



Canadian Environmental Assessment Act

Explanation of the Amendments to the Act



Canadian Environmental Assessment Act

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Canadian Environmental Assessment Agency
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Guide Overview

Purpose of guide This guide has been prepared by the Canadian Environmental Assessment Agency to explain:

- the legislative amendments to the *Canadian Environmental Assessment Act* (the Act) and associated regulatory changes implemented as a result of the Five Year Review of the Act; and
- the policies related to the transition to the amended provisions.

Intended users of guide This guide is intended for an audience already familiar with the Act. The users may include:

- practitioners and managers in federal authorities who are responsible for conducting or participating in environmental assessments under the *Canadian Environmental Assessment Act*;
- other levels of government and other organizations that may participate in environmental assessments in cooperation with the federal government; and
- private sector practitioners and project proponents.

Contents of guide The guide is organized into the following three main parts:

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Disclaimer This guidance material is intended for information purposes only. It should not be perceived as a substitute for the *Canadian Environmental Assessment Act* or any of the regulations. In the event of any inconsistency between this guide and the Act or regulations, the latter would prevail. Individuals with specific questions about the legislation are urged to seek legal advice.

**Additional
guidance**

If, after consulting this guide, you need further advice or information on federal coordination, please contact the [Canadian Environmental Assessment Agency office](#) in your region.

Part 1. Summary of the Five Year Review and the Amended Act

Introduction to Part 1 Part 1 of this guide provides a summary of the Five Year Review of the *Canadian Environmental Assessment Act*. It also provides an index of the Act, which identifies the amendments resulting from the review.

Contents of Part 1 Part 1 contains the following chapters:

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1.1 Summary of the Five Year Review

Introduction The purpose of this chapter is to briefly explain the process followed to review and amend the *Canadian Environmental Assessment Act* (the Act). It also discusses the main goals and results of the review process.

Original Act To help promote a healthy environment and economy through sustainable development, the Government of Canada proclaimed the *Canadian Environmental Assessment Act* in January 1995.

Together with its regulations, the Act applies to projects for which the federal government has decision-making authority — whether it is as a proponent, land manager, source of funding or regulator.

The Act is intended to ensure that the environmental effects of a project receive careful consideration early in the project cycle, and to provide opportunities for public participation in the environmental assessment process.

Requirement for review Section 72 of the original Act requires the Minister of the Environment to undertake a comprehensive review of the provisions and operation of the Act five years after its coming into force.

Five Year Review process The statutory Five Year Review was launched on December 14, 1999. The launch was accompanied by the release of a discussion paper entitled *Review of the Canadian Environmental Assessment Act, A Discussion Paper for Public Consultation*.

More in-depth studies on specific topics were also made available to the public. Examples include a discussion paper on the section 5 “triggers” and a discussion paper on the assessment of “cumulative effects”.

More than 1,200 Canadians participated in broad public consultations that took place between December 1999 and March 2000. Parallel discussions were also held with Aboriginal organizations.

In addition, the Minister and the Canadian Environmental Assessment Agency (the Agency) worked closely on the Five Year Review with the Regulatory Advisory Committee (RAC), a multi-stakeholder advisory body to the Minister, comprising representatives from industry, environmental organizations, Aboriginal communities and governments.

The provincial and territorial governments also made a number of specific recommendations for change.

**Bill C-9
(formerly C-19)**

Following the consultations, the Minister tabled his report in Parliament on March 20, 2001. Entitled *Strengthening Environmental Assessment for Canadians*, this report was accompanied by the introduction of Bill C-9's predecessor, *Bill C-19, An Act to Amend the Canadian Environmental Assessment Act*.

The amendments proposed in Bill C-9 were based on a consideration of the views presented during the consultation phase. In addition to addressing the problems identified during the Act's five years of operation, the amendments also took into account the experience gained in the previous years of conducting environmental assessments in Canada.

**Chronological
summary**

The following table summarizes the progression of the Five Year Review and Bill C-9's subsequent royal assent, which has resulted in the amendments to the Act.

Date	Action
December 14, 1999	<ul style="list-style-type: none"> The Minister of the Environment launched a review of the provisions and operations of the <i>Canadian Environmental Assessment Act</i>.
January–March 2000	<ul style="list-style-type: none"> The Agency, on behalf of the Minister of the Environment, conducted extensive public consultations and specialized workshops on the Act.
March 20, 2001	<ul style="list-style-type: none"> The Minister of the Environment introduced a bill to amend the <i>Canadian Environmental Assessment Act</i>. The bill received first reading.
June 4, 2001	<ul style="list-style-type: none"> Bill C-19 received second reading in the House of Commons and was referred to the Standing Committee on Environment and Sustainable Development.
December 4, 2001	<ul style="list-style-type: none"> The Standing Committee on Environment and Sustainable Development began review of Bill C-19.

October 9, 2002	<ul style="list-style-type: none"> • An Act to amend the Canadian Environmental Assessment Act was re-introduced in Parliament as Bill C-9.
December 11, 2002	<ul style="list-style-type: none"> • The Standing Committee on Environment and Sustainable Development completed its clause-by-clause review of Bill C-9.
January 27, 2003	<ul style="list-style-type: none"> • The new Bill C-9, as amended by the Standing Committee on Environment and Sustainable Development, was reported back to the House.
April 29, 2003	<ul style="list-style-type: none"> • Report Stage of Bill C-9.
May 6, 2003	<ul style="list-style-type: none"> • Third reading: Bill C-9 was passed by the House of Commons and first reading occurred in the Senate.
May 13, 2003	<ul style="list-style-type: none"> • Second reading in the Senate.
June 4, 2003	<ul style="list-style-type: none"> • The Senate Committee on Energy, the Environment and Natural Resources reported Bill C-9.
June 5, 2003	<ul style="list-style-type: none"> • Third reading debate in the Senate. Bill C-9 was passed by the Senate with no amendments.
June 11, 2003	<ul style="list-style-type: none"> • Bill C-9 received royal assent
October 30, 2003	<ul style="list-style-type: none"> • Bill C-9 comes into force

Goals of the amendments

The three goals for the renewed federal environmental assessment process are to:

- provide a greater measure of certainty, predictability and timeliness to all participants in the process;
- enhance the quality of assessments; and
- ensure more meaningful public participation.

The goals will be achieved through the implementation of the proposed changes in key areas throughout the Act.

Each change is identified in the following [section 1.2](#) and explained individually in detail in [Part 2](#) of this guide.

**Summary of
main
amendments**

The following summarizes the main changes to the Act as a result of Bill C-9:

- establishment of a federal environmental assessment coordinator for projects that undergo screening or a comprehensive study type of assessment;
- modification of the comprehensive study process to prevent a second environmental assessment of a project by a review panel, while extending the participant funding program to comprehensive studies;
- expansion of existing regulation-making authority for projects on federal lands;
- provision of a new use for class screening reports as a replacement for project-specific assessments;
- requirement for mandatory follow-up programs for projects after a comprehensive study, mediation or assessment by a review panel;
- creation of the Canadian Environmental Assessment Registry to provide Canadians with access to information about the environmental assessment of specific projects; and
- requirement for the Canadian Environmental Assessment Agency to establish and lead a quality assurance program, promote and monitor compliance, and assist relevant parties in building consensus and resolving disputes.

**Additional
information**

The *Canadian Environmental Assessment Act*, the various discussion papers and the Minister's Report to Parliament on the Five Year Review are available on the Web site of the [Canadian Environmental Assessment Agency \(www.ceaa-acee.gc.ca\)](http://www.ceaa-acee.gc.ca).

1.2 Index of Amendments

Introduction This chapter provides an overview of the amended *Canadian Environmental Assessment Act*. It identifies which sections of the Act have been amended and where in this guide the amendments are explained in detail.

Summary of amendments The following table provides a list of the main sections and subsections of the amended *Canadian Environmental Assessment Act*.

Sections, which comprise a change from the original Act, are identified in the left-hand column as either new (◆) or revised (◇) text. These changes are explained in [Part 2](#) of this guide.

Sections, which have not been amended, are not discussed further in this guide.

◆ New ◇ Revised	Amended Canadian Environmental Assessment Act	See Guide...	
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Part 2. Explanation of Amendments

Introduction to Part 2 Part 2 of this guide provides the written text of each amendment, as well as explanations of each modification.

Contents of Part 2 This part is organized in chapters according to the main sections of the amended Act. The main chapters are as follows:

Chapters	See...	
	Act	Guide Page
2.1 Interpretation of Terms	s.2	19
2.2 Purposes of the Act	s.4	29
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2.6 Agreements and Arrangements	s.54	125
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2.10 The Canadian Environmental Assessment Agency	s.61 - 70	173
2.11 Review and Transitional Provisions	na	181

* Note: see [Bill C-9](#), clauses 32 ro 34.

2.1 Interpretation of Terms

Introduction This chapter discusses the amendments to sections of the Act under the heading “Interpretation”.

Contents The table below identifies the sections of the Act under the heading “Interpretation” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See...	
	Act	Guide Page
2.1.1 Definition of “Comprehensive Study”	2.(1)	21
2.1.2 Definition of “Exclusion List”	2.(1)	22
2.1.3 Definition of “Federal Authority”	2.(1)	23
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2.1.6 Interpretation Clause: Extended Meaning of “Administration of Federal Lands”	2(2)	27
2.1.7 Interpretation Clause: For Greater Certainty – The Act Applies Until Decision by Responsible Authority	2(3)	28

2.1.1 Definition of “Comprehensive Study”

Act reference	2(1)
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Amendment	<p>The definition “comprehensive study” is replaced by the following:</p> <p><i>2.(1) “comprehensive study” means an environmental assessment that is conducted pursuant to sections 21 and 21.1, and that includes a consideration of the factors required to be considered pursuant to subsections 16(1) and (2).</i></p>
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Explanation	The amendment to the definition of comprehensive study adds a reference to the new section 21.1 in the revised comprehensive study process.
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Rationale	<p>The amended definition recognizes that the comprehensive study process has been revised under the Act.</p> <p>Section 21.1 creates a new decision-making step: the decision by the Minister of the Environment, early on in the process, on whether the assessment should continue by means of a comprehensive study or be referred to a review panel or mediator.</p>
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2.1.2 Definition of “Exclusion List”

Act Reference 2(1)

Amendment The definition “exclusion list” is replaced by the following:

2.(1) “exclusion list” means a list of projects or classes of projects that have been exempted from the requirement to conduct an assessment by regulations made under paragraph 59(c) or (c.1).

Explanation The amendment to the definition of exclusion list clarifies that projects on the exclusion list are exempt from requirements to conduct an assessment.

It also includes a reference that projects may be excluded by regulations made under the amended paragraph 59(c) or the new paragraph 59(c.1), which provides authority to create a separate exclusion list for projects outside Canada as part of a regulatory regime applicable to Crown corporations or the Canadian International Development Agency (CIDA).

Rationale The amended definition provides greater clarity on the use of the exclusion list, and recognizes the special circumstances of Crown corporations and CIDA in applying the Act outside Canada.

2.1.3 Definition of “Federal Authority”

Act reference 2(1)

Amendment The portion of the definition “federal authority” in subsection 2(1) after paragraph (a) is replaced by the following:

- 2.(1)(b) an agency of the Government of Canada, a parent Crown corporation, as defined in subsection 83(1) of the Financial Administration Act, or any other body established by or pursuant to an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs,*
- (c) any department or departmental corporation set out in Schedule I or II to the Financial Administration Act, and*
- (d) any other body that is prescribed pursuant to regulations made under paragraph 59(e),*

but does not include the Executive Council of — or a minister, department, agency or body of the government of — Yukon, the Northwest Territories or Nunavut, a council of the band within the meaning of the Indian Act, Export Development Canada, the Canada Pension Plan Investment Board, a Crown corporation that is a wholly-owned subsidiary, as defined in subsection 83(1) of the Financial Administration Act, The Hamilton Harbour Commissioners as constituted pursuant to The Hamilton Harbour Commissioners' Act, a harbour commission established pursuant to the Harbour Commissions Act, a not-for-profit corporation that enters into an agreement under subsection 80(5) of the Canada Marine Act or a port authority established under that Act;

Explanation	<p>This amendment revises the list of entities that are federal authorities.</p> <p>It brings a significantly expanded list of entities under the definition of “federal authority” by adding parent Crown corporations as defined in subsection 83(1) of the <i>Financial Administration Act</i>.</p> <p>Export Development Canada and the Canada Pension Plan Investment Board are explicitly excluded from the definition. Crown corporations that are wholly-owned subsidiaries are also excluded from the definition.</p> <p>The amendment also integrates changes made by the <i>Yukon Act</i> with changes made by Bill C-9.</p> <p>Furthermore, it deletes an obsolete reference to the Toronto Harbour Commissioners and the <i>Toronto Harbour Commissioners’ Act, 1911</i>.</p> <hr/>
Special note	<p>This amendment does not come into force until June 11, 2006, which is three years after the day Bill C-9 received royal assent.</p> <hr/>
Rationale	<p>As federal authorities, Crown corporations will be subject to the requirements of the Act or a modified process established through regulations made under section 59.</p> <p>The changes related to the new <i>Yukon Act</i> exclude the “cabinet” (executive council) of the Yukon and Nunavut from the definition of federal authority as these jurisdictions have their own assessment processes.</p> <p>The last part of the amendment is a minor “housekeeping” change, as the <i>Toronto Harbour Commissioners’ Act, 1911</i> was repealed when sections 204 and 204.1 of the <i>Canada Marine Act</i> were brought into force in 1999.</p> <hr/>

2.1.4 Definition of “Federal Lands”

Act reference

2(1)

Amendment

Paragraph (a) of the definition “federal lands” in subsection 2(1) is replaced by the following:

2.(1)(a) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands under the administration and control of the Commissioner of the Yukon, the Northwest Territories or Nunavut,

Explanation

This amendment places federal lands managed by a port authority, within the definition of “federal lands” under the Act.

The expanded definition will have the effect of restoring the “land trigger” under the Act for these port lands.

Rationale

The expanded definition is part of a broader effort to ensure that the coverage of the Act is fair and consistent.

The amendment reverses a consequential amendment made to the Act in 1998 by the *Canada Marine Act*, which removed port lands from the definition of “federal lands” under the Act.

2.1.5 Definition of “Registry”

Act reference	2(1)
Amendment	<p>The following definition is added to subsection 2(1):</p> <p><i>2.(1) “Registry” means the Canadian Environmental Assessment Registry established under section 55;</i></p>
Explanation	<p>The amendment adds a new definition under the Act.</p> <p>The definition specifies that the term “registry” means the Canadian Environmental Assessment Registry established under the new section 55 of the amended Act.</p>
Rationale	<p>The definition reflects that existing public registries established by responsible authorities, now called “project files”, will be complemented by a government-wide Internet site of project information administered by the Canadian Environmental Assessment Agency.</p> <p>The Registry promotes public participation by providing timely notice of and access to information about the environmental assessments of specific projects.</p>
Related guidance	See the guide entitled: Canadian Environmental Assessment Registry .

2.1.6 Interpretation Clause: Extended Meaning of “Administration of Federal Lands”

Act reference	2(2)
Amendment	<p>Subsection 2(2) is replaced by the following:</p> <p><i>Extended meaning of “administration of federal lands”</i> <i>2.(2) In so far as this Act applies to Crown corporations, the expression “administration of federal lands” includes the ownership or management of those lands.</i></p>
Explanation	<p>This amendment extends the meaning of “the administration of federal lands” to include federal lands that are owned or managed by a Crown corporation.</p>
Rationale	<p>Crown corporations do not technically “administer” the federal lands they occupy. This change ensures that the paragraph 5(1)(c) “land trigger” is operative for projects where a Crown corporation provides federal land in support of a project.</p>

2.1.7 Interpretation Clause: The Act Applies Until Decision by Responsible Authority

Act reference

2(3)

Amendment

Section 2 is amended by adding the following after subsection (2):

For greater certainty

2.(3) For greater certainty, any construction, operation, modification, decommissioning, abandonment or other undertaking in relation to a physical work and any activity that is prescribed or is within a class of activities that is prescribed for the purposes of the definition “project” in subsection (1) is a project for at least so long as, in relation to it, a person or body referred to in subsection 5(1) or (2), 8(1), 9(2), 9.1(2), 10(1) or 10.1(2) is considering, but has not yet taken, an action referred to in those subsections.

Explanation

This amendment clarifies that a project continues to be a “project” for the purposes of the Act until a federal authority (e.g., department) or body regulated under the Act (e.g., Canada Port Authority) takes a decision following an environmental assessment.

In other words, projects that need a federal decision cannot proceed until the requirements of the Act have been met.

Rationale

Addresses a potential loophole created by the Federal Court *Red Hill Creek Expressway* decision, where a proponent could argue that it, or another government, had taken “irrevocable decisions” about a proposed project and the Act does not apply.

2.2 Purposes of the Act

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Purposes”.

Contents The table below identifies the sections of the Act under the heading “Purposes” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See...	
	Act	Guide Page
2.2.1 Consider Projects in a Careful and Precautionary Manner	4.(1)(a)	31
2.2.2 Promote Federal–Provincial Cooperation and Coordination	4.(1)(b.2)	32
2.2.3 Promote Communication and Cooperation Between Responsible Authorities and Aboriginal Peoples	4.(1)(b.3)	33
2.2.4 Public Participation	4.(1)(d)	34
2.2.5 Duties of the Government of Canada to Apply the Precautionary Principle	4.(2)	35

2.2.1 Consider Projects in a Careful and Precautionary Manner

Act reference	4(1)(a)
Amendment	<p>The portion of section 4 before paragraph (b) is replaced by the following:</p> <p><i>Purposes</i></p> <p><i>4.(1) The purposes of this Act are</i></p> <p><i>(a) to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects;</i></p>
Explanation	<p>This amendment adds the notion that a purpose of the Act is to ensure projects are considered in a careful and precautionary manner, before decisions are taken, to prevent significant adverse environmental effects.</p>
Rationale	<p>Recognizes the Act as a precautionary tool to prevent significant adverse environmental effects.</p>

2.2.2 Promote Federal–Provincial Cooperation and Coordination

Act reference 4(1)(b.2)

Amendment Subsection 4(1) is amended by adding the following after paragraph (b.1):

4.(1)(b.2) to promote cooperation and coordinated action between federal and provincial governments with respect to environmental assessment processes for projects;

Explanation This amendment establishes a new purpose of the Act that signals the importance of cooperation and coordination between federal and provincial governments when both levels of government are required through their respective legislation to ensure an environmental assessment of a project.

