered and support decision making
- Indigenous peoples want a partnership role in development
- Indigenous peoples want improvements in consultation processes, including clear accountabilities and direct involvement from the Crown

We are considering:

- Being responsive to **Indigenous rights, jurisdiction and decision making**, with space created to enable increased Indigenous involvement, including Indigenous-led assessments
- A **single government agency with increased capacity** to coordinate consultation and accommodation for federally designated projects
- Allowing for the **sharing of administrative authority and management responsibility** with Indigenous peoples in a manner similar to other jurisdictions (e.g. independent environmental monitors)
- **Early and regular engagement and participation** based on recognition of Indigenous rights and interests from the outset, seeking to achieve free, prior and informed consent through processes based on mutual respect and dialogue
- Formalizing the **co-development of frameworks for collaboration** with Indigenous peoples on environmental assessments and regulatory processes
- Convening specific **working tables** with Indigenous peoples during assessments
- **Greater participation of Indigenous peoples** on assessment boards and review panels and in regulatory processes
- **Clarifying roles for consultation and accommodation** in regulatory processes to ensure the honour of the Crown is respected

Indigenous Engagement
"The Government is committed to a renewed relationship with Indigenous peoples, nation-to-nation, Inuit-to-Crown, government-to-government. This renewed relationship is based on the recognition of rights, respect, co-operation, and partnership"

Prime Minister Justin Trudeau

Seeking Your Views

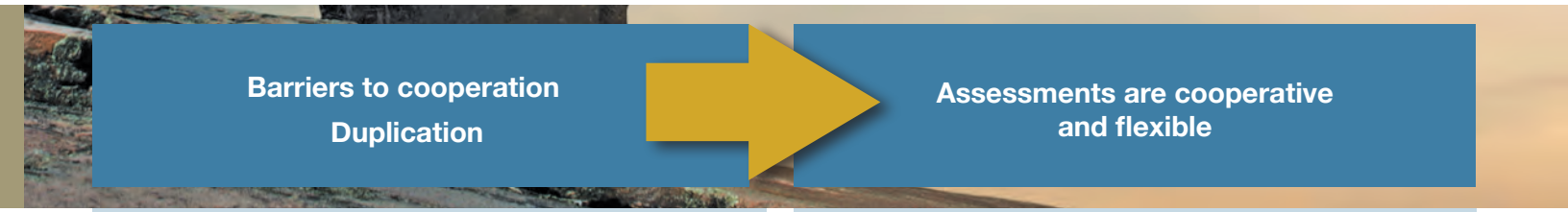
There is no relationship more important to the Government of Canada than that with Indigenous peoples. As we move forward:

- *How can we work together to most effectively ensure the changes we implement support us on our shared path to reconciliation?*

- Working with Indigenous peoples **to build capacity and enable their participation in assessments**
- **Increase economic participation** of Indigenous communities and businesses
- **Consideration and protection of Indigenous knowledge**, alongside science and other evidence
- Collaboration on **regional-scale studies**
- **Creating opportunities for Indigenous partnerships and co-development in monitoring** – building on systems in Canada's North (e.g. established through land claim agreements) and on co-development work initiated for some projects

Cooperation with Jurisdictions

We heard a common view from industry, provinces, territories and Indigenous peoples: we need to be efficient and seek out every reasonable opportunity to collaborate on project assessments. We heard that federal environmental assessment and regulatory processes can be strengthened to support cooperation with provinces and territories, while respecting their jurisdiction.



Our current system can be improved:

- Capacity and conduct of compliance and enforcement activities could be increased by working cooperatively with other jurisdictions
- Regional issues should be better addressed with all implicated jurisdictions at the table
- Few precedents to guide federal government to cooperate with Indigenous jurisdictions
- Legislated timelines in federal reviews make it hard to align and cooperate with parallel processes underway in other jurisdictions

Coordination
"Coordinating multiple processes allows for the combining of strengths from each jurisdiction."