Rationale Acknowledges the objectives of the 1998 *Canada-Wide Accord on Environmental Harmonization*, and reaffirms the federal government's view of the importance of cooperative reviews.

Under the Constitution, the federal and provincial governments share responsibility for the environment. An estimated 160 projects a year are subject to both federal and environmental assessment processes.

There are concerns that where two environmental assessment processes apply to a single project, this may result in duplication of effort, unnecessary delays in project planning and cost increases.

Good progress toward greater cooperation and coordination of efforts has been made through the *Canada-Wide Accord* and its *Sub-Agreement on Environmental Assessment*.

A more harmonized approach can provide greater certainty in planning and decision making and avoid unproductive duplication, while respecting the constitutional powers and statutory responsibilities of each level of government.

It is also in keeping with the Minister's stated goals of improving coordination among participants in the assessment process.

2.2.3 Promote Communication and Cooperation Between Responsible Authorities and Aboriginal Peoples

Act reference 4(1)(b.3)

Amendment The following is added to Subsection 4(1) after new paragraph (b.2):

4.(b.3) to promote communication and cooperation between responsible authorities and Aboriginal peoples with respect to environmental assessment;

Explanation The amendment establishes a new purpose of the Act that signals the importance of communication and cooperation between responsible authorities and Aboriginal peoples on environmental assessment.

Rationale Formally recognizes that Aboriginal people in Canada have a unique role to play in many environmental assessments, particularly those involving reserve lands, traditional territories, and treaty and land management areas.

It is also in keeping with the Minister's stated goals of improving coordination among participants and of better incorporating Aboriginal perspectives in the assessment process.

2.2.4 Public Participation

Act reference 4(1)(d)

Amendment Paragraph 4(1)(d) is replaced by the following:

4.(1)(d) to ensure that there be opportunities for timely and meaningful public participation throughout the environmental assessment process.

Explanation This amendment adds the concept that opportunities for public participation need to be “timely and meaningful” throughout the environmental assessment process.

Rationale The value of meaningful public participation in the environmental assessment process was one of the strongest messages that came out of the Five Year Review of the Act.

Related guidance See the guide entitled: [Canadian Environmental Assessment Registry](#).

2.2.5 Duties of the Government of Canada to Apply the Precautionary Principle

Act reference

4(2)

Amendment

Section 4 is also amended by adding the following after subsection (1):

Duties of the Government of Canada

4.(2) In the administration of this Act, the Government of Canada, the Minister, the Agency and all bodies subject to the provisions of this Act, including federal authorities and responsible authorities shall exercise their powers in a manner that protects the environment and human health and applies the precautionary principle.

Explanation

This amendment compels the federal government and all bodies subject to the Act to exercise their powers “in a manner that protects the environment and human health and applies the precautionary principle”.

The precautionary principle is a rule about handling uncertainty in the assessment and management of risk. The rule recommends that the uncertainty be handled in favour of certain values — health and environmental safety — over others.

One version of the precautionary principle is contained in Principle 15 of the 1992 Rio Declaration, signed by Canada, which states:

In order to protect the environment, the precautionary principle shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation

Uncertainty in science produces the possibility of error in the prediction of risks and benefits. The precautionary principle suggests that if our best predictions turn out to be in error, it is better to err on the side of safety.

The application of the precautionary principle recognizes that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm.

Rationale

This amendment recognizes the Act as a precautionary tool to prevent significant adverse environmental effects.

**Related
guidance**

Privy Council Office guidance on the precautionary principle/approach (<http://www.pco-bcp.gc.ca/>)

2.3 Environmental Assessment of Projects

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Environmental Assessment of Projects”.

Contents The table below identifies the sections of the Act under the heading “Environmental Assessment of Projects” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See... Act	Guide Page
Excluded Projects		
2.3.1 Exclusions: Clarification of Applicability	7(1)	39
2.3.2 Exclusions: Block Funding Decisions	7(2)	40
2.3.3 Assessment Regimes for Crown Corporations	8(1) - 8(3)	41
2.3.4 Assessments by Harbour Commissions and Port Authorities	9(1), 9(2)	43
2.3.5 Assessments by Prescribed Authorities	9.1(1), 9.1(2)	45
2.3.6 Assessments by Band Councils under Regulations	10(1), 10(2)	47
2.3.7 Assessments by the Canadian International Development Agency	10.1(1) - 10.1(3)	49
Responsible Authority		
2.3.8 Ministerial Order to Prohibit Work on a Project	11.1(1) - (4), 11.2(1)(2)	51
Federal Environmental Assessment Coordinator		
2.3.9 Federal Environmental Assessment Coordinator: Responsibilities	12.1 - 12.3	54
2.3.10 Identifying the Federal Environmental Assessment Coordinator	12.4, 12.5	57

2.3.1 Exclusions: Clarification of Applicability

Act reference

7(1)

Amendment

The portion of subsection 7(1) before paragraph (a) is replaced by the following:

Exclusions

7.(1) An assessment of a project is not required under section 5 or sections 8 to 10.1, where

Explanation

Subsection 7(1) exempts projects from an environmental assessment where the project is subject to an environmental assessment under one of the “triggers” in section 5 of the Act, but there is an emergency or the project is described in an exclusion list.

This amendment adds references applying to...

- Crown corporations that are not federal authorities (section 8),
- harbour commissions and port authorities (9),
- prescribed authorities (9.1),
- band councils subject to the *Indian Act* (10) and
- the Canadian International Development Agency (10.1).

...so the exclusions in section 7 also apply to regulatory regimes that require these bodies to ensure environmental assessments are conducted for projects in which they are involved as a proponent or decision maker.

Rationale

Without this clarification, bodies subject to regulations would have been required to assess projects normally excluded (e.g., responding to an emergency).

2.3.2 Exclusions: Block Funding Decisions

Act reference 7(2)

Amendment Subsection 7(2) is replaced by the following:

Exclusions

7.(2) For greater certainty, an assessment is not required under any of the provisions referred to in this subsection where a federal authority exercises a power or performs a duty or function referred to in paragraph 5(1)(b) or 10.1(2)(b) — or a person or body exercises a power or performs a duty or function referred to in paragraph 5(1)(b), 9(2)(b), 9.1(2)(b) or 10(1)(b) — in relation to a project and the essential details of the project are not specified before or at the time the power is exercised or the duty or function is performed.

Explanation Subsection 7(2) exempts projects from an environmental assessment where the project is subject to an environmental assessment under the “funding trigger” in paragraph 5(1)(b) of the Act, or a power is exercised under 9(2)(b), 9.1(2)(b) or 10.1(b), but the essential details of the project are not specified before or at the time the funding or other financial assistance is provided.

Paragraphs 9(2)(b), 9.1(2)(b) and 10(1)(b) are the funding triggers for:

- harbour commissions and port authorities;
- prescribed authorities; and
- band councils.

The amendment clarifies that such bodies covered by regulatory regimes do not have to ensure an environmental assessment of their block funding decisions when the essential details of the project are not yet known.

Subsection 7(2) also applies to subsections 54(1) and 54(2), which require that agreements to transfer funds oblige a provincial or international recipient to conduct an assessment once the details are known.

Rationale This provision typically applies to block funding by transfer payment to provinces, band councils and international organizations involved in overseas development assistance.

2.3.3 Assessment Regimes for Crown Corporations

Act references 8(1), 8(2), 8(3)

Amendments Section 8 of the Act is replaced by the following:

Assessments by certain Crown corporations

8.(1) *A Crown corporation, as defined in subsection 83(1) of the Financial Administration Act, that is not a federal authority shall, if regulations have been made in relation to it under paragraph 59(j) and have come into force, ensure that, before it exercises a power or performs a duty or function referred to in any of paragraphs 5(1)(a) to (d) in relation to a project, an environmental assessment of the project under this section is conducted in accordance with those regulations as early as is practicable in the planning stages of the project and before irrevocable decisions are made.*

Where a minister has no duty

8.(2) *Notwithstanding section 5, a Minister of the Crown in right of Canada is not required to ensure that an environmental assessment of a project is conducted by reason only of that minister's authorization or approval under any other Act of Parliament or any regulations made under such an Act of the exercise of a power or performance of a duty or function referred to in paragraph 5(1)(a), (b) or (c) in relation to the project by a Crown corporation within the meaning of the Financial Administration Act.*

Precedence of federal authority

8.(3) *If a Crown corporation is the proponent of a project and proposes to do any act or thing that commits it to carrying out the project in whole or in part and a federal authority other than the Crown corporation is required under paragraph 5(1)(d) to ensure the conduct of an environmental assessment of that project, the Crown corporation is not required to ensure that an environmental assessment of the project is conducted but, for greater certainty, it may accept a delegation from the federal authority under section 17.*

Explanation The amended section 8 requires those selected Crown corporations, which are not federal authorities as defined in the amended Act, to carry out an environmental assessment in accordance with any regulations made for this purpose, as early as is practicable in the planning stages of the project and before exercising any power that would be a trigger under subsection 5(1).

Subsection 8(2) specifies that a federal Minister through whom a Crown corporation reports to Parliament is not required to ensure that an environmental assessment is conducted merely because the Crown corporation does something that would be a proponent, funding, or land trigger under paragraphs 5(1)(a), (b) or (c).

New subsection 8(3) states that if another federal authority is subject to the requirement to conduct an environmental assessment, then the Crown corporation is not required to do so unless it accepts a delegation from the federal authority under section 17 of the Act.

Rationale Subsection 8(1), in combination with paragraph 59(j), provides authority for the creation of an environmental assessment process for the wholly-owned subsidiaries of Crown corporations, which are not included in the definition of “federal authority”.

Subsection 8(2) prevents duplication of effort by departments and Crown corporations on the same project.

Similarly, subsection 8(3) addresses situations of potentially conflicting decision-making responsibilities between a federal authority in the role of a regulator and a Crown corporation acting as the project proponent.

2.3.4 Assessments by Harbour Commissions and Port Authorities

Act references 9(1), 9(2)

Amendments Subsections 9(1) and 9(2) of the Act are replaced by the following:

Assessments by harbour commissions and port authorities

9.(1) *The Hamilton Harbour Commissioners as constituted pursuant to The Hamilton Harbour Commissioners' Act, a harbour commission established pursuant to the Harbour Commissions Act, a not-for-profit corporation that enters into an agreement under subsection 80(5) of the Canada Marine Act or a port authority established under that Act shall, if regulations have been made under paragraph 59(k) and have come into force, ensure that an environmental assessment of a project under this section is conducted in accordance with those regulations as early as is practicable in the planning stages of the project and before irrevocable decisions are made.*

Projects

9.(2) *The environmental assessment of a project under this section shall be conducted where*

- (a) a person or body referred to in subsection (1) is the proponent of the project and does any act or thing that commits it to carrying out the project in whole or in part;*
 - (b) a person or body referred to in subsection (1) makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part;*
 - (c) a person or body referred to in subsection (1) sells, leases or otherwise disposes of federal lands or any interests in those lands, for the purpose of enabling the project to be carried out in whole or in part;*
 - (d) under a provision prescribed under paragraph 59(k.1), a person or body referred to in subsection (1) issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part; or*
 - (e) in circumstances prescribed by regulations made under paragraph 59(k.2), a project is to be carried out in whole or in part on federal lands over which a person or body referred to in subsection (1) has administration or management.*
-

Explanation	<p>Section 9 is amended by deleting the obsolete reference to the Toronto Harbour Commissioners, thus making this section apply only to:</p> <ul style="list-style-type: none"> • Hamilton Harbour Commissioners; • a harbour commission; • a port authority; or • a not-for-profit corporation that enters into an agreement under the <i>Canada Marine Act</i>. <p>The amendment specifies that harbour commissions and port authorities must ensure that an environmental assessment of a project is conducted if regulations have been made under subsection 59(k) and “have come into force”.</p> <p>It also adds a new subsection 9(2), which details the triggers that require the need for an environmental assessment to be conducted by a harbour commission or port authorities. These triggers will apply only if included in the regulations.</p> <hr/>
Triggers	<p>A regulatory regime could include some or all of the following triggers that would require an assessment by the harbour commission or port authority:</p> <ul style="list-style-type: none"> (a) is the proponent of the project; (b) provides financial assistance to a proponent in support of a project; (c) provides federal land in support of a project; (d) issues a prescribed permit or licence, or grants an approval that allows a project to proceed; or (e) permits a project to be carried out on federal lands over which it has administration or management. <p>The fifth trigger requires an environmental assessment of projects carried out in whole or in part on federal lands over which the entity has “administration or management”. This new trigger would require an environmental assessment in the case of projects undertaken by third parties or tenants on federal lands controlled by a harbour commission or port authority.</p> <hr/>
Rationale	<p>The provisions ensure that appropriate projects involving a harbour commission and a port authority are covered by the Act.</p> <hr/>

2.3.5 Assessments by Prescribed Authorities

Act references 9.1(1), 9.1(2)

Amendments The Act is amended by adding the following after section 9:

Prescribed authorities

9.1(1) *If regulations have been made under paragraph 59(k.3) and have come into force, an authority prescribed by those regulations shall ensure that an environmental assessment of a project under this section is conducted in accordance with those regulations as early as is practicable in the planning stages of the project and before irrevocable decisions are made.*

Projects

9.1(2) *The environmental assessment of a project under this section shall be conducted where*

- (a) the project is to be carried out on federal lands and the prescribed authority is the proponent of the project and does any act or thing that commits it to carrying out the project in whole or in part;*
- (b) the project is to be carried out on federal lands and the prescribed authority makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part;*
- (c) the prescribed authority sells, leases or otherwise disposes of federal lands or any interests in those lands, for the purpose of enabling the project to be carried out in whole or in part;*
- (d) the prescribed authority, under a provision prescribed under paragraph 59(k.4), issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part; or*
- (e) in circumstances prescribed by regulations made under paragraph 59(k.5), a project is to be carried out in whole or in part on federal lands over which the prescribed authority has administration or management or any right or interest specified in those regulations.*

Explanation New section 9.1 applies to “authorities” prescribed by regulations made under paragraph 59(k.3) and that have come into force.

The provision applies to bodies operating primarily on federal lands that are not federal authorities, (e.g., National Airport System Airport Authorities), and that are not otherwise covered by comparable provisions for Canada Port Authorities.

The provisions:

- require “prescribed authorities” to ensure that an environmental assessment of a project is conducted if regulations have been made under paragraph 59(k.3) and are in force; and
- clarify what would trigger the need for an environmental assessment by prescribed authorities.

Triggers An environmental assessment may be required if the prescribed authority:

- (a) is the proponent of the project on federal lands;
- (b) provides financial assistance in support of a project on federal lands;
- (c) provides federal land in support of a project;
- (d) issues a prescribed permit or licence, or grants an approval that allows a project to proceed; or
- (e) permits a project to be carried out on federal lands over which it has administration or management.

The environmental assessment triggers set out in new subsection 9.1(2) differ from others in the Act. Under the first two triggers (the “proponent trigger” and the “funding trigger”), the project must be carried out on “federal lands”.

The fifth trigger requires an environmental assessment of projects carried out in whole or in part on federal lands over which the entity has “administration or management”. This provision creates a new trigger that would require an environmental assessment in the case of projects undertaken by third parties or tenants on federal lands controlled by a prescribed authority.

Rationale The provisions ensure that appropriate projects involving prescribed authorities are covered by the Act.

2.3.6 Assessments by Band Councils under Regulations

Act references 10(1), 10(2)

Amendments Section 10 is replaced, in part, by the following:

Assessments by band councils under regulations

- 10. (1)** *If a project is to be carried out in whole or in part on a reserve that has been set apart for the use and benefit of a band and that is subject to the Indian Act, the council of the band for whose use and benefit the reserve has been set apart shall, if regulations that apply to the band have been made under paragraph 59(l) and have come into force, ensure that an environmental assessment of the project is conducted in accordance with those regulations before the band council exercises one of the following powers or performs one of the following duties or functions in respect of the project, namely, where the band council*
- (a) is the proponent of the project and does any act or thing that commits it to carrying out the project in whole or in part;*
 - (b) makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance to the proponent of the project for the purpose of enabling the project to be carried out in whole or in part, including financial assistance in the form of any reduction, avoidance, deferral, removal, refund, remission or other form of relief from the payment of any tax; or*
 - (c) takes any action under a provision prescribed under paragraph 59(l.001) for the purpose of enabling the project to be carried out in whole or in part.*

Timing of assessment

- 10.(2)** *Where an environmental assessment of a project is required under subsection (1), the band council shall ensure that the assessment is conducted as early as is practicable in the planning stages of the project and before irrevocable decisions are made.*
-

Explanation

Section 10, which deals with the environmental assessment of federally funded projects carried out on reserve lands subject to the *Indian Act*, is amended by deleting a subsection that exempted federally funded projects on reserve lands from requirements for an environmental assessment.

Under 10(1), if...

- a project is to be carried out on a reserve, and
- regulations that apply to the reserve's band council have been made under paragraph 59(*l*) and have come into force,

...then the band council shall ensure that an environmental assessment of the project is conducted in accordance with those regulations.

Under 10(2), the environmental assessment is to be conducted as early as possible in the planning stages of the project and before any irrevocable decisions are made.

Triggers

Regulations may include some or all of the following triggers that would require an assessment where the band council:

- (a) is the proponent of the project;
- (b) provides financial assistance to the proponent of the project; or
- (c) takes any action under a provision prescribed under paragraph 59(*l.001*) for the purpose of enabling the project to be carried out in whole or in part.

Rationale

The amendments address concerns about gaps in the coverage of the Act relating to federally funded projects carried out on reserve lands.

Prior to the amendments, federally funded projects on reserves were to be assessed only by band councils in accordance with regulations established for that purpose. Efforts to develop such regulations were not successful.

Related amendment

A related amendment expands the scope of the potential regulatory regime for band councils. If such regulations come into force, a band council subject to the regulations will have obligations to assess projects that occur on the reserve where it has decision-making authority.

See: [2.9.12 Regulations for Band Councils](#)

2.3.7 Assessments by the Canadian International Development Agency

Act references 10.1(1), 10.1(2), 10.1(3)

Amendments The Act is amended by adding the following after section 10:

Assessments - CIDA

10.1(1) *The Canadian International Development Agency shall, if regulations have been made under paragraph 59(1.01) and have come into force, ensure that an environmental assessment of a project is conducted under this section in accordance with those regulations as early as is practicable in the planning stages of the project and before irrevocable decisions are made.*

Projects

10.1(2) *An environmental assessment of a project under this section is required to be conducted where the Canadian International Development Agency*

- (a) is the proponent of the project and does any act or thing that commits it to carrying out the project in whole or in part; or*
- (b) makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance for the purpose of enabling the project to be carried out in whole or in part.*

Replacement for environmental assessment

10.1(3) *The application of subsection 5(1) to the Canadian International Development Agency is suspended while regulations referred to in subsection (1) are in force.*

Explanation New section 10.1 applies to the Canadian International Development Agency (CIDA).

If regulations have been made under paragraph 59(1.01) and are in force, new subsection 10.1(1) requires CIDA to carry out an environmental assessment of designated projects, in accordance with those regulations.

The environmental assessment is to be conducted as early as practicable in the planning stages of the project, and before irrevocable decisions are made.

Triggers

Subsection 10.1(2) sets out the following two “triggers” for an assessment of the environmental effects. An environmental assessment will be required if CIDA:

- (a) is the proponent; or
- (b) provides financial assistance in support of a project.

New clause 10.1(3) stipulates, in turn, that the application of subsection 5(1) of the current Act (i.e., the triggers applicable to “federal authorities”) is suspended while the CIDA regulations are in force.

CIDA will remain a federal authority under the Act. It will remain subject to the *Projects Outside of Canada Environmental Assessment Regulations* until new regulations are in force.

Rationale

Assessments of overseas development assistance confront special constraints and challenges, such as the need to respect the sovereignty and cultural setting of foreign states.

The provisions ensure that appropriate projects involving CIDA undergo an environmental assessment, while recognizing the unique circumstances associated with providing overseas development assistance.

2.3.8 Ministerial Order to Prohibit Work on a Project

Act references 11.1(1), 11.1(2), 11.1(3), 11.1(4), 11.2(1), 11.2(2)

Amendments The Act is amended by adding the following after section 11:

Ministerial orders

11.1(1) *The Minister or the minister through whom the responsible authority is accountable to Parliament for the conduct of its affairs in respect of a project being assessed under this Act — or, if there is more than one responsible authority in respect of a project, the ministers together — may, by order, prohibit a proponent from doing, until the day on which the responsible authority or authorities take a course of action under paragraph 20(1)(a) or (b) or subsection 37(1), any act or thing that carries out the project being assessed in whole or in part and that would alter the environment.*

Order in force

11.1(2) *An order under subsection (1) takes effect on the day on which it is made.*

Approval of Governor in Council

11.1(3) *The order ceases to have effect 14 days after it is made unless, within that period, it is approved by the Governor in Council.*

Exemption from application of Statutory Instruments Act

11.1(4) *The order is exempt from the application of sections 3, 5 and 11 of the Statutory Instruments Act and shall be published in the Canada Gazette within 23 days after it is approved by the Governor in Council.*

Injunction

11.2(1) *If, on the application of the Attorney General of Canada or any interested person, it appears to a court of competent jurisdiction that an order made under section 11.1 has been, is about to be or is likely to be contravened, the court may issue an injunction ordering any person named in the application to refrain from doing any act or thing that would contravene the order, until the day on which the responsible authority or authorities referred to in that section take a course of action under paragraph 20(1)(a) or (b) or subsection 37(1).*

Notice

11.2(2) *At least forty-eight hours before an injunction is issued under subsection (1), notice of the application shall be given to persons named in the application, unless the urgency of the situation is such that the delay involved in giving the notice would not be in the public interest.*

**Explanation:
prohibition
orders**

The amendments add new subsection 11.1(1), which empowers the Minister of the Environment, or the minister of a responsible authority, to issue an order prohibiting a project proponent from doing anything to carry out the project that would alter the environment before an assessment is completed.

If there is more than one responsible authority, the ministers would jointly issue the prohibition order. The Minister of the Environment may, however, issue a prohibition order independently of responsible authority ministers.

Under new subsection 11.1(2), the ministerial order takes effect immediately, but under 11.1(3), it expires 14 days later, unless it is approved by the Governor in Council within the 14 days.

Under new subsection 11.1(4), the order is exempt from selected procedural requirements in the *Statutory Instruments Act* dealing with the making of regulations, but it would have to be published in the *Canada Gazette* within 23 days after being approved by the Governor in Council.

If approved, the prohibition would be effective until a decision about the project is taken under either section 20 following a screening, or section 37 following a comprehensive study, mediation or assessment by a review panel.

The ministerial orders would apply to project activities subject to federal jurisdiction and within the scope of the project being assessed by the responsible authority.

Injunctions

Where an order issued under new section 11.1 is about to be contravened or is likely to be contravened, new section 11.2 empowers the court to issue an injunction against the relevant party or parties. The court could do so upon the application of the Attorney General of Canada or any interested person.

The injunction would prevent the proponent from doing any act or thing that would contravene the order until the responsible authority had decided whether the project should go ahead.

Under new subsection 11.2(2), a minimum 48-hour notice of the application would have to be given to the relevant party(s) before the issuance of the injunction, unless the urgency of the situation was such that the delay involved in giving the notice would not be in the public interest.

Rationale

The new provisions address a gap in the previous Act where, in certain situations, project construction could occur before an environmental assessment was completed.

Comparable authority already exists (in section 50) with respect to projects with transboundary effects.

2.3.9 Federal Environmental Assessment Coordinator: Responsibilities

Act references 12.1, 12.2, 12.3

Amendments The Act is amended by adding the following after section 12:

Federal Environmental Assessment Coordinator

Role

12.1 *The role of a federal environmental assessment coordinator is to coordinate the participation of federal authorities in the environmental assessment process for a project where a screening or comprehensive study is or might be required and to facilitate communication and cooperation among them and with provinces, persons or bodies referred to in sections 8 to 10, jurisdictions referred to in paragraph 12(5)(c) or (d) or 40(1)(e) or (f) and other participants.*

Duties

12.2 *The federal environmental assessment coordinator shall*

- (a) ensure that the federal authorities that are or may be responsible authorities and those that are or may be in possession of specialist or expert information or knowledge with respect to the project are identified;*
- (b) coordinate their involvement throughout the environmental assessment process;*
- (c) coordinate the responsible authorities' fulfilment of their obligations under subsection 55.3(1), paragraph 55.4(1)(a) and section 55.5;*
- (d) ensure that federal authorities fulfil their obligations under this Act in a timely manner; and*
- (e) coordinate the federal authorities' involvement with other jurisdictions.*

Powers

12.3 *In carrying out duties under section 12.2, the federal environmental assessment coordinator may*

- (a) establish and chair a committee composed of the federal authorities that are or may be responsible authorities for the project and those that are or may be in possession of specialist or expert information or knowledge with respect to the project;*
- (b) after consulting with the authorities referred to in paragraph (a), establish time lines in relation to the assessment; and*
- (c) in consultation with the federal authorities that are or may be responsible authorities, determine the timing of any public participation.*

Explanation

In recognition of the difficulties that may arise where more than one entity is involved or interested in a project, the amendments create the “federal environmental assessment coordinator”.

The federal environmental assessment coordinator role applies to every screening and comprehensive study conducted under the Act, to address procedural and administrative issues of environmental assessments.

Note: The federal environmental assessment coordinator role does not infringe on the principle of self-assessment. Responsible authorities remain responsible for the substantive aspects of the environmental assessment.

Role

New section 12.1 sets out the coordinator’s role, which is to:

- coordinate the participation of federal authorities in the environmental assessment process for a project where a screening or comprehensive study might be required; and
- facilitate communication and cooperation among federal authorities and other participants.

Regulations (*Federal Coordination Regulations*) made under paragraph 59(a.1) may specify and expand upon this role.

Duties Under new section 12.2, the coordinator is required to carry out the following duties, in accordance with any revised *Federal Coordination Regulations*:

- ensure that the federal authorities that are or may become responsible authorities, as well as expert federal authorities, are identified;
 - coordinate their involvement throughout the environmental assessment process;
 - coordinate the fulfilment by responsible authorities of their obligation to include specified records and information on the Registry, except for that information that must be kept confidential under section 20 of the *Access to Information Act*;
 - ensure that federal authorities fulfil their obligations under the Act in a timely manner; and
 - coordinate the involvement of federal authorities with other jurisdictions.
-

Powers In carrying out the foregoing duties, new section 12.3 stipulates that the coordinator may, in accordance with any revised *Federal Coordination Regulations*, and in consultation with relevant parties:

- establish and chair a committee composed of federal authorities that are or may become responsible authorities, as well as expert federal authorities;
 - establish time lines regarding the project; and
 - determine the timing of any public participation.
-

Rationale The federal environmental assessment coordinator role is an important new tool for improving the certainty, predictability, timeliness and quality of environmental assessments involving the federal government.

Improved coordination will reduce the potential for costly delays in project planning and increase the confidence of proponents in terms of consistency of information requirements and timing of decisions on their projects.

Related guidance

[*Federal Coordination: An Overview*](#)

2.3.10 Identifying the Federal Environmental Assessment Coordinator

Act references 12.4, 12.5

Amendments The Act is amended by adding the following after new section 12.3:

Agency as coordinator

- 12.4 (1)** *Subject to subsection (3), the federal environmental assessment coordinator for a project is the Agency if*
- (a) the project is subject to the environmental assessment process of another jurisdiction referred to in paragraph 12(5)(a), (c) or (d) or 40(1)(e) or (f); or*
 - (b) the project is described in the comprehensive study list.*

Responsible authority as coordinator

- 12.4 (2)** *Subject to subsections (1) and (3), the federal environmental assessment coordinator for a project is*
- (a) the sole responsible authority in relation to the project; or*
 - (b) if there is more than one responsible authority in relation to the project, the one that is selected by the responsible authorities or, if they have not selected one within a reasonable time, the one that is designated by the Agency.*

Coordinator by agreement

- 12.4 (3)** *No person or body other than the coordinator designated under subsections (1) and (2) may assume any of the powers, duties or functions of the federal environmental assessment coordinator except*
- (a) the Agency, if the responsible authorities referred to in paragraph (2)(b) and the Agency agree; or*
 - (b) a responsible authority, in a case referred to in paragraph (1)(a) or (b), if the Agency and the responsible authority agree.*

For greater certainty

- 12.4 (4)** *For greater certainty, agreements contemplated by subsection (3) may apply generally and not be specific to a particular project.*

Obligation to comply with coordinator's requests

- 12.5** *Every federal authority shall comply in a timely manner with requests and determinations made by the federal environmental assessment coordinator in the course of carrying out its duties or functions.*

Explanation: Agency as coordinator	<p>New subsection 12.4(1) specifies that the Canadian Environmental Assessment Agency (the Agency) is to be the coordinator in relation to:</p> <ul style="list-style-type: none"> • projects described in the comprehensive study list; or • projects that are subject to the environmental assessment process of another specified jurisdiction (i.e., provincial governments, selected Aboriginal governments or governing bodies, foreign governments and international organizations of states).
Responsible authority as coordinator	<p>New subsection 12.4(2) provides that if only one responsible authority is involved in the project, the responsible authority is the coordinator.</p> <p>Where more than one responsible authority is involved:</p> <ul style="list-style-type: none"> • the coordinator is the responsible authority selected by the responsible authorities involved; or • the responsible authority designated by the Agency if the responsible authorities fail to make their selection within a reasonable time.
Special agreements	<p>New subsection 12.4(3) allows the coordinator to be changed by agreement under specified conditions.</p> <p>New subsection 12.4(4) adds that such agreements may apply generally to more than one project.</p>
Obligation to comply with coordinator	<p>New section 12.5 requires every federal authority to comply in a timely manner with requests and determinations made by the coordinator in the course of carrying out its duties or functions.</p>
Rationale	<p>The federal environmental assessment coordinator will:</p> <ul style="list-style-type: none"> • address the need to improve coordination among federal authorities involved in the same environmental assessment; • ensure a “single federal window” in assessments involving other jurisdictions, to promote coordination and avoid duplication of effort; and • facilitate communication and cooperation with other participants in the environmental assessment, including the proponent and the public.

**Related
guidance**

[*Federal Coordination: An Overview*](#)

2.4 Environmental Assessment Process

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Environmental Assessment Process”.

Contents The table below identifies the sections of the Act under the heading “Environmental Assessment Process” that have been amended, as well as where each amendment is explained in this chapter.

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2.4.1 Use of Community Knowledge and Aboriginal Traditional Knowledge

Act reference

16.1

Amendment

The Act is amended by adding the following after section 16:

Community knowledge and aboriginal traditional knowledge

16.1 *Community knowledge and aboriginal traditional knowledge may be considered in conducting an environmental assessment.*

Explanation

The amendments add a new section after the current section 16, which lists the factors to be considered in carrying out an environmental assessment.

New section 16.1 provides that community knowledge and Aboriginal traditional knowledge may be considered in conducting an assessment.

The amendment formally recognizes the value of community knowledge and Aboriginal traditional knowledge in environmental assessment; and encourages responsible authorities to consider such knowledge when conducting environmental assessments under the Act.

Rationale

Community knowledge and Aboriginal traditional knowledge can be important sources of information to responsible authorities when conducting an environmental assessment.

Community knowledge generally is considered to be information about and experience with a particular geographic area gained over a period of time by farmers, hunters, fishers and naturalists.

Aboriginal traditional knowledge generally is considered to be knowledge of the environment and ecological systems acquired and practised over generations of experience by Aboriginal peoples as a foundation of their cultures.

2.4.2 Use of Regional Studies

Act reference

16.2

Amendment

The Act is amended by adding the following after new subsection 16.1:

Regional Studies

16.2 *The results of a study of the environmental effects of possible future projects in a region, in which a federal authority participates, outside the scope of this Act, with other jurisdictions referred to in paragraph 12(5)(a), (c) or (d), may be taken into account in conducting an environmental assessment of a project in the region, particularly in considering 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.*

Explanation

New section 16.2 clarifies that where...

- the environmental effects of possible future projects in a region have been studied, and
- a federal authority participated in the study with a specified jurisdiction (provincial government, Aboriginal government or other Aboriginal governing body),

... the results of such a study may be taken into account in conducting an environmental assessment of a project in that region.

Rationale

It particularly encourages the use of such regional studies for considering any cumulative effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out in the region.

It also encourages federal authorities to cooperate with provinces, land claim bodies or Aboriginal self-governing bodies in regional studies outside the scope of the Act and use the results of these studies in conducting environmental assessments under the Act.

The amendment recognizes the value of regional studies and an ecosystem-based approach to addressing cumulative effects, beyond individual project assessments. The consideration of cumulative environmental effects — the combined effects of many projects in a region over a period of time — is a major challenge to conducting high-quality environmental assessments.

Studies examining the environmental effects of existing projects or activities and possible future projects within an ecosystem or geographic area may be better able to:

- identify cumulative effects;
 - make more efficient use of scientific expertise and local knowledge;
 - provide more consistent information requirements for industry;
 - involve all the jurisdictions in the region of the project; and
 - address broader, long-term issues related to sustainable development.
-

2.4.3 Publication of Determinations

Act reference 16.3

Amendment The Act is amended by adding 16.3 after new subsection 16.2.

Publication of determinations

16.3 *The responsible authority shall document and make available to the public, pursuant to subsection 55(1), its determinations pursuant to section 20.*

Explanation New section 16.3 requires responsible authorities to document and make available to the public their determinations under section 20 (decisions following screening).

Rationale The new section provides a cross reference to subsection 55(1) which establishes the Canadian Environmental Assessment Registry. Decisions following screenings will be posted on the Registry *Internet site* and documents upon which these decisions are based will be part of the publicly accessible *project file*.

2.4.4 Clarification of Applicability of the Exclusion List

Act reference	18(1)
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Amendment	<p>The portion of subsection 18(1) before paragraph (a) is replaced by the following:</p> <p><i>Screening</i> 18.(1) <i>Where a project is not described in the comprehensive study list or the exclusion list made under paragraph 59(c), the responsible authority shall ensure that...</i></p>
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Explanation	<p>Section 18(1) of the current Act requires that a “screening” be conducted in relation to projects that are not described in the comprehensive study list or the exclusion list.</p> <p>The amendments to this section specify that the exclusion list is the one made by regulations under paragraph 59(c).</p>
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Rationale	<p>This amendment reflects the fact that the bill proposes two exclusion lists:</p> <ul style="list-style-type: none"> • the exclusion list in paragraph 59(c); and • the exclusion list in new paragraph 59(c.1), which creates a new list of possible exclusions regarding projects carried out by specified entities (e.g., projects carried out outside Canada by Crown corporations or the Canadian International Development Agency, in certain circumstances). <p>The reference to the exclusion list made under paragraph 59(c) clarifies that the list is distinct from other possible exclusion lists made under the new paragraph 59(c.1) that applies to projects outside Canada or outside federal lands.</p>
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2.4.5 Public Participation in a Screening

Act references 18(3), 18(4)

Amendments Subsection 18(3) of the Act is replaced by the following:

Public participation

18.(3) *Where the responsible authority is of the opinion that public participation in the screening of a project is appropriate in the circumstances— or where required by regulation — the responsible authority*

(a) shall, before providing the public with an opportunity to examine and comment on the screening report, include in the Internet site a description of the scope of the project, the factors to be taken into consideration in the screening and the scope of those factors or an indication of how such a description may be obtained;

(b) shall give the public an opportunity to examine and comment on the screening report and on any record relating to the project that has been included in the Registry before taking a course of action under section 20 and shall give adequate notice of that opportunity; and

(c) may, at any stage of the screening that it determines, give the public any other opportunity to participate.