Building Common Ground, p. 23

We are considering:

- More **comprehensive cooperation with interested jurisdictions** (provinces, territories, Indigenous) to advance and support the objective of "one project – one assessment"
- Legislative provisions to allow for **substitution of project assessments** with provinces and territories where there is alignment with federal standards, to promote greater efficiency
- Developing new provisions and **criteria to enable substitution** of project assessments to Indigenous governments
- Ensuring that processes better recognize **Indigenous jurisdiction, laws, practices and governance systems**
- Providing flexibility by allowing ministerial approval of **exceptions to legislated timelines** (e.g. alignment of assessments with other jurisdictions)
- Working with provinces, territories and Indigenous peoples to guide **planning and management of cumulative effects**

Seeking Your Views

Allowing for more cooperation across jurisdictions can help ensure projects are reviewed in a rigorous and efficient way.

- *What are the most important steps we should take to improve cooperation across jurisdictions?*

Proposed Program and Legislative Changes

The government is considering changes to restore trust in Canada's environmental assessment and regulatory review processes, namely: environmental assessment, energy regulation under the National Energy Board, protection of fish and fish habitat, and safeguarding navigation on our waterways.

i. Impact Assessment

As outlined in the previous section, changes to the *Canadian Environmental Assessment Act*, *2012* are being considered to strengthen environmental protections. Going forward, ***we are considering*** a new approach to environmental assessment for designated projects that includes:

Governance

- **Establishing a single government agency** responsible for guiding and conducting federal assessments and coordinating Crown consultations for those assessments
- For major energy transmission, nuclear, and offshore oil and gas projects, the agency and life-cycle regulators would **jointly conduct impact assessments as part of a single, integrated review process**
- **Decision making retained by Minister(s) or Cabinet** based on whether the project is in the public interest, to ensure accountable government
- Working with industry to **define activities** that should be cost-recovered
- Requiring a new **early planning phase** led by proponents with clear direction from the government
- **Advisory committees** for Indigenous peoples, stakeholders and experts to provide advice to the Minister on issues related to impact assessments

What is Assessed

- **Reviewing the Project List** Regulations and establishing criteria and a transparent process to periodically review and update the Project List to ensure those types of major projects that have the greatest potential impacts in areas of federal jurisdiction are assessed
- Maintaining authority to designate a non-listed project that **could have adverse impacts** on areas of federal jurisdiction where warranted, based on clear criteria and a more transparent process
- Maintaining the flexibility to **exclude designated projects** from assessment under certain conditions based on clear criteria and a transparent process
- Enhancing transparency and requirements for the **assessment of projects on federal lands**
- Relying on the life-cycle regulators (i.e. National Energy Board, Canadian Nuclear Safety Commission, Offshore Petroleum Boards) for the **assessment of non-designated projects** (e.g. delineation wells in the offshore)

Parameters of Assessment

- **Broadening the scope of assessment** to include environmental, economic, social and health impacts to support holistic and integrated decision making
- Consistent **use of Gender-Based Analysis Plus (GBA+) in assessments** to better understand the impacts on communities (e.g. the influx of people in a temporary work camp)
- Strengthening existing provisions that explicitly **require assessment of impacts on Indigenous peoples**
- Considering both **positive and negative impacts** of a project in the assessment process
- Reinforcing rigour through **peer reviews of science** and evidence in the assessment phase

Cooperation with Jurisdictions

- Developing **cooperation agreements with interested jurisdictions** (provinces, territories, Indigenous) to advance and support the objective of "one project – one assessment," while respecting their jurisdiction
- Retaining legislative provisions to allow **substitution with provinces and territories** where there is alignment with federal standards
- Developing new provisions to **enable substitution with Indigenous governments**
- Ensuring that the process better **recognizes Indigenous jurisdiction, laws and practices**
- Increasing flexibility to allow the Government of Canada to defer to or harmonize with environmental assessment processes created pursuant to **Indigenous governments**

Compliance and Enforcement

- Maintain authority for **enforceable assessment conditions** and work with federal regulatory authorities to enhance compliance and enforcement activities
- Maintain authority for the National Energy Board, the Canadian Nuclear Safety Commission and the Offshore Petroleum Boards to **integrate impact assessment conditions stemming from a joint assessment** under their responsibility for regulatory compliance, monitoring and enforcement
- Explore a **mechanism to amend project conditions** to support the integration of adaptive management and technological advances
- **Inclusive monitoring and compliance activities**, so that life-cycle regulators and permitting departments work closely with Indigenous peoples, communities, and landowners