Timing of public participation

18.(4) *The responsible authority's discretion under subsection (3) with respect to the timing of public participation is subject to a decision made by the federal environmental assessment coordinator under paragraph 12.3(c).*

Explanation Section 18(3) previously required that when a responsible authority determined that public participation was appropriate for a screening, the responsible authority was to give the public notice and an opportunity to comment on the screening report before making a determination about whether the project should go ahead.

With the amendments, before providing the public with an opportunity to comment on the screening report, the responsible authority will be required to post the following (or an indication of how to obtain the following) on the Registry Internet site:

- a description of the scope of the project;
- the factors to be taken into account in the screening; and
- the scope of those factors.

The public must also have an opportunity to examine and comment on the screening report and other records included in the registry before the responsible authority makes a decision under section 20.

The responsible authority will also have discretion to permit other opportunities for public participation, although decisions about timing could be made by the federal environmental assessment coordinator under paragraph 12.3(c).

Rationale

Public participation is a fundamental objective of the Act. These amendments clarify that a responsible authority may provide the public with an opportunity to participate at any stage in a screening, in addition to the opportunity to comment on a screening report.

Prior to these amendments, there was uncertainty as to whether public participation in a screening was restricted to providing an opportunity to review and comment on a draft screening report.

Providing convenient access to scoping decisions will enhance the public's ability to participate effectively in screenings.

Providing opportunities for public participation in a screening remains at the discretion of the responsible authority.

2.4.6 Declaration and Use of Class Screening Reports

Act references 19(1), 19(2)

Amendments Section 19 of the Act is replaced in part by 19(1) and 19(2) as follows:

Class screening reports

19. (1) *Subject to subsection (3), the Agency may declare a report to be a class screening report if projects of the class described in the report are not likely, in the opinion of the Agency, to cause significant adverse environmental effects when the design standards and mitigation measures described in the class screening report are applied.*

Use of class screening report

19.(2) *The declaration shall include a statement that the class screening report may be used as*

- (a) a replacement for the screening required by section 18, and the decision required by section 20, for projects of the class; or*
- (b) a model for streamlining the screening required by section 18 for projects of the class.*

Explanation The amendments change subsection 19(1) in several respects.

Subsection 19(1) previously authorized the Canadian Environmental Assessment Agency to declare a “screening report” to be a “class screening report”, if the Agency determined that the screening report could be used as a model in conducting screenings of other projects within the same class.

These determinations were made on the request of the relevant responsible authority and subject to the prescribed public notice and comment provisions.

Under the new subsection 19(1), the Act drops the requirement for a request by the responsible authority.

It also specifies that the Agency may declare a report to be a class screening report, if projects of the class described in the report are not likely to cause significant adverse environmental effects when the design standards and mitigation measures described in the class screening report are applied.

The amendments also introduce new subsection 19(2), which requires the Agency to declare whether the class screening report may be used as:

- a “*replacement*” for the screening that must be carried out under section 18 in relation to the project, and the ensuing decision that must be made under section 20 on whether the project should proceed; or
- a “*model for streamlining*” the screening required under section 18 for projects of that class.

Note that the “*replacement*” designation is new, while the “*model*” designation is a reworded version of the previous use of a class screening report for streamlining under the original subsection 19(1).

Rationale

The section 19 amendments are intended to increase the opportunities for using a class screening report in relation to projects considered to be routine with known environmental effects.

2.4.7 Public Notice and Consideration of Public Comments in a Class Screening

Act references 19(3), 19(4)

Amendments Section 19 of the Act is replaced in part by the following after 19.(2):

Public notice and consideration of public comments

19.(3) *The Agency shall, before making a declaration pursuant to subsection (1),*

(a) publish, in any manner it considers appropriate, a notice setting out the following information, namely,

(i) the date on which the draft report will be available to the public,

(ii) the place at which copies of it may be obtained, and

(iii) the deadline and address for filing comments on the appropriateness of its use as a replacement or model for screenings for projects of that class; and

(b) take into consideration any comments filed under subparagraph (a)(iii) and include in the Registry any comments filed by the public.

Publication of declaration

19.(4) *Any declaration made pursuant to subsection (1) shall be published in the Canada Gazette and, together with the report to which it relates or a description of how a copy of the report may be obtained, shall be included in the Internet Site.*

Explanation Prior to making the declaration under 19(1), the Agency must comply with the provisions to give public notice and an opportunity to comment under new subsection 19(3).

The Canadian Environmental Assessment Agency must determine the most appropriate means of providing public notice. It must also invite comment on the appropriateness of the class screening report's use as a replacement or model for screenings for projects of the same class.

The public notice requirements are to publish:

- the date on which the draft report will be available to the public;
- the place at which copies of it may be obtained; and
- the deadline and address for filing comments.

Examples of public notification:

- Agency Web site; and
- direct consultations with stakeholders, experts, community groups and affected Aboriginal communities.

The Agency is then required to:

- take public comments into consideration; and
- publish the comments in the Registry.

The publication requirements regarding declarations are also revised under new subsection 19(4).

This new subsection requires that the Agency's declaration of a class screening report must be posted on the Internet site of the Canadian Environmental Assessment Registry, together with the report itself or information on how a copy may be obtained.

Rationale

Public review and comment help ensure quality control and accountability in the application of the class screening tool.

The amendment will facilitate more effective public participation by removing publication in the *Canada Gazette* as the sole form of public notification.

The Agency will have the discretion to provide public notification in a manner that matches the circumstances of the project and the communities of interest involved.

2.4.8 Use of a Replacement Class Screening Report

Act reference

19(5)

Amendment

Section 19 of the Act is replaced in part by the following after 19(4):

Use of a class screening report as a replacement

19.(5) *Where a responsible authority is satisfied that a project falls within a class in respect of which a class screening report has been made to which paragraph (2)(a) applies, no further action is required under section 18 or 20 with respect to the project, as long as the responsible authority ensures that the design standards and mitigation measures described in the report are implemented.*

Explanation

If a responsible authority is satisfied that a project falls within the class of projects for which a *replacement* class screening report has been made and declared by the Agency, then, the responsible authority is absolved from having to...

- take further action to conduct a screening (section 18) and
- decide on the appropriate course of action (section 20),

... as long as the responsible authority ensures that the design standards and mitigation measures described in the report are implemented.

This amendment establishes a new use of a class screening report as a *replacement* for a project-specific screening report. If a project falls within a replacement class, the responsible authority need not prepare a project-specific screening report.

This differs from the original use of a class screening report as a *model*. A model class screening report does not eliminate the need to prepare a project-specific report; it simply streamlines the preparation of project-specific screening reports. The use of model class screening reports remains, but model class screening reports may not be used as a replacement for a project-specific assessment.

Rationale

The new provision seeks to encourage greater application of the class screening tool by eliminating the need for a responsible authority to conduct screenings for many smaller, routine projects known to have inconsequential environmental effects with the application of proven mitigation measures.

The Five Year Review of the Act identified the need to focus the application of the Act on appropriate projects and to reduce significantly the number of assessments undertaken every year.

2.4.9 Use of a Model Class Screening Report

Act reference	19(6)
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Amendment	<p>Section 19 of the Act is replaced in part by 19(6) as follows:</p> <p><i>Use of class screening report as a model</i></p> <p>19.(6) <i>Where a responsible authority is satisfied that a project or part of a project falls within a class in respect of which a class screening report has been made to which paragraph (2)(b) applies, the responsible authority may use or permit the use of that report and any screening on which it is based to whatever extent the responsible authority considers appropriate for the purpose of complying with section 18.</i></p>
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Explanation	<p>New subsection 19(6) is a reworded version of the previous subsection 19(4).</p> <p>This subsection authorizes that, where a responsible authority is satisfied that a <i>model</i> class screening report declared under new paragraph 19(2)(b) applies to a project, the responsible authority may make use or permit the use of the class screening report, as well as any screening on which it is based.</p> <p>This authorization may be used to whatever extent the responsible authority considers appropriate for the purpose of complying with the screening requirements under section 18.</p>
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Rationale	<p>The section 19 amendments are intended to increase the opportunities for using a class screening report in relation to projects considered to be routine with known environmental effects.</p>
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2.4.10 Adjustments to a Class Screening Report

Act reference	19(7)
Amendment	<p>Section 19 of the Act is replaced in part by subsection 19(7), as follows:</p> <p><i>Necessary adjustments</i></p> <p>19.(7) <i>Where a responsible authority uses or permits the use of a class screening report to which paragraph (2)(b) applies, it shall ensure that any adjustments are made to the report that are necessary to take into account local circumstances and any cumulative environmental effects that may result from the project in combination with other projects or activities that have been or will be carried out.</i></p>
Explanation	New subsection 19(7) is a reworded version of the previous subsection 19(5).
Rationale	This subsection contains an amendment that is consequential to the changes made in the previous subsections.

2.4.11 Termination of a Class Screening Report

Act references	19(8), 19(9)
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Amendments	<p>Section 19 of the Act is replaced in part by subsections 19(8) and 19(9), as follows:</p> <p><i>Declaration to remove class screening report</i></p> <p>19.(8) <i>Where the Agency determines that a class screening report is no longer appropriate to be used as a replacement or model in conducting screenings of other projects within the same class, the Agency may declare the report not to be a class screening report.</i></p> <p><i>Publication</i></p> <p>19.(9) <i>Any declaration made pursuant to subsection (8) shall be published in the Canada Gazette and included in the Internet Site.</i></p>
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Explanation	New subsections 19(8) and (9) are reworded versions of current subsections 19(6) and (7).
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Rationale	These subsections contain amendments that are consequential to the changes made in the previous subsections.
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2.4.12 Responsible Authority Decisions

Act reference 20(1)(a)

Amendment Paragraph 20(1)(a) of the Act is replaced by the following:

20.(1)(a) subject to subparagraph (c)(iii), where, taking into account the implementation of any mitigation measures that the responsible authority considers appropriate, the project is not likely to cause significant adverse environmental effects, the responsible authority may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part;

Explanation Current subsection 20(1) of the Act sets out the courses of action that are open to a responsible authority following the screening of a project.

The option in paragraph 20(1)(a) is to allow the project to go ahead where the project is not likely to cause significant adverse environmental effects if appropriate mitigation measures are implemented.

The revision to paragraph 20(1)(a) is linked to further changes in section 20 that make it clear that a responsible authority may rely on mitigation measures implemented by another person or body (e.g., a province).

Rationale Along with new subsection 20(1.1), the provision permits projects to be approved based, at least in part, on mitigation measures that the responsible authority considers appropriate.

2.4.13 Scope of Mitigation Measures

Act reference	20(1.1)
Amendment	<p>Section 20 is amended by the addition of the following:</p> <p>Mitigation measures – extent of authority</p> <p><i>20.(1.1) Mitigation measures that may be taken into account under subsection (1) by a responsible authority are not limited to measures within the legislative authority of Parliament and include</i></p> <p><i>(a) any mitigation measures whose implementation the responsible authority can ensure; and</i></p> <p><i>(b) any other mitigation measures that it is satisfied will be implemented by another person or body.</i></p>
Explanation	<p>This provision permits projects to be approved based, at least in part, on mitigation measures that the responsible authority considers appropriate.</p> <p>The amendment clarifies that a responsible authority may impose mitigation conditions beyond the immediate scope of the legislation that provides authority to grant a permit, licence or authorization, as long as in so doing it is acting within the limits of federal jurisdiction.</p> <p>It also clarifies that a responsible authority may take into account mitigation measures implemented by another “person or body”, such as a provincial government.</p>
Example	<p>Environmental protection or conservation conditions, such as measures to protect migratory birds from the effects of a project, could be attached to permits issued under the <i>Navigable Waters Protection Act</i>, even though that Act is silent on matters of environmental protection.</p> <p>Measures to protect wildlife that will be implemented by a provincial government could be factored into the decision making of a responsible authority, when determining if the project is likely to cause significant adverse environmental effects.</p>

Rationale

Some responsible authorities had interpreted this subsection narrowly, and had been reluctant to impose mitigation measures beyond their own legislation.

The amendments also address uncertainty arising out of the Federal Court *Suncor* decision which made it unclear as to whether the Government of Canada could rely on mitigation measures implemented by other jurisdictions.

2.4.14 Responsible Authority to Ensure Implementation of Mitigation

Act reference

20(2)

Amendment

Subsection 20(2) is replaced as follows:

Responsible authority to ensure implementation of mitigation measures
20.(2) *When a responsible authority takes a course of action referred to in paragraph (1)(a), it shall, with respect to any mitigation measures it has taken into account and that are described in paragraph (1.1)(a), ensure their implementation in any manner that it considers necessary and, in doing so, it is not limited to its duties or powers under any other Act of Parliament.*

Explanation

This amendment rewords subsection 20(2) to clarify that a responsible authority is not limited to mitigation measures within its duties or powers conferred by any act of Parliament.

Rationale

The responsible authority is not limited to mitigation measures within its duties or powers conferred by any act of Parliament, and must ensure the implementation of those mitigation measures in any manner necessary.

2.4.15 Assistance of Another Federal Authority

Act reference 20(2.1)

Amendment Section 20 is amended by the addition of the following after 20(2):

Assistance of other federal authority

20.(2.1) *A federal authority shall provide any assistance requested by a responsible authority in ensuring the implementation of a mitigation measure on which the federal authority and the responsible authority have agreed.*

Explanation New subsection 20(2.1) requires a “federal authority” to provide any assistance requested by a “responsible authority” to ensure the implementation of a mitigation measure on which both have agreed.

In other words, a federal authority that has proposed a specific mitigation measure shall provide assistance in its implementation, if asked to do so by the responsible authority making the assessment decision on the project.

Example The Department of Fisheries and Oceans (DFO) has undertaken a screening of a project requiring a permit under the *Fisheries Act*.

The project may adversely affect migratory birds, and Environment Canada has requested that DFO include several mitigation measures to protect migratory birds as a condition to issuing the permit.

As the federal authority with expertise on migratory birds, Environment Canada must, at DFO’s request, assist in ensuring that the mitigation measures it proposed are implemented.

Rationale Expertise related to a specific mitigation measure typically rests with the expert federal authority recommending the measure.

It is reasonable to expect the federal authority to provide the necessary support so the measure is properly implemented.

2.4.16 Prohibition to Take Further Action

Act reference	20(3)
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Amendment	<p>Subsection 20(3) is replaced with the following:</p> <p><i>Prohibition of actions in furtherance of project</i></p> <p>20. (3) <i>Where the responsible authority takes a course of action pursuant to paragraph (1)(b) in relation to a project, the responsible authority shall publish a notice of that course of action in the Registry and, notwithstanding any other Act of Parliament, no power, duty or function conferred by or under that Act or any regulation made under it shall be exercised or performed that would permit that project to be carried out in whole or in part.</i></p>
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Explanation	<p>This amendment replaces current subsection 20(3) of the Act with an amended version.</p> <p>The new subsection deletes the requirement for the responsible authority to file a notice in the public registry of a decision taken under previous paragraph 20(1)(b) to not allow the project to proceed. The notice shall now be published in the Canadian Environmental Assessment Registry.</p>
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Rationale	<p>This amendment is consequential to section 55 amendments, which replace the public registry with a combined electronic and paper Registry.</p>
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2.4.17 Timing of Environmental Assessment Decision

Act reference	20(4)
Amendment	<p>The following subsection is added to section 20 after 20(3).</p> <p><i>Time for decision</i></p> <p>20.(4) <i>A responsible authority shall not take any course of action under subsection (1) before the 15th day after the inclusion on the Internet Site of</i></p> <p><i>(a) notice of the commencement of the environmental assessment;</i></p> <p><i>(b) a description of the scope of the project; and</i></p> <p><i>(c) where the responsible authority, in accordance with subsection 18(3), gives the public an opportunity to participate in the screening of a project, a description of the factors to be taken into consideration in the environmental assessment and of the scope of those factors or an indication of how such a description may be obtained.</i></p>
Explanation	<p>For screenings without public participation, a responsible authority may only take a decision about the proposed project 15 days after the notice of commencement and a description of the scope of the project have been posted on the Internet site of the Canadian Environmental Assessment Registry.</p> <p>For screenings where the responsible authority determines that public participation is warranted, in accordance with subsection 18(3), a decision may only be taken 15 days after the following documents have been posted on the Internet site:</p> <ul style="list-style-type: none"> • notice of commencement; • description of the scope of the project; and • description or an indication of how to obtain a description of the factors to be considered and the scope of those factors.
Rationale	Ensures that the public has a reasonable amount of time to access documents related to a screening before final decisions are taken.

2.4.18 Determination of the Environmental Assessment Track by the Minister of the Environment

Act references 21.1(1), 21.1(2)

Amendments Section 21 of the Act is amended, in part, by the addition of the following:

Public consultation

21.(1) *Where a project is described in the comprehensive study list, the responsible authority shall ensure public consultation with respect to the proposed scope of the project for the purposes of the environmental assessment, the factors proposed to be considered in its assessment, the proposed scope of those factors and the ability of the comprehensive study to address issues relating to the project.*

Report and recommendation

21.(2) *After the public consultation, as soon as it is of the opinion that it has sufficient information to do so, the responsible authority shall*

(a) report to the Minister regarding

(i) the scope of the project, the factors to be considered in its assessment and the scope of those factors,

(ii) public concerns in relation to the project,

(iii) the potential of the project to cause adverse environmental effects, and

(iv) the ability of the comprehensive study to address issues relating to the project; and

(b) recommend to the Minister to continue with the environmental assessment by means of a comprehensive study, or to refer the project to a mediator or review panel in accordance with section 29.

Minister's decision

21.1 (1) *The Minister, taking into account the things with regard to which the responsible authority must report under paragraph 21(2)(a) and the recommendation of the responsible authority under paragraph 21(2)(b), shall, as the Minister considers appropriate,*

(a) refer the project to the responsible authority so that it may continue the comprehensive study and ensure that a comprehensive study report is prepared and provided to the Minister and to the Agency; or

(b) refer the project to a mediator or review panel in accordance with section 29.

Decision final

21.1(2) *Despite any other provision of this Act, if the Minister refers the project to a responsible authority under paragraph (1)(a), it may not be referred to a mediator or review panel in accordance with section 29.*

Explanation

With regard to projects described on the comprehensive study list regulations, previous section 21 required a responsible authority to:

- ensure that a comprehensive study is conducted and a related report is prepared and provided to the Minister and the Agency; or
- refer the project to the Minister for a referral to a mediator or review panel under section 29.

These provisions are replaced with a series of new measures which mandate that a decision be made early in the comprehensive study process to ensure that a project is not subject to both a comprehensive study and a mediation or assessment by a review panel.

Report and recommendation

Specifically, with regard to projects described on the comprehensive study list, new section 21 requires the responsible authority to:

- report to the Minister on selected matters (itemized below) following public consultation; and
- recommend to the Minister whether the environmental assessment be continued by means of a comprehensive study, or the project be referred to a mediator or review panel.

The matters that must be covered in the report are:

- the scope of the project, the factors to be considered in the assessment, and the scope of those factors;
- public concerns in relation to the project;
- the project's potential to cause adverse environmental effects; and
- the ability of the comprehensive study to address issues relating to the project.

Minister's decision

After taking the responsible authority's report and recommendation into account, the Minister is given the following two choices under new subsection 21.1(1):

- refer the project back to the responsible authority and ensure that a comprehensive study report is prepared; or
- refer the project to a mediator or review panel.

The Minister's decision under new subsection 21.1(1) is final. New subsection 21.1(2) precludes the Minister from referring the project to a mediator or review panel where he or she has decided to send it back to the responsible authority for continuation of the comprehensive study.

Rationale

These changes will provide greater certainty and predictability to the comprehensive study process by eliminating the possibility of a second environmental assessment, by a review panel or a mediator, following completion of a comprehensive study.

Related guidance

See guide entitled: [*Comprehensive Studies*](#).

2.4.19 Public Participation Opportunities in a Comprehensive Study

Act reference 21.2

Amendment Section 21 of the Act is amended, in part, by the following:

Public participation

21.2 *Where a project has been referred to a responsible authority under paragraph 21.1(1)(a), the responsible authority shall ensure that the public is provided with an opportunity, in addition to those provided under subsection 21(1) and section 22, to participate in the comprehensive study, subject to a decision with respect to the timing of the participation made by the federal environmental assessment coordinator under paragraph 12.3(c).*

Explanation Where the project is sent back to the responsible authority for a comprehensive study, new section 21.2 requires that the public be provided with a further opportunity to participate in the comprehensive study.

This public participation is subject to any decision of the federal environmental assessment coordinator under new paragraph 12.3(c) regarding the timing of the participation.

The existing requirement to provide an opportunity for the public to review and comment on the comprehensive study report remains unchanged.

Rationale There is a need to strengthen the role of public participation in comprehensive studies, given the scale, complexity and public concerns associated with many of the projects undergoing this type of assessment.

The Participant Funding Program has also been expanded to include comprehensive studies to support the expanded role for public participation.

Public participation is one of the fundamental objectives of the Act. Effective public participation can:

- provide all interested persons and organizations with a fair opportunity to contribute to decisions which may influence projects that may affect them;
- allow proponents and government decision makers to better address public concerns and priorities; and
- build greater public trust in the environmental assessment process and in the decisions that come out of that process.

**Related
guidance**

See guide entitled: [*Comprehensive Studies*](#).

2.4.20 Decision of the Minister of the Environment after Comprehensive Study

Act references 23(1), 23(2), 23(3)

Amendments Section 23 of the Act is replaced by the following:

Decision of Minister

23.(1) *The Minister shall, after taking into consideration the comprehensive study report and any comments filed pursuant to subsection 22(2), refer the project back to the responsible authority for action under section 37 and issue an environmental assessment decision statement that*

- (a) sets out the Minister's opinion as to whether, taking into account the implementation of any mitigation measures that the Minister considers appropriate, the project is or is not likely to cause significant adverse environmental effects; and*
- (b) sets out any mitigation measures or follow-up program that the Minister considers appropriate, after having taken into account the views of the responsible authorities and other federal authorities concerning the measures and program.*

More information required

23.(2) *Before issuing the environmental assessment decision statement, the Minister shall, if the Minister is of the opinion that additional information is necessary or that there are public concerns that need to be further addressed, request that the federal authorities referred to in paragraph 12.3(a) or the proponent ensure that the necessary information is provided or actions are taken to address those public concerns.*

Time for statement

23.(3) *The Minister shall not issue the environmental assessment decision statement before the 30th day after the inclusion on the Internet site of*

- (a) notice of the commencement of the environmental assessment;*
- (b) a description of the scope of the project;*
- (c) where the Minister, under paragraph 21.1(1)(a), refers a project to the responsible authority to continue a comprehensive study,*
 - (i) notice of the Minister's decision to so refer the project, and*
 - (ii) a description of the factors to be taken into consideration in the environmental assessment and of the scope of those factors or an indication of how such a description may be obtained; and*

(d) the comprehensive study report that is to be taken into consideration by a responsible authority in making its decision under subsection 37(1) or a description of how a copy of the report may be obtained.

**Explanation:
Minister's
decision**

Section 23 previously set out the Minister's options after consideration of the comprehensive study report and any comments made by the public.

Depending on whether the project, with mitigation, is likely to cause significant adverse environmental effects and depending also on the public's concerns, the Minister had two choices:

- refer the project back for a decision by the responsible authority under section 37; or
- refer the project to a mediator or review panel.

Section 23 is now limited to projects where a decision has been made to continue the comprehensive study. This is in accordance with amended section 21, which precludes the possibility of a project being subject to both a comprehensive study and a mediation or assessment by a review panel.

Under new subsection 23(1), the Minister, after taking the comprehensive study report and the public's comments into consideration, is required to send the project back to the responsible authority for a decision as to whether the project should be allowed to proceed.

**Environmental
assessment
decision
statement**

Under a new requirement, the Minister must also issue an "environmental assessment decision statement" following public review and comment on the comprehensive study report.

The statement must set out:

- the Minister's determination of whether the project is likely to cause significant adverse environmental effects; and
- the mitigation measures and/or follow-up program that the Minister considers appropriate, falling within federal jurisdiction and developed in consultation with responsible authorities and federal authorities.

The Minister shall not issue the environmental assessment decision statement until the items listed in new subsection 23(3) have been on the Registry's Internet Site for 30 days.

More information required

Under new subsection 23(2), before issuing the environmental assessment statement, if the Minister is of the opinion that...

- additional information is necessary or
- there are public concerns that need to be further addressed

... the Minister may request that the proponent and federal authorities involved ensure that the necessary information is provided or actions are taken to address the public's concerns.

Rationale

The new provisions provide the Minister of the Environment with new powers and tools to ensure the quality of comprehensive studies.

These new powers balance the removal of the Minister's previous authority to refer the project to a review panel or mediator following a comprehensive study, if there were outstanding issues or concerns.

Related guidance

See guide entitled: [*Comprehensive Studies*](#).

2.4.21 Consequences of an Unsuccessful Mediation

Act reference

29(4)

Amendment

Subsection 29(4) is replaced by the following:

When mediation fails

29.(4) Where, at any time after an environmental assessment or part of an environmental assessment of a project has been referred to a mediator, the Minister or the mediator determines that the mediation is not likely to produce a result that is satisfactory to all the participants, the Minister shall order the conclusion of the mediation.

Explanation

Where the Minister or mediator determines that a mediation process is not likely to produce a result that is satisfactory to all the participants, the Minister was previously required under subsection 29(4) to terminate the mediation and refer the project to a review panel.

Subsection 29(4) is now amended by dropping the requirement that the project be automatically referred to a review panel in the event that a mediation fails.

It also replaces the words “shall terminate the mediation of the issue” with “shall order the conclusion of the mediation,” thus terminating the mediation process in its entirety rather than only those aspects of it that are problematic.

The Minister of the Environment will now order the conclusion of the mediation if it becomes clear that the parties are not going to reach a satisfactory result, and the mediator will prepare and submit a report to the Minister and the responsible authority.

Using this report and any other relevant information (such as a previous screening report), the responsible authority will complete the assessment and make a decision about the project.

Rationale

The amendment is designed to encourage the use of mediation, which can reduce the costs and time demands of some environmental assessments. To date, the formal mediation process in the Act has not been used. The automatic referral to assessment by a review panel in the case of a failed mediation has been identified as a barrier and has been removed.

2.4.22 Mediation Report

Act reference	32(1)
Amendment	<p>Subsection 32(1) of the French version of the Act is replaced by the following:</p> <p><i>Rapport du médiateur</i> <i>32. (1) Dès la fin de la médiation, le médiateur présente un rapport au ministre et à l'autorité responsable.</i></p>
Explanation	<p>This amendment effects a minor wording change to the French text of subsection 32(1): it replaces the words “l’achèvement” with the words “la fin”.</p>
Rationale	<p>This amendment ensures concordance between the French and English versions of the Act.</p>

2.4.23 Review Panel Authority with Respect to in Camera Hearings and Confidential Information

Act references 35(3), 35(4.1)

Amendments Subsection 35(3) is replaced by the following:

Hearings to be public

35.(3) A hearing by a review panel shall be public unless the panel is satisfied after representations made by a witness that specific, direct and substantial harm would be caused to the witness or specific harm to the environment by the disclosure of the evidence, documents or other things that the witness is ordered to give or produce pursuant to subsection (1).

Section 35 is amended by adding the following after subsection 35(4):

Non-disclosure

35.(4.1) Where a review panel is satisfied that the disclosure of evidence, documents or other things would cause specific harm to the environment, the evidence, documents or things are privileged and shall not, without the authorization of the review panel, knowingly be or be permitted to be communicated, disclosed or made available by any person who has obtained the evidence, documents or other things pursuant to this Act.

Explanation

Previous subsection 35(3) required a review panel to hold hearings that are open to the public unless specific, direct and substantial harm would be caused to the witness by the disclosure of such evidence, document or other thing that the witness has been ordered to produce by the review panel.

The amendments extend this exception to situations where giving the evidence or producing the document would cause “specific harm to the environment”.

Previous subsection 35(4) stipulated that where the disclosure of evidence, documents, etc., would cause specific, direct and substantial harm to a witness, such evidence, documents, etc., are privileged and must not, without that witness’s authorization, knowingly be (or be permitted to be) communicated, disclosed or made available by any person who has obtained such evidence or documents pursuant to the Act.

The amendments create new subsection 35(4.1), which extends this non-disclosure rule to situations where the review panel is satisfied that disclosure of the evidence, documents, etc. would cause specific harm to the environment. However, the privileged information could be disclosed if authorized by the review panel.

Rationale

The original Act provided for in camera hearings and keeping information confidential where the review panel determined that public disclosure of certain information would cause specific, direct and substantial harm to the witness.

The amendments extend the concept of specific harm to the environment as an additional reason for holding in camera hearings and for keeping information confidential.

For example, the location of the nesting sites or dens of an endangered or rare species, if made public, could aid poachers that engage in illegal hunting.

2.4.24 Decision Making at the End of Comprehensive Study

Act reference	37(1)
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Amendments	<p>The portion of subsection 37(1) before paragraph (a) is replaced by the following:</p> <p><i>Decision of responsible authority</i></p> <p><i>37.(1) Subject to subsections (1.1) to (1.3), the responsible authority shall take one of the following courses of action in respect of a project after taking into consideration the report submitted by a mediator or a review panel or, in the case of a project referred back to the responsible authority pursuant to subsection 23(1), the comprehensive study report:</i></p> <p>As well, the portion of paragraph 37(1)(a) after subparagraph (ii) is replaced by the following:</p> <p><i>the responsible authority may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part; or</i></p>
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Explanation	<p>Previous subsection 37(1) of the Act sets out the courses of action open to a responsible authority once a project has undergone a comprehensive study, mediation or assessment by a review panel.</p> <p>This subsection is amended as a consequence of the new subsection 23(1), which requires the Minister to refer the project back to the responsible authority after issuing an environmental assessment decision statement.</p> <p>The amendments also make subsection 37(1) subject to new subsections 37(1.2) and (1.3), discussed on the following pages.</p>
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Rationale	<p>Section 37 is the key decision-making provision for a responsible authority following completion of a comprehensive study.</p> <p>As a quality assurance step, the Minister of the Environment issues an environmental assessment decision statement upon completion of a comprehensive study.</p>
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**Related
guidance**

See guide entitled: [*Comprehensive Studies*](#).

2.4.25 Preparation of the Government Response to Review Panel or Mediator’s Report

Act reference 37(1.2)

Amendment Section 37 is amended by adding the following after subsection (1.1):

Federal authority

37.(1.2) Where a response to a report is required under paragraph (1.1)(a) and there is, in addition to a responsible authority, a federal authority referred to in paragraph 5(2)(b) in relation to the project, that federal authority may act as a responsible authority for the purposes of that response. This subsection applies in the case of a federal authority within the meaning of paragraph (b) of the definition “federal authority” in subsection 2(1) if the Minister through whom the authority is accountable to Parliament agrees.

Explanation New subsection 37(1.2) applies exclusively to projects for which a report has been submitted by a mediator or review panel.

With regard to such projects, the responsible authority is required by subsection 37(1.1) to take the report of the mediator or review panel into consideration and, with the approval of the Governor in Council, to respond to it, before taking the appropriate course of action under subsection 37(1).

New subsection 37(1.2) allows a federal authority to participate in or lead in the preparation of the Government’s response to the mediator’s report. It provides that where there is, in addition to the responsible authority, a “federal authority” that meets the criteria (described below), that federal authority may act as the responsible authority for the purpose of providing the response.

This subsection applies where the Governor in Council is required to make a decision about a project under another Act, and this triggers a requirement for an environmental assessment under subsection 5(2) of the Act.

The "federal authority" to which this new subsection applies is:

- a federal authority within the definition of "federal authority" under subsection 2(1); and
- the federal authority that, pursuant to current paragraph 5(2)(b):
 - recommends to the Governor in Council that it issues the permit, gives its approval, etc., for which the environmental assessment was triggered, and
 - assumes the functions of a "responsible authority".

In the case of a federal authority that is not a minister or line department, then the minister through whom the federal authority is ultimately accountable to Parliament, must agree that the federal authority will take on this role of preparing the response.

Rationale

The amendment provides the flexibility needed to ensure that all appropriate federal authorities are involved in the development of the Government's response.

Prior to the amendment, the responsible authority that was also triggered under subsection 5(1) in relation to the same project, and not the federal authority acting on behalf of the Governor in Council, was always tasked with preparing the Government's response, regardless of its level of involvement with the project.

2.4.26 Action Requiring Approval of Governor in Council

Act reference 37(1.3)

Amendment Section 37 is amended by adding the following after subsection 37(1.2):

Approval of Governor in Council

37.(1.3) Where a project is referred back to a responsible authority under subsection 23(1) and the Minister issues an environmental assessment decision statement to the effect that the project is likely to cause significant adverse environmental effects, no course of action may be taken by the responsible authority under subsection (1) without the approval of the Governor in Council.

Explanation New subsection 37(1.3) applies to projects for which a decision has been made under new paragraph 21.1(1)(a) to continue with the comprehensive study.

Where, under new subsection 23(1), the Minister has issued an environmental assessment decision statement that the project is likely to cause significant adverse environmental effects, new subsection 37(1.3) precludes the responsible authority from taking action under subsection 37(1) without first obtaining the Governor in Council's approval.

In other words, this amendment requires a responsible authority to seek Governor in Council approval of any decision to proceed or to not proceed with a project when the Minister of the Environment issues a decision statement that the project is likely to cause significant adverse environmental effects.

Rationale The amendment ensures that only the Governor in Council can make a determination that significant adverse environmental effects resulting from the project are justified in the circumstances.

Related guidance See guide entitled: [Comprehensive Studies](#).

2.4.27 Scope of Mitigation Measures

Act references 37(2.1), 37(2.2)

Amendments Subsection 37(3) of the Act is replaced in part by the following:

Mitigation measures – extent of authority

37.(2.1) Mitigation measures that may be taken into account under subsection (1) by a responsible authority are not limited to measures within the legislative authority of Parliament and include

(a) any mitigation measures whose implementation the responsible authority can ensure; and

(b) any other mitigation measures that it is satisfied will be implemented by another person or body.

Responsible authority to ensure implementation of mitigation measures

37.(2.2) When a responsible authority takes a course of action referred to in paragraph (1)(a), it shall, with respect to any mitigation measures it has taken into account and that are described in paragraph (2.1)(a), ensure their implementation in any manner that it considers necessary and, in doing so, it is not limited to its duties or powers under any other Act of Parliament.

Explanation New subsections 37(2.1) and (2.2) have been added to permit responsible authorities to take into account mitigation measures that are outside the legislative authority of Parliament.

These amendments clarify that a responsible authority may impose mitigation conditions beyond the immediate scope of the legislation that provides authority to grant a permit, licence or authorization, as long as in so doing it is acting within the limits of federal jurisdiction.

They also clarify that a responsible authority may take into account mitigation measures implemented by another “person or body”, such as a provincial government, as long as the responsible authority can ensure, or be satisfied, that the mitigation measures will be implemented.