Timelines

- **Maintain legislated timelines** to provide clarity and predictability
- Provide flexibility by allowing ministerial approval of **exceptions to legislated timelines** (e.g. alignment of assessments with other jurisdictions)

One project – One assessment

Our approach remains committed to building on what is working well, while seeking to attract and grow investment. In support of this objective, we are considering:

- *Maintaining **legislated project assessment timelines** to provide clarity and predictability*
- *Providing authority to approve **exceptions to legislated timelines** (e.g. for cooperative assessments with provinces)*
- *A new early engagement and planning phase to identify issues early and provide clarity on **requirements for the assessment and regulatory phase***
- ***Maintaining a Project List** to retain clarity on when a federal assessment is required*
- *A **single government agency** to deliver process integrity and consistency for major projects*
- *Continued focus on **single window for federal coordination** (e.g. ensuring alignment of assessment and follow-on permitting)*

ii. Modern Energy Regulation

The Government of Canada believes that any major project needs to go through an open, transparent, inclusive, and thorough environmental, social and economic assessment process. The changes described here aim to modernize the National Energy Board to reflect what Canadians expect from an independent regulator. Our government is modernizing and rebuilding trust in Canada's lifecycle energy regulator so that safe and credible projects can proceed. ***We are considering*** changes to the *National Energy Board Act*, including:

Mandate

- Leveraging existing venues for **policy dialogues** outside of project hearings (e.g. Generation Energy, Pan-Canadian Framework for Clean Growth and Climate Change)
- Developing a separate model to deliver **timely and credible energy** information to Canadians
- Changing the wording to **determining public interest** to explicitly include environment, safety, social and health considerations
- Adding provisions to provide authority to **regulate renewable energy projects and associated power lines in offshore areas** that are under federal jurisdiction

Modern and effective governance

- Separating the roles of **Chief Executive Officer and Chairperson of the Board**, currently held by the same person
- Creating a **corporate-style executive board** to lead and provide strategic direction to the NEB organization
- Creating separate **Hearing Commissioners** to review projects and provide regulatory authorizations
- Enhancing the **diversity** of the Board and Hearing Commissioners
- Increasing **Indigenous representation** among the Board and Hearing Commissioners and requiring expertise in Indigenous knowledge
- **Maintaining the National Energy Board in Calgary, while eliminating the residency requirement** for the Board and Hearing Commissioners.

Decision making

- Increasing **public participation** opportunities in technical hearings, including enhancing the support available to all participants to help them navigate regulatory processes
- Providing authority to make **final decisions on certain functions** such as import/export licenses, and variances or transfers to certificates and licenses
- Introducing an **advocate to support landowners** in regulatory processes
- Establishing **alternatives to some formal adjudicative processes**, such as appropriate dispute resolution

Indigenous

- Creating **opportunities for dialogue** with Indigenous peoples on energy policy
- Strengthening the approach for Indigenous peoples to **build capacity** for participation in processes and help coordinate Crown consultations
- Expanding the role of Indigenous peoples in the **monitoring of pipeline and other energy infrastructure** from construction to decommissioning

Operations

- Encouraging the development of **cooperation agreements with interested jurisdictions**
- Making **information available to the public online**, including incident reports and follow-up data, in a way that is easily understood
- Enhancing **safety and security measures** to protect energy infrastructure and prevent tampering

> "... we have developed a comprehensive vision for the future of energy transmission infrastructure regulation, which, we believe, will chart an ambitious and thoroughly modern course as Canada enters a new era in the development of its vital energy sector."
>
> *Forward, Together,* p. 3

iii. Restoring Lost Protections to the *Navigation Protection Act*

In 2012, changes to the *Navigation Protection Act* (NPA) introduced a Schedule of Canada's busiest waterways – oceans, lakes and rivers – and shifted its focus to the approval of works, such as bridges and dams, on these waterways. As part of our commitment to restore lost protections for navigation, provide a meaningful role for Indigenous peoples in the regime and meet a high standard of transparency throughout the regulatory process, ***we are considering changes that include:***

Restore Lost Protections for the Public Right of Navigation

- **Improving the process for adding navigable waters to the Schedule**, including developing clear criteria and a more accessible and transparent process
- **Regulating obstructions and certain classes of works** (such as dams and ferry cables) on all navigable waters in Canada
- Developing a **complaint mechanism** for works on unscheduled navigable waters to provide a means to address concerns about the public right of navigation