If the responsible authority can ensure performance of the mitigation measures, then it is under a duty to do so under subsection 37(2.2).

Example Environmental protection or conservation conditions, such as measures to protect migratory birds from the effects of a project, could be attached to permits issued under the *Navigable Waters Protection Act*, even though that Act is silent on matters of environmental protection.

Measures to protect wildlife that will be implemented by a provincial government could be factored into the decision making of a responsible authority, when determining if the project is likely to cause significant adverse environmental effects.

Rationale Some responsible authorities had interpreted this subsection narrowly, and had been reluctant to impose mitigation measures beyond their own legislation.

The amendments also address uncertainty arising out of the Federal Court *Suncor* decision which made it unclear as to whether the Government of Canada could rely on mitigation measures implemented by other jurisdictions.

2.4.28 Assistance of Another Federal Authority: Mitigation

Act reference 37(2.3)

Amendment Subsection 37(3) of the Act is replaced in part by the following after 37(2.2):

Assistance of other federal authority

37.(2.3) A federal authority shall provide any assistance requested by a responsible authority in ensuring the implementation of a mitigation measure on which the federal authority and the responsible authority have agreed.

Explanation The amendments add new subsection 37(2.3). This new subsection requires a federal authority to provide any assistance requested by a responsible authority to ensure the implementation of a mitigation measure on which both have agreed.

Thus, a federal authority that has proposed a specific mitigation measure for a comprehensive study, mediation or assessment by a review panel is obliged to assist in its implementation, if asked to do so by the responsible authority making the assessment decision on the project.

Example The Department of Fisheries and Oceans (DFO) has undertaken a comprehensive study of a project requiring a permit under the *Fisheries Act*.

The project may adversely affect migratory birds, and Environment Canada has requested that DFO include several mitigation measures to protect migratory birds as a condition to issuing the permit.

As the federal authority with expertise on migratory birds, Environment Canada must, at DFO's request, assist in ensuring that the mitigation measures it proposed are implemented.

Rationale Expertise related to a specific mitigation measure typically rests with the expert federal authority recommending the measure.

It is reasonable to expect the federal authority to provide the necessary support so the measure is properly implemented.

2.4.29 Prohibition to Proceed

Act reference	37(3)
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Amendment	<p>Subsection 37(3) of the Act is replaced in part as follows:</p> <p><i>Prohibition: proceeding with project</i></p> <p><i>37.(3) Where the responsible authority takes a course of action referred to in paragraph (1)(b) in relation to a project, the responsible authority shall publish a notice of that course of action in the Registry and, notwithstanding any other Act of Parliament, no power, duty or function conferred by or under that Act or any regulation made under it shall be exercised or performed that would permit that project to be carried out in whole or in part.</i></p>
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Explanation	<p>This amendment replaces current subsection 37(3) with an amended version.</p> <p>The new subsection deletes the requirement to file a notice in the public registry of a decision under previous paragraph 37(1)(b) to not proceed with the project. The notice shall now be published in the Canadian Environmental Assessment Registry</p>
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Rationale	<p>The amendment is consequential to section 55 amendments, which replace the public registry with a combined electronic and paper registry.</p>
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2.4.30 Timing of Environmental Assessment Decision

Act reference	37(4)
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Amendment	<p>Section 37 is amended by the addition of the following:</p> <p><i>Time for decision</i></p> <p><i>37.(4) A responsible authority shall not take any course of action under subsection (1) before the 30th day after the report submitted by a mediator or a review panel or a summary of it has been included on the Internet site in accordance with paragraph 55.1(2)(p).</i></p>
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Explanation	A responsible authority may only take a decision about the proposed project 30 days after the review panel's report or a summary of it has been posted on the Internet site of the Canadian Environmental Assessment Registry.
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Rationale	Ensures that the public has a reasonable amount of time to access the mediator's or review panel's report before final decisions are taken.
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2.4.31 Follow-up Program in a Screening

Act reference

38(1)

Amendment

Section 38 is replaced in part by the following subsection:

Consideration of follow-up – decision under paragraph 20(1)(a)

38.(1) *Where a responsible authority takes a course of action under paragraph 20(1)(a), it shall consider whether a follow-up program for the project is appropriate in the circumstances and, if so, shall design a follow-up program and ensure its implementation.*

Explanation

Under the previous subsection 38(1), following an environmental assessment for which the responsible authority decides to allow the project to proceed, the responsible authority was required to design an appropriate follow-up program in accordance with the applicable regulations and to “arrange” for its implementation. No regulations were made for this purpose.

This clause applied to screenings, as well as to comprehensive studies, mediations or assessment by a review panel.

Amended subsection 38(1) now applies only to screenings. It requires the responsible authority to...

- design the follow-up program and
- ensure its implementation,

... but only if the responsible authority considers that a follow-up program is appropriate in the circumstances.

Thus, for every screening, the responsible authority is required to consider whether a follow-up program is appropriate in the circumstances.

Rationale

Screenings are used to assess small, medium and relatively large projects. The complexity and potential for adverse environmental effects of these projects varies greatly. It is therefore appropriate to require responsible authorities to consider whether a follow-up program is necessary.

**Related
guidance**

The Agency Web site will include an electronic repository of information gathered during follow-up, allowing others to use the results of follow-up programs to improve their ability to predict effects and design mitigation measures.

2.4.32 Mandatory Follow-up Program for a Comprehensive Study, Review Panel or Mediation

Act reference

38(2)

Amendment

Section 38 of the Act is replaced in part by the following subsection:

Mandatory follow-up – decision under paragraph 37(1)(a)

38.(2) *Where a responsible authority takes a course of action under paragraph 37(1)(a), it shall design a follow-up program for the project and ensure its implementation.*

Explanation

Under the previous subsection 38(1), following an environmental assessment for which the responsible authority decides to allow the project to proceed, the responsible authority was required to design an appropriate follow-up program in accordance with the applicable regulations and to “arrange” for its implementation. No regulations were ever made for this purpose.

This clause applied to screenings, as well as to comprehensive studies, mediations or assessment by a review panel.

Since subsection 38(1) has been amended to apply only to screenings, new subsection 38(2) has been added for comprehensive studies, mediations or assessment by a review panel.

For these processes, subsection 38(2) requires responsible authorities to:

- design the follow-up program; and
- ensure the implementation of a follow-up program.

Under section 17, a responsible authority continues to be able to delegate any part of the design and implementation of a follow-up program.

Rationale

Follow-up is an essential component of an effective environmental assessment process. It can:

- verify the accuracy of the environmental assessment;
- allow mitigation measures to be adapted to address unforeseen circumstances; and
- build a knowledge base to improve the quality of future assessments.

Prior to the amendment, implementation of a follow-up program after a comprehensive study, assessment by a review panel or mediation was at the discretion of the responsible authority.

Related guidance

The Agency Web site will include an electronic repository of information gathered during follow-up, allowing others to use the results of follow-up programs to improve their ability to predict effects and design mitigation measures.

2.4.33 Scope of Follow-up Program

Act reference	38(3)
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Amendment	<p>Section 38 of the Act is replaced in part by the following subsection:</p> <p><i>Scope of follow-up program</i></p> <p>38.(3) <i>In designing a follow-up program and in ensuring its implementation, a responsible authority is not limited by the Act of Parliament that confers the powers it exercises or the duties or functions it performs.</i></p>
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Explanation	<p>In designing and implementing the follow-up program, the responsible authority is not limited by the scope of legislation through which it is acting.</p> <p>These amendments clarify that a responsible authority may conduct follow-up beyond the immediate scope of the legislation that provides authority to grant a permit, licence or authorization, as long as in so doing it is acting within the limits of federal jurisdiction.</p>
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Example	The Department of Fisheries and Oceans could include follow-up requirements related to migratory birds in a permit issued under the <i>Fisheries Act</i> .
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Rationale	<p>The scope of an environmental assessment and mitigation measures is not limited by the legislation through which the responsible authority acts.</p> <p>Since a follow-up program looks at the accuracy of the environmental assessment predictions and the effectiveness of mitigation measures, the scope of a follow-up program may need to correspond to the scope of the assessment and mitigation measures, even though these may go beyond the normal range of legislation through which the responsible authority is acting.</p>
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Related guidance	The Agency Web site will include an electronic repository of information gathered during follow-up, allowing others to use the results of follow-up programs to improve their ability to predict effects and design mitigation measures.
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2.4.34 Assistance of other Federal Authority: Follow-up Program

Act reference	38(4)
Amendment	<p>Section 38 of the Act is replaced in part by the following subsection:</p> <p><i>Assistance of other federal authority</i></p> <p>38.(4) <i>A federal authority shall provide any assistance requested by a responsible authority in ensuring the implementation of a follow-up program on which the federal authority and the responsible authority have agreed.</i></p>
Explanation	<p>New subsection 38(4) requires a federal authority to provide any assistance requested by a responsible authority in ensuring the implementation of a follow-up program on which both have agreed.</p> <p>Therefore, a federal authority that has proposed a certain aspect of a follow-up program for a screening, comprehensive study, mediation or review panel is obliged to assist in its implementation, if asked to do so by the responsible authority making the assessment decision on the project.</p>
Rationale	<p>Expertise related to an aspect of a follow-up program rests with the federal authority recommending the program. It is reasonable to expect the federal authority to provide the necessary support so the program is properly carried out.</p>
Related guidance	<p>The Agency Web site will include an electronic repository of information gathered during follow-up, allowing others to use the results of follow-up programs to improve their ability to predict effects and design mitigation measures.</p>

2.4.35 Use of Follow-up Program Results

Act reference	38(5)
Amendment	<p>Section 38 is replaced in part by the following subsection:</p> <p><i>Follow-up programs</i> 38.(5) <i>The results of follow-up programs may be used for implementing adaptive management measures or for improving the quality of future environmental assessments.</i></p>
Explanation	<p>New subsection 38(5) clarifies that results of follow-up programs for all types of environmental assessments conducted under the Act can be used for:</p> <ul style="list-style-type: none"> • implementing adaptive management measures within the limits of federal jurisdiction; and • improving the quality of future environmental assessments.
Rationale	<p>Unanticipated adverse environmental effects may arise during the life of a project because of inaccurate assessments or unforeseen environmental changes.</p> <p>Adaptive management measures:</p> <ul style="list-style-type: none"> • involve the implementation of new or modified mitigation measures over the life of a project to address unanticipated environmental effects; and • allow for the adoption of improved mitigation measures (e.g., due to technological advances) over the life of a project. <p>The need for adaptive measures can be determined through an effective follow-up program.</p>
Related guidance	<p>The Agency Web site will include an electronic repository of information gathered during follow-up, allowing others to use the results of follow-up programs to improve their ability to predict effects and design mitigation measures.</p>

2.4.36 Joint Review Panels with Aboriginal Self-Governing Bodies

Act reference

40(2)

Amendment

Subsection 40(2) of the Act is replaced by the following:

Review panels established jointly with another jurisdiction

40.(2) *Subject to section 41, where the referral of a project to a review panel is required or permitted by this Act, the Minister*

(a) may enter into an agreement or arrangement with a jurisdiction referred to in paragraph (1)(a), (b), (c) or (d) that has powers, duties or functions in relation to the assessment of the

environmental effects of the project, respecting the joint establishment of a review panel and the manner in which the environmental assessment of the project is to be conducted by the review panel; and

(b) shall, in the case of a jurisdiction within the meaning of subsection 12(5) that has a responsibility or an authority to conduct an assessment of the environmental effects of the project or any part of it, offer to consult and cooperate with that other jurisdiction respecting the environmental assessment of the project.

Explanation

This subsection deals with projects that might be subject to both an assessment by a review panel under the Act and an environmental assessment by another “jurisdiction” in Canada.

With respect to the establishment of joint review panels with Aboriginal bodies, the previous subsection 40(2) was limited to jurisdictions that had a “responsibility or an authority” to conduct an assessment. The amendment extends the possibility of joint review panels to Aboriginal self-governing bodies that have “powers, duties or functions” in relation to an assessment, such as authority over the administration of lands belonging to an Aboriginal group, but not necessarily an explicit authority or responsibility to conduct an assessment.

Jurisdictions under 40(a) to (d)

A “jurisdiction” is defined in paragraph 40(1)(a) to (d) as:

- (a) *a federal authority;*
 - (b) *the government of a province;*
 - (c) *any other agency or body established pursuant to an Act of Parliament or the provincial legislature and having powers, duties or functions in relation to an environmental assessment of a project;*
 - (d) *any body established pursuant to a land claims agreement referred to in section 35 of the Constitution Act, 1982 and having powers, duties or functions in relation to an environmental assessment of a project.*
-

Jurisdictions under 12(5)

A “jurisdiction” is defined in subsection 12(5) as:

- (a) *the government of a province;*
 - (b) *an agency or a body established pursuant to provincial legislation, and that has powers, duties or functions in relation to an environmental assessment of a project;*
 - (c) *a body established pursuant to a land claims agreement referred to in section 35 of the Constitution Act, 1982 and that has powers, duties or functions in relation to an environmental assessment of a project; or*
 - (d) *a governing body established pursuant to self-government of Indians and that has powers, duties or functions in relation to an environmental assessment of a project.*
-

Rationale

This amendment will increase the number of Aboriginal jurisdictions that could join the Government of Canada in the establishment of a joint review panel.

2.4.37 Establishment of Joint Review Panels

Act reference

40(3)

Amendment

Subsection 40(3) of the Act is replaced by the following:

Review panels established jointly with another jurisdiction

40.(3) *Subject to section 41, where the referral of a project to a review panel is required or permitted by this Act and a jurisdiction referred to in paragraph (1)(e) or (f) has a responsibility or an authority to conduct an assessment of the environmental effects of the project or any part of it, the Minister and the Minister of Foreign Affairs may enter into an agreement or arrangement with that jurisdiction respecting the joint establishment of a review panel and the manner in which the environmental assessment of the project is to be conducted by the review panel.*

Explanation

This amendment replaces subsection 40(3), replacing the words “assessment of the environmental effects” of a project with “environmental assessment”.

Under this subsection, if a project can be referred to a review panel under the Act, and a foreign government or international organization is responsible for assessing the environmental effects of part or all of the project, then the Minister of the Environment and the Minister of Foreign Affairs may enter into an agreement with that jurisdiction to establish a joint review panel, and to govern the environmental assessment conducted by that review panel.

Rationale

This change was made to increase clarity.

2.4.38 Joint Review Panels: Agreement Conditions

Act reference

41

Amendment

The portion of section 41 before paragraph (a) is replaced by the following:

Conditions

41. An agreement or arrangement entered into pursuant to subsection 40(2) or (3), and any document establishing a review panel under subsection 40(2.1), shall provide that the environmental assessment of the project shall include a consideration of the factors required to be considered under subsections 16(1) and (2) and be conducted in accordance with any additional requirements and procedures set out in the agreement and shall provide that

As well, paragraph 41(d) of the Act is replaced by the following:

41.(d) the review panel is to have the powers and immunities provided for in section 35;

Explanation

This amendment changes section 41 to refer to “environmental assessment”, rather than “assessment of the environmental effects”.

The amendment to paragraph 41(d) clarifies that members of joint review panels are covered by the same immunities provided to members of federal-only review panels in section 35.

Previously, paragraph 41(d) gave joint review panels only the “powers” of review panels, but not their “immunities”.

Rationale

Joint review panels are important tools for coordinating the environmental assessment of major projects involving the federal government and another jurisdiction or decision-making authority.

This change was made to reflect the intention that assessments by joint review panels should meet the requirements of the Act.

Section 35, referred to in paragraph 41(d) provides members of federal-only review panels with immunity from any action or other proceedings against them in connection with their participation on the review panel.

2.5 Transboundary and Related Environmental Effects

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Transboundary and Related Environmental Effects”.

Contents The table below identifies the sections of the Act under the heading “Transboundary and Related Environmental Effects” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See	
	Act	Guide Page
2.5.1 Consideration of Transboundary Effects	46(1), 47(1), 48(1), 48(1.1), 48(2), 48(3)	121
2.5.2 Transboundary Notification	48(5)	124

2.5.1 Consideration of Transboundary Effects

Act references 46(1), 47(1), 48(1), 48(1.1), 48(2), 48(3)

Amendments Subsection 46(1) of the Act is replaced by the following:

Transboundary and related environmental effects

46.(1) *Where no power, duty or function referred to in section 5 is to be exercised or performed by a federal authority in relation to a project that is to be carried out in a province and the Minister is of the opinion that the project may cause significant adverse environmental effects in another province, the Minister may refer the project to a mediator or a review panel in accordance with section 29 for an assessment of the environmental effects of the project in that other province.*

Subsection 47(1) of the Act is replaced by the following:

International environmental effects

47.(1) *Where no power, duty or function referred to in section 5 is to be exercised or performed by a federal authority in relation to a project that is to be carried out in Canada or on federal lands and the Minister is of the opinion that the project may cause significant adverse environmental effects occurring both outside Canada and outside those federal lands, the Minister and the Minister of Foreign Affairs may refer the project to a mediator or a review panel in accordance with section 29 for an assessment of the environmental effects of the project occurring both outside Canada and outside federal lands.*

The portion of subsection 48(1) before paragraph (a) is replaced by the following:

Environmental effects of projects carried out on lands of federal interest

48.(1) *Where no power, duty or function referred to in section 5 is to be exercised or performed by a federal authority in relation to a project that is to be carried out in Canada and the Minister is of the opinion that the project may cause significant adverse environmental effects on...*

Paragraph 48(1)(b) is replaced by the following:

*48.(1)(a.1) a park or park reserve as defined in subsection 2(1) of the Canada National Parks Act,
(b) federal lands other than those mentioned in paragraph (a) or (a.1),*

Section 48 is amended by the addition of the following after subsection (1):

Ecological integrity

48.(1.1) In deciding whether or not a project may cause significant adverse environmental effects on a park or park reserve as defined in subsection 2(1) of the Canada National Parks Act, the Minister shall take into account its ecological integrity, as that expression is defined in that subsection.

The portion of subsection 48(2) of the Act before paragraph (a) is replaced by the following:

Environmental effects of projects carried out on reserve lands, etc.

48.(2) Where no power, duty or function referred to in section 5 is to be exercised or performed by a federal authority in relation to a project that is to be carried out on...

Paragraph 48(3)(c) of the Act is replaced by the following:

48.(3)(c) in respect of lands referred to in paragraph (1)(c) or (e) or (2)(b), the party to the agreement or claim — or that party's successor — that was, or was acting on behalf of, an aboriginal people or group, or...

Explanation

These sections are amended by dropping the words “*or conferred by or under any other Act of Parliament or regulation*”.

These amendments remove a constraint on the power of the Minister of the Environment to refer a project to a review panel or mediator even in the absence of a section 5 “trigger”, if the project may cause significant adverse environmental effects:

- in another province;
- outside of Canada; or
- on reserve lands or across the boundaries of federal lands.

Prior to the amendment, the Minister of the Environment could not exercise the power to refer a project to a review panel or mediator if a federal authority had exercised or was expected to exercise any power, duty or function conferred by any other act of Parliament or regulation.

Furthermore, under new subsection 48(1.1), the Minister is required to take into account a national park's ecological integrity if potential transboundary effects on park land are at issue. This amendment explicitly recognizes national parks, park reserves and the importance of taking into account their ecological integrity when making decisions under section 48 on whether to refer a project to a mediator or review panel.

Rationale

The amendment eliminates the legal test that required a determination of whether another federal power, duty or function had been or was expected to be exercised. This legal requirement limited the Minister's authority, making the three transboundary sections essentially inoperable. No referral to a review panel or mediator was made under these provisions in the original Act.

The amendments make the transboundary sections operable, consistent with the original intent of the Act.

2.5.2 Transboundary Notification

Act reference	48(5)
Amendments	<p>Subsection 48(5) is amended by striking out the word “and” at the end of paragraph (c) and by adding the following after paragraph (d):</p> <p><i>48.(5)(e) in respect of lands referred to in paragraph (1)(a) or (2)(a), the council of the band for whose use and benefit the reserve has been set apart;</i></p> <p><i>48.(5)(f) in respect of lands referred to in paragraph (1)(c) or (e) or (2)(b), the party to the agreement or claim — or that party's successor — that was, or was acting on behalf of, an aboriginal people or group; and</i></p> <p><i>48.(5)(g) in respect of lands that have been set aside for the use and benefit of Indians pursuant to legislation referred to in paragraph (1)(d) or (2)(c), the governing body established by that legislation.</i></p>
Explanation	<p>Subsection 48(5) is amended by adding parties entitled to receive notice that the Minister intends to refer a project to a mediator or a review panel under subsections 48(1) and (2).</p> <p>The amendments require the Minister of the Environment to provide 10 days’ notification of the intention to establish a review panel related to transboundary effects on reserve lands or across the boundaries of federal lands to any affected:</p> <ul style="list-style-type: none"> • band council subject to the <i>Indian Act</i>; • land claim bodies; and • Aboriginal self-governments.
Rationale	<p>Provides the same opportunity for notice to Aboriginal peoples as given to proponents, provinces and individual petitioners.</p> <p>Recognizes the interest and important role of Aboriginal peoples in the environmental assessment of projects that may have an impact on lands where they have an interest.</p>

2.6 Agreements and Arrangements

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Agreements and Arrangements”.

Contents The table below identifies the sections of the Act under the heading “Agreements and Arrangements” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See...	
	Act	Guide Page
2.6.1 International Agreements or Arrangements	54(2), 54(3)	127

2.6.1 International Agreements or Arrangements

Act references 54(2), 54(3)

Amendments

Subsections 54(2) and (3) of the Act are replaced by the following:

International agreement or arrangement

54.(2) *Subject to subsection (3), where a federal authority or the Government of Canada on behalf of a federal authority enters into an agreement or arrangement with any government or any person, organization or institution, whether or not part of or affiliated with a government, under which a federal authority exercises a power or performs a duty or function referred to in paragraph 5(1)(b) or 10.1(2)(b) in relation to projects the essential details of which are not specified and that are to be carried out both outside Canada and outside federal lands, the Government of Canada or the federal authority shall ensure, in so far as is practicable and subject to any other such agreement to which the Government of Canada or federal authority is a party, that the agreement or arrangement provides for the assessment of the environmental effects of those projects and that the assessment will be carried out as early as practicable in the planning stages of those projects, before irrevocable decisions are made, in accordance with*

- (a) this Act and the regulations; or*
- (b) a process for the assessment of the environmental effects of projects that is consistent with the requirements of this Act and is in effect in the foreign state where the projects are to be carried out.*

Exception

54.(3) *For greater certainty, if a federal authority will be required to exercise a power or perform a duty or function referred to in paragraph 5(1)(b) or 10.1(2)(b) — in relation to a project in respect of which an agreement or arrangement referred to in subsection (1) or (2) applies — after the essential details of the project are specified*

- (a) subsection (1) or (2), as the case may be, does not apply in respect of the agreement or arrangement; and*
- (b) section 5 or 10.1, as the case may be, applies.*

Explanation

Section 54 is linked to section 7, which states that an environmental assessment is not required at the time a federal authority provides financial assistance *if* the essential details of the project(s) expected to receive funding are not known.

When these transfers of block funding occur, subsection 54(2) requires the federal government or federal authority to ensure to the extent possible that the agreement or arrangement transferring the funds provides for the conduct of an environmental assessment in accordance with the Act or regulations, or with a foreign environmental assessment process that is consistent with the requirements of the Act, once the essential details of the project are known.

This clause is applicable when:

- the federal government or a federal authority enters into an agreement with a government or other entity to provide financial assistance for projects outside Canada and outside federal lands; and
- the essential details of such projects are not specified.

The amendments add a reference to the new funding trigger in paragraph 10.1(2)(b) that would operate if separate regulations were in place for the Canadian International Development Agency.

Subsection 54(3) states that measures in 54(2) do not apply to an agreement or arrangement which calls for the funding to be provided only after the essential details of the projects are specified. In other words, if the federal authority will be involved in decisions about the projects supported by the block funding, then the requirements of the Act and its regulations would apply.

The amendments add a reference to section 10.1 which provides for a regulatory regime that would apply to projects funded by the Canadian International Development Agency.

Rationale

Amendments were made to this section to increase clarity and to reflect new sections in the Act that provide authority to create a special environmental assessment regime for the Canadian International Development Agency.

2.7 The Canadian Environmental Assessment Registry

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Canadian Environmental Assessment Registry”.

Contents The table below identifies the sections of the Act under the heading “Canadian Environmental Assessment Registry” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See...	
	Act	Guide Page
2.7.1 Establishment of Registry	55(1) - 55(3)	131
2.7.2 Internet Site Maintenance and Contents	55.1	133
2.7.3 Contributions of Records to Internet Site	55.2, 55.3	137
2.7.4 Project Files	55.4	139
2.7.5 General	55.5, 55.6	141

2.7.1 Establishment of Registry

Act references 55(1), 55(2), 55(3)

Amendments Section 55 and the heading before it are replaced by the following:

CANADIAN ENVIRONMENTAL ASSESSMENT REGISTRY

Establishment of Registry

Canadian Environmental Assessment Registry

55.(1) For the purpose of facilitating public access to records relating to environmental assessments and providing notice in a timely manner of the assessments, there shall be a registry called the Canadian Environmental Assessment Registry, consisting of an Internet site and project files.

Right of access

55.(2) The Registry shall be operated in a manner to ensure convenient public access to it. This right of access to the Registry is in addition to any right of access provided under any other Act of Parliament.

Copy

55.(3) For the purpose of facilitating public access to records included in the Registry, in the case of a screening or comprehensive study, the federal environmental assessment coordinator and, in any other case, the Agency shall ensure that a copy of any such record is provided in a timely manner on request.

Explanation

Section 55 previously required each responsible authority to establish and maintain a “public registry” for each project. Each registry was to contain all records and documents related to the environmental assessment. If a project was referred to a mediator or review panel, the Agency assumed responsibility for maintaining the registry until the ensuing report is submitted to the Minister.

The amendments replace this “public registry” requirement with a new section 55 which calls for the establishment and maintenance of a new registry, called the “Canadian Environmental Assessment Registry” (the Registry).

New subsection 55(1) outlines that the Canadian Environmental Assessment Registry consists of:

- a government-wide Internet site of project information; and
- project files, formerly called “public registries” in the original Act.

The purpose of the new Registry is to:

- provide notice in a timely manner of the environmental assessments to be carried out; and
- facilitate public access relating to such assessments.

New subsection 55(2) clarifies that the right of access to the Act is in addition to any access provided under another act of Parliament.

For example, individuals requesting documents under the Act cannot be required to go through the process established by the *Access to Information Act*.

New subsection 55(3) requires that, depending on the type of assessment, the Agency or the federal environmental assessment coordinator must ensure that copies of records from the registry are provided in a timely manner in response to public requests.

Rationale

The new Canadian Environmental Assessment Registry addresses the need to:

- retain current requirements for convenient public access to environmental assessment records and information;
- use the Internet site as a means of public notification;
- provide public access to environmental assessment information in a user-friendly and timely manner, in both official languages, consistent with the Government of Canada’s commitment to provide more services to Canadians on-line;
- promote greater public use of the registry;
- encourage the availability of important documents in electronic format; and
- obtain basic information to support the quality assurance program for environmental assessments.

Related guidance

See the guide entitled: [Canadian Environmental Assessment Registry](#).

2.7.2 Internet Site Maintenance and Contents

Act references 55.1(1), 55.1(2), 55.1(3)

Amendments Section 55 is replaced, in part, by the following:

Internet Site

Establishment and maintenance

55.1(1) *The Agency shall, in accordance with this Act and the regulations, establish and maintain an Internet site to be generally accessible through what is commonly referred to as the Internet.*

Contents

55.1(2) *Subject to subsection 55.5(1), the Internet site shall include*

- (a) within 14 days after the commencement of an environmental assessment, notice of its commencement, except where a class screening report is used under subsection 19(5) or (6);*
- (b) an agreement contemplated by subsection 12.4(3);*
- (c) a description of the scope of the project in relation to which an environmental assessment is to be conducted, as determined under section 15;*
- (d) a statement of the projects in respect of which a class screening report is used under subsection 19(5) or (6);*
- (e) any declaration referred to in subsection 19(4) and the report to which it relates or a description of how a copy of the report may be obtained, and any declaration referred to in subsection 19(9);*
- (f) notice of termination of an environmental assessment by a responsible authority under section 26;*
- (g) notice of termination of an environmental assessment by the Minister under section 27;*
- (h) any public notices that are issued by responsible authorities or the Agency to request public input into an environmental assessment;*
- (i) notice of a decision of the Minister to refer a project under paragraph 21.1(1)(a);*

- (j) *where the responsible authority, in accordance with subsection 18(3), gives the public an opportunity to participate in the screening of a project or where the Minister, under paragraph 21.1(1)(a), refers a project to the responsible authority to continue a comprehensive study, a description of the factors to be taken into consideration in the environmental assessment and of the scope of those factors or an indication of how such a description may be obtained;*
- (k) *the screening or comprehensive study report taken into consideration by a responsible authority for the purpose of a decision under section 20 or 37 or a description of how a copy of the report may be obtained, except where a class screening report is used under subsection 19(5) or (6);*
- (l) *an environmental assessment decision statement under subsection 23(1) and any request made under subsection 23(2);*
- (m) *notice of the referral of a project to a mediator or review panel;*
- (n) *the terms of reference of a mediation or a review panel;*
- (o) *if the Minister has ordered the conclusion of a mediation under subsection 29(4), notice of the order;*
- (p) *a report of a mediator or review panel or a summary of the report;*
- (q) *a response under paragraph 37(1.1)(a) to the report of a mediator or review panel;*
- (r) *except where a class screening report is used under subsection 19(5) or (6), the decision of a responsible authority, made under section 20 or 37 concerning the environmental effects of the project, and a statement of any mitigation measures the implementation of which the responsible authority took into account in making its decision;*
- (s) *a notice stating whether or not, pursuant to subsection 38(1), a follow-up program for the project is considered appropriate;*
- (t) *a description summarizing any follow-up program and its results or an indication of how a full description of the program and its results may be obtained;*
- (u) *any other information that the responsible authority or the Agency, as the case may be, considers appropriate, including information in the form of a list of relevant documents in which case a description of how they may be obtained shall be provided; and*
- (v) *any other record or information prescribed under paragraph 59(h.1)*

Form and manner of Internet site

55.1(3) *The Agency shall determine and notify the public*

- (a) what the form of the Internet site is to be and how it is to be kept;*
- (b) how records and information are to be included in it;*
- (c) what information must be contained in any record referred to in subsection (2);*
- (d) what records and information are to be included in the Internet site, in addition to any record referred to in subsection (2);*
- (e) when information must be included in the Internet site;*
- (f) when information may be removed from the Internet site; and*
- (g) how access to the Internet site is to be provided.*

Explanation

Clauses 55.1 to 55.3 deal with the Internet site component of the Registry.

New subsection 55.1(1) requires the Agency to establish and maintain an Internet site.

The Internet site replaces the voluntary Federal Environmental Assessment Index that had been established by the Canadian Environmental Assessment Agency.

Contents of the Internet site

New subsection 55.1(2) lists the type of information that must be included in the Internet site.

Examples of information that must be included in the Internet site are:

- a notice of the commencement, within two weeks except where a class screening report is used;
- a description of the scope of the project;
- a statement of the projects, on a quarterly basis, in relation to which a class screening report is used;
- a notice of termination where the responsible authority has decided against allowing the project to proceed, or it is withdrawn by the proponent;
- a notice of the Minister's decision to refer a project back to the responsible authority for continuation of the comprehensive study;
- where there is to be public participation, a description of the factors to be taken into account and the scope of those factors, or an indication of how such a description may be obtained;
- the screening or comprehensive study report (or how to obtain a copy of the report), except where a class screening report is used;
- the terms of reference of a mediation or review panel;

- the response, as approved by the Governor in Council, to the report of a mediator or review panel;
- a notice of whether follow-up is considered appropriate; and
- a summary of the follow-up program that was instituted and its results, or how to obtain a full description of the program and its results.

The list under new subsection 55.1(2) is not exhaustive. Under new paragraph 55.1(2)(v), the Agency or responsible authority is empowered to include in the Registry any other information considered appropriate. This could include information in the form of a list of relevant documents and where such documents may be obtained.

Any other record or information may also be required by regulations made under new paragraph 59(h.1).

Form of the Internet site

Under new subsection 55.1(3), the Agency has the authority to determine:

- the form of the Internet site and the manner in which it is to be kept;
- how the records are to be included in it;
- the information that must be contained in the records that must be included in the Registry;
- records and information in addition to those listed in subsection 55.1(2);
- when such information must be included and when it may be removed; and
- how the Internet site is to be accessed.

Rationale

The new government-wide mandatory Internet site is intended to provide:

- convenient public access to information about federal environmental assessments; and
- timely public notification about the commencement of an environmental assessment and opportunities for public participation.

Related guidance

See the guide entitled: [Canadian Environmental Assessment Registry](#).

2.7.3 Contributions of Records to Internet Site

Act references 55.2(1), 55.2(2), 55.3(1), 55.3(2), 55.3(3)

Amendments Section 55 is replaced, in part, by the following:

Duty to contribute records – Agency

55.2(1) *The Agency shall ensure that the records referred to in paragraphs 55.1(2)(b), (e), (i) and (l) are included in the Internet site.*

In the case of mediation or review panel

55.2(2) *The Agency shall, in the case of a mediation or an assessment by a review panel, ensure that the records referred to in paragraphs 55.1(2)(c), (g), (h), (m), (n), (o), (p), (q) and (u) and any record or information referred to in paragraph 55.1(2)(v) are included in the Internet site.*

Duty to contribute records – responsible authorities

55.3(1) *A responsible authority shall ensure that the records referred to in paragraphs 55.1(2)(a), (f), (j), (k), (r), (s) and (t) and, in the case of a screening or a comprehensive study, the records referred to in paragraphs 55.1(2)(c), (h) and (u) and any record or information referred to in paragraph 55.1(2)(v), are included in the Internet site.*

Statement – paragraph 55.1(2)(d)

55.3(2) *A responsible authority shall ensure that the statement referred to in paragraph 55.1(2)(d) is included in the Internet site every three months or with any other greater frequency to which it agrees with the Agency.*

Time for inclusion of report

55.3(3) *A screening report referred to in paragraph 55.1(2)(k) or a description of how a copy of it may be obtained shall be included in the Internet site not later than the decision referred to in paragraph 55.1(2)(r) that is based on the report, unless otherwise authorized by the Agency.*

Explanation	<p>New section 55.2 identifies the types of records that the Agency must ensure are included in the Internet site.</p> <p>New section 55.3 sets out the types of records that a responsible authority must ensure are included in the Internet site.</p> <p>Note that, under new subsection 55.3(2), a responsible authority is required to ensure that, every three months or with greater frequency that is agreed to with the Agency, a statement is included in the Internet site of the projects for which a class screening report is used.</p> <hr/>
Rationale	<p>The duty to contribute records corresponds to the specific roles of the Agency and responsible authorities for the different types of assessment.</p> <hr/>
Related guidance	<p>See the guide entitled: Canadian Environmental Assessment Registry.</p> <hr/>

2.7.4 Project Files

Act references 55.4(1), 55.4(2)

Amendments Section 55 is replaced, in part, by the following:

Project Files

Establishment and maintenance

55.4(1) *In respect of every project for which an environmental assessment is conducted, a project file shall be established and maintained, in accordance with this Act and the regulations,*

- (a) by the responsible authority from the commencement of the environmental assessment until any follow-up program in respect of the project is completed; and*
- (b) where the project is referred to a mediator or a review panel, by the Agency from the appointment of the mediator or the members of the review panel until the report of the mediator or review panel is submitted to the Minister.*

Contents of project file

55.4(2) *Subject to subsection 55.5(1), a project file shall contain all records produced, collected or submitted with respect to the environmental assessment of the project, including*

- (a) all records included in the Internet site;*
 - (b) any report relating to the assessment;*
 - (c) any comments filed by the public in relation to the assessment;*
 - (d) any records relating to the need for, design of or implementation of any follow-up program; and*
 - (e) any documents requiring mitigation measures to be implemented.*
-

Explanation New section 55.4 governs the part of the Registry to be contained in project files. These are the hard copy records that must be maintained under the Act.