Partner with Indigenous Peoples

- Working with Indigenous peoples to obtain and **incorporate Indigenous knowledge in decision making**, alongside other sources of evidence
- Facilitating **early and regular engagement and participation** in NPA processes, including a **tailored process for adding waterways** in their traditional territory to the Schedule
- Identifying ways in which Indigenous peoples could be involved in **monitoring, enforcement and decision making** activities on their traditional lands

Open, Accessible and Transparent Processes

- Providing easy, **on-line access to information** about projects
- **Requiring proponents to provide notice** and opportunities for appropriate consultation before constructing a work on any navigable water
- Clarifying the criteria used for the **aqueous highway test** in determining whether a water is navigable

In addition to these system changes, we are also considering whether there are priority navigable waters that should be added to the Schedule now, in advance of any new process coming into effect.

"Although the goals of industry, government, Indigenous groups, conservation associations and other stakeholders may diverge as to how development surrounding Canada's waterways takes place, representatives of these groups told the Committee of the need for clarity, transparency and expedience in processes that protect navigation and in dispute resolution."

A Study of the Navigation Protection Act, p. 13

iv. Enhanced Protection for Canada's Fish and Fish Habitat

Changes made to the *Fisheries Act* in 2012 shifted the focus away from broad fish habitat protection and toward managing threats to the productivity of Canada's commercial, recreational and Aboriginal fisheries. As part of our commitment to restore lost protections and incorporate modern safeguards in the *Fisheries Act*, ***we are considering*** legislative, regulatory, policy and program changes **that would**:

Partnering with Indigenous peoples

- Enhance the **participation of Indigenous peoples** in the conservation and protection of fish and fish habitats
- Ensure **meaningful and ongoing engagement** and participation in planning and integrated management
- Incorporate **Indigenous knowledge** into decision making

Planning and Integrated Management

- Support **early and broad engagement** in planning and management activities
- Enable proactive identification of **important habitats** and consider these areas in decision making
- Collaborate with partners to identify key **restoration and rebuilding** priorities
- Incorporate modern **resource management and planning** principles such as cumulative effects, the precautionary approach, and ecosystem-based management

Regulation and Enforcement

- Prohibit the **harmful alteration, disruption or destruction (HADD) of fish habitat** without approval
- Clarify when ***Fisheries Act* authorizations** are needed for projects and when they are not
- Identify measures to avoid and mitigate harm to habitat, including through the development and enforcement of **standards and codes of practice**
- Enhance **enforcement powers**
- Clarify the **factors considered** in decisions about approvals
- **Build the capacity and develop expertise** to protect fish and fish habitat

Partnering and Collaboration

- Foster partnering for activities that **conserve and enhance fish habitat**
- **Develop scientific expertise** on fish and fish habitat protection
- Establish a **collaborative committee to advise** on fish and fish habitat protection
- **Strengthen federal leadership**, cooperation and communication with all orders of government, in all regions

Reporting Back to Canadians

- Provide Canadians **transparent access to information** about projects and activities impacting fish and fish habitat through:
  - improved reporting from proponents
  - strengthened compliance monitoring
  - timely, relevant and accessible information

"In [the Committee's] opinion, the proposed amendments included in this report reflect the values of ecosystem-based management, sustainable development, the precautionary principle and co-management in addressing fish habitat protection and fisheries management."

Enhancing The Protection of Fish And Fish Habitat And The Management of Canadian Fisheries, p. 38

Your Views

Moving forward, we will continue to work closely with provinces and territories, Indigenous peoples, industry and civil society to ensure we get this right.

We are interested in your views on the new approach and directions we are considering. Please provide your comments on or before August 28, 2017.

They can be provided to: canada.ca/environmentalreviews.

Next Steps

The government will reflect on the input received and will continue to consult and engage with Canadians as we determine how to move forward. We will also continue to work with provinces and territories, Indigenous peoples and a variety of stakeholders to explore specific issues such as the proposed approach to early planning and engagement, and the criteria for reviewing the Project List Regulations. This work will inform proposed changes to Canada's environmental assessment and regulatory processes in the fall of 2017.