These amendments retain requirements for providing convenient public access to project records and documents. The term “project files” replaces “public registry”.

A project file must be maintained by the responsible authority for every environmental assessment undertaken until any follow-up aspect of it is completed.

Also, where the project is referred to a mediator or review panel, the project file must be maintained until the report is submitted to the Minister. In these cases, the Agency will be required to provide copies of documents in the Registry, including documents that are part of the project files, in response to public requests.

Contents of the project files

Under subsection 55.4(2), the project file must contain all records produced, collected or submitted in relation to an environmental assessment, including all records included in the Internet site, any reports or public comments, and any records relating to mitigation measures or follow-up programs.

Rationale

Integrates public registry requirements in the original Act with new obligations related to the Internet site.

Related guidance

See the guide entitled: [Canadian Environmental Assessment Registry](#).

2.7.5 General

Act references 55.5(1), 55.5(2), 55.5(3), 55.6

Amendments Section 55 is replaced, in part, by the following:

General

Categories of information that may be made publicly available

55.5 (1) *The Registry shall contain a record, part of a record or information only if*

- (a) it has otherwise been made publicly available; or*
- (b) the responsible authority, in the case of a record under its control, or the Minister, in the case of a record under the Agency's control,*
 - (i) determines that it would have been disclosed to the public in accordance with the Access to Information Act if a request had been made in respect of that record under that Act at the time the record came under the control of the responsible authority or the Agency, including any record that would be disclosed in the public interest pursuant to subsection 20(6) of that Act, or*
 - (ii) believes on reasonable grounds that it would be in the public interest to disclose it because it is required for the public to participate effectively in the environmental assessment— other than any record the disclosure of which would be prohibited under section 20 of the Access to Information Act.*

Applicability of sections 27, 28 and 44 of Access to Information Act to third party information

55.5(2) *Sections 27, 28 and 44 of the Access to Information Act apply to any information described in subsection 27(1) of that Act that the Agency or a responsible authority intends be included in the Registry with any modifications that the circumstances require, including the following:*

- (a) the information is deemed to be a record that the head of a government institution intends to disclose; and*
- (b) any reference to the person who requested access shall be disregarded.*

Deemed application

55.5(3) *This section applies with respect to a responsible authority that is a parent Crown corporation but is not a government institution within the meaning of the Access to Information Act as if it were such a government institution.*

Protection from civil proceeding or prosecution

55.6 *Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against a responsible authority, the Agency or the Minister, or against any person acting on behalf of them or under their direction, or against a director or officer of a Crown corporation to which this Act applies and no proceedings lie against the Crown, the Agency or any responsible authority, for the disclosure in good faith of any record or any part of a record pursuant to this Act or for any consequences that flow from that disclosure or for the failure to give any notice required under section 27 or 28 of the Access to Information Act if reasonable care is taken to give the required notice.*

Explanation

These amendments prohibit the inclusion in the Canadian Environmental Assessment Registry of any third party information that would not be disclosed if a request were made under the *Access to Information Act*.

New subsection 55.5(1) requires the Agency or the responsible authority to ensure that confidential third party information is not included in the Registry unless otherwise permitted under the *Access to Information Act*. In doing so, it adopts the definition of “third party information” from section 20 of the *Access to Information Act*.

Third party information

Third party information subject to non-disclosure, within the meaning of section 20 of the *Access to Information Act*, includes:

- trade secrets of a third party;
- financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and treated consistently in a confidential manner by the third party;
- information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or
- information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

New subsection 55.5(2), makes sections 27, 28 and 44 of the *Access to Information Act* apply to the third party information that the Agency or responsible authority intends to include in the Registry.

These sections require that the relevant government institution:

- give notice of its intention to disclose the prescribed third party information;
- provide the third party with an opportunity to make representations; and
- where it is decided to disclose the information, inform the third party that he or she may apply for judicial review.

Protection from civil proceeding or prosecution

New section 55.6 revises previous subsection 55(6).

This section protects the listed parties from being sued or prosecuted under the *Access to Information Act*. The Agency and directors or officers of Crown corporations have been added to the list of those bodies protected from criminal or civil actions in recognition of their new duties and responsibilities associated with the Canadian Environmental Assessment Registry.

It also disallows proceedings to be taken against the Crown or a responsible authority:

- for the disclosure in good faith of any record or part of a record under this Act (including any consequences flowing from the disclosure); or
- for failure to give any notice required under section 27 or any other provision of the *Access to Information Act* if reasonable care is taken to give the required notice.

It also limits the protection afforded for failure to give notice under “section 27 or any other provision” of the *Access to Information Act* to breaches involving “sections 27 or 28” only, as opposed to “any other provision” of the Act.

Rationale

By clarifying the restrictions on third party information, the change will make it easier for responsible authorities to meet their Canadian Environmental Assessment Registry obligations while ensuring that no inappropriate information is inadvertently released.

It also addresses concerns that some responsible authorities required individuals to go through the lengthier process under the *Access to Information Act* when requesting documents related to the environmental assessment of projects under the Act.

**Related
guidance**

See the guide entitled: [*Canadian Environmental Assessment Registry*](#).

2.8 Relevant Information

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Relevant Information”.

Contents The table below identifies the sections of the Act under the heading “Relevant Information” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See...	
	Act	Guide Page
2.8.1 Statistical Summary and Other Relevant Information	56	147
2.8.2 Information for the Quality Assurance Program	56.1	148

2.8.1 Statistical Summary and Other Relevant Information

Act reference

56

Amendment

The heading “Statistical Summary” before section 56 is replaced with the following:

RELEVANT INFORMATION

Explanation

The amendment replaces the current heading “Statistical Summary” with a new heading, “Relevant Information”.

Rationale

The amendment to the heading reflects the fact that additional data may have to be supplied under new section 56.1, above and beyond the yearly statistical summary of environmental assessments and related decisions that responsible authorities are required to prepare under current section 56.

2.8.2 Information for the Quality Assurance Program

Act reference 56.1

Amendment The Act is amended by adding the following after section 56.

Information required in support of quality assurance program

56.1 *Federal authorities and persons and bodies referred to in sections 8 to 10 shall, if requested to do so by the Agency, provide the Agency with any information respecting the assessments whose conduct they ensure under this Act that the Agency considers necessary in support of a quality assurance program that it establishes.*

Explanation This amendment creates a new section 56.1.

This section requires federal authorities and other specified persons or bodies to provide to the Agency information about the environmental assessments which they must ensure are conducted under the Act.

The other “persons and bodies” are entities identified in sections 8 to 10 that could be required to do assessments if the relevant regulations are in place. These bodies include:

- Crown corporations that are not federal authorities (subsection 8(1));
 - harbour commissions and port authorities (section 9);
 - prescribed authorities (section 9.1); and
 - band councils covered by the *Indian Act*.
-

Rationale The obligation to provide the Agency with information corresponds to an amendment adding paragraph 63(2)(g) which gives the Agency authority to request the information that will be necessary to evaluate and analyze assessments conducted by federal authorities and bodies subject to regulations.

2.9 Administration

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Administration”.

Contents The table below identifies the sections of the Act under the heading “Administration” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See... Act	Guide Page
Minister’s Powers		
2.9.1 Authority to Make <i>Comprehensive Study List Regulations</i>	58(1) 59(d)	151
2.9.2 Participant Funding in a Comprehensive Study	58(1.1)	152
Regulations		
2.9.3 Amendments to the <i>Federal Coordination Regulations</i>	59(a.1)	154
2.9.4 Authority to Make Minor Projects Regulations	59(c)	155
2.9.5 Exclusions for Crown Corporations and CIDA	59(c.1)	156
2.9.6 Law List Regulations	59(f)	157
2.9.7 Regulations for Dissemination of Information	59(h)-(h.3)	158
2.9.8 Projects Outside Canada Regulations	59(i)	160
2.9.9 Regulations for Crown Corporations	59(j)	162
2.9.10 Regulations for Harbour Commissions and Canada Port Authorities	59(k)(k.1-k.2)	164
2.9.11 Regulations for “Prescribed Authorities”	59(k)(k.3-k.5)	166
2.9.12 Regulations for Band Councils	59(l)(l.001)	168
2.9.13 Regulations for the Canadian International Development Agency	59(l.01), (l.02)	169
2.9.14 Regulations for the Requirement of Public Participation in Screenings	59(l.03)	171

2.9.1 Authority to Make *Comprehensive Study List Regulations*

Act references 58(1)(i), 59(d)

Amendments Subsection 58(1) is amended by striking out the word “and” at the end of paragraph (g), by adding the word “and” at the end of paragraph (h) and by adding the following after paragraph (h):

58.(1)(i) make regulations prescribing any project or class of projects for which a comprehensive study is required where the Minister is satisfied that the project or any project within that class is likely to have significant adverse environmental effects.

Paragraph 59(d) of the Act is repealed.

Explanation Section 58 of the Act sets out the Minister’s powers.

The amendments create a new ministerial power to make regulations prescribing projects for which a comprehensive study is required, where the Minister is satisfied that the class of projects is likely to have significant adverse environmental effects.

This power is currently among the list of Cabinet regulation-making powers set out in paragraph 59(d) of the Act; however, that provision is repealed under the amendments.

Thus, the amendments transfer authority for making the *Comprehensive Study List Regulations* from the Governor in Council to the Minister of the Environment.

Rationale Streamlines the process of making amendments to these Regulations that have been in place since 1995.

2.9.2 Participant Funding in a Comprehensive Study

Act reference 58(1.1)

Amendment Subsection 58(1.1) is replaced by the following:

Participant funding

58.(1.1) *For the purposes of this Act, the Minister shall establish a participant funding program to facilitate the participation of the public in comprehensive studies, mediations and assessments by review panels established under either subsection 33(1) or 40(2).*

Explanation Previous subsection 58(1.1) required the Minister to establish a participant funding program to facilitate the public's participation in mediations and assessment by a review panel.

The amendments expand this program by extending participant funding to comprehensive studies. The amendment also clarifies that the participant funding program applies to joint assessment by a review panel as well.

The program is administered by the Canadian Environmental Assessment Agency.

Key procedures After the Minister of the Environment makes the decision on the assessment track, the availability and level of participant funding will be announced.

Application forms for funding will be available through the Canadian Environmental Assessment Agency's Web site and in hardcopy format from the Agency's offices.

Funding applications will be reviewed by a committee chaired by an Agency staff member and two independent members. The committee will make recommendations to the Agency President, who will be responsible for the final decisions on funding awards.

Rationale Participant funding will support substantive public involvement in comprehensive studies.

**Related
guidance**

See guide entitled: [*Comprehensive Studies*](#).

2.9.3 Amendments to the *Federal Coordination Regulations*

Act reference 59(a.1)

Amendment Section 59 is amended by adding the following after paragraph (a):

59.(a.1) respecting the duties and functions of the federal environmental assessment coordinator, and respecting the selection or designation of the coordinator;

Explanation New paragraph 59(a.1) is added, which provides authority to mark regulations regarding the duties and functions of the “federal environmental assessment coordinator”, as well as the selection and designation of the coordinator.

Changes have been proposed to the *Federal Coordination Regulations* using authority in paragraph 59(a.1) to reflect the new roles and responsibilities of the federal environmental assessment coordinator.

Rationale This authority provides an opportunity to set in regulation details respecting the role and responsibilities of the federal environment assessment coordinator.

Related guidance See guide entitled: [Federal Coordination: An Overview](#).

2.9.4 Authority to Make Minor Projects Regulations

Act reference

59(c)

Amendment

Paragraph 59(c) of the Act is replaced by the following:

59.(c) exempting any projects or classes of projects from the requirement to conduct an assessment under this Act that

- (i) in the opinion of the Governor in Council, ought not to be assessed for reasons of national security,*
- (ii) in the case of projects in relation to physical works, in the opinion of the Governor in Council, have insignificant environmental effects, or*
- (iii) have a total cost below a prescribed amount and meet prescribed environmental conditions;*

Explanation

The conditions in paragraph 59(c) under which projects or classes of projects may be exempted from having to undergo an environmental assessment have been revised.

Notably, new paragraph 59(c) deletes the former reference to excluded projects where the contribution of the federal authority was “minimal” in relation to the overall project.

The amendment provides authority for the Governor in Council to make regulations to exclude projects from environmental assessment where:

- the total cost of the projects or classes of projects is below an amount set in the regulations; and
 - environmental conditions included in the regulations are met.
-

Rationale

Regulations may be necessary to exclude projects below a cost threshold so that responsible authorities can focus resources on projects that may have adverse environmental effects, rather than having to address smaller, routine projects known to have inconsequential effects.

The concept of a “minimal federal contribution” under the previous provision proved to be unworkable. The new provision would ensure that important environmental conditions, such as species at risk and critical habitat considerations, are addressed within any regulations.

2.9.5 Exclusions for Crown Corporations and CIDA

Act reference 59(c.1)

Amendment Section 59 is amended by the addition of the following after paragraph 59(c):

59.(c.1) exempting, in replacement of exemptions made under paragraph (c), in relation to any Crown corporation to which this Act applies or in relation to the Canadian International Development Agency, any projects or classes of projects to be carried out outside Canada and any federal lands from the requirement to conduct an environmental assessment under this Act that

- (i) in the opinion of the Governor in Council, ought not to be assessed for reasons of national security,*
- (ii) in the case of projects in relation to a physical work, in the opinion of the Governor in Council, have insignificant environmental effects, or*
- (iii) have a total cost below a prescribed amount and meet prescribed environmental conditions;*

Explanation New paragraph 59(c.1) allows for the creation of a separate exclusion list that would apply to the Canadian International Development Agency and Crown corporations for projects outside Canada and any federal lands.

The projects or classes of projects that can be excluded are those to be carried out outside Canada and any federal lands, under the following conditions:

- the projects should not be assessed for reasons of national security;
 - the projects relate to a physical work and have insignificant environmental effects; or
 - the projects have a total cost below a prescribed amount and they meet prescribed environmental conditions.
-

Rationale The assessment of projects outside Canada faces special constraints and challenges, such as the need to respect the sovereignty and cultural setting of foreign states, the availability of information and the nature of development assistance programs. By providing for separate *Exclusion List Regulations*, this paragraph recognizes that the exclusions that apply to projects in Canada may not be relevant or appropriate for projects outside Canada involving the Canadian International Development Agency or Crown corporations.

2.9.6 Law List Regulations

Act reference 59(f)

Amendment Paragraph 59(f) of the Act is replaced by the following:

59.(f) prescribing, for the purposes of paragraph 5(1)(d), the provisions of any Act of Parliament or any instrument made under an Act of Parliament;

Explanation This paragraph provides authority for the *Law List Regulations*. These regulations create a list of decisions in specific statutes and regulations that cannot be made until an environmental assessment has been completed.

The amendment replaces the term “regulation” with “any instrument” made under an Act of Parliament. This change broadens the scope of the *Law List Regulations* to potentially include authorizations issued by Crown corporations.

Examples When the Department of Fisheries and Oceans receives an application for a permit under subsection 35(2) of the *Fisheries Act*, it must first ensure that an environmental assessment of the proposed project is conducted before deciding whether to issue the permit.

An example of an authorization by a Crown corporation would be when the National Capital Commission provides consent for the construction of a private road.

Rationale The amendment corresponds to changes that add parent Crown corporations to the definition of federal authority three years following the royal assent of Bill C-9 on June 11, 2003.

2.9.7 Regulations for Dissemination of Information

Act reference 59(h)-(h.3)

Amendment Paragraph 59(h) of the Act is replaced by the following:

59.(h) respecting the dissemination by responsible authorities of information relating to projects and the environmental assessment of projects and the establishment, maintenance and operation of project files referred to in section 55.4, including facilities to enable the public to examine physical or electronic records contained in the files, the time and manner in which those records may be examined or copied by the public and the transfer and retention of those records after the completion of any follow-up program;

(h.1) prescribing records or information to be included in the Internet site by the Agency or a responsible authority;

(h.2) respecting the charging of fees for providing copies of documents contained in the Registry;

(h.3) for the purposes of subsection 38(1) or (2) or 53(1), prescribing the manner of designing a follow-up program;

Explanation Paragraph 59(h) deals with the information disseminated in the Registry and is replaced by a series of regulations — 59(h) to (h.3) — dealing with the two parts of the Canadian Environmental Assessment Registry (Internet site and project files).

These paragraphs from the original Act which applied to “public registries” have been modified to reflect “project file” component of the Registry.

These paragraphs provide authority to make regulations to govern:

- the records to be included in the project files and Internet site;
- facilities for the public to review the project files; and
- the charging of fees for copies of documents.

Paragraph 59(h.3) provides new authority to make regulations prescribing the manner of designing a follow-up program.

Rationale

The amendments reflect the two components of the Registry: project files and the Internet site.

The new paragraph for potential follow-up regulations corresponds to the increased emphasis on follow-up programs, such as the mandatory requirements for follow-up programs after a comprehensive study, mediation or review panel.

2.9.8 Projects Outside Canada Regulations

Act references 59(i)(ii), 59(i.1), 59(i.2)

Amendments Subparagraph 59(i) of the Act is replaced by the following:

59(i)(ii) projects to be carried out outside Canada and either outside of federal lands or on federal lands described in paragraph (a) of the definition “federal lands” in subsection 2(1),

59.(i.1) prescribing, in the case of projects that are to be carried out outside Canada and any federal lands and that are subject to an environmental assessment whose conduct a Crown corporation to which this Act applies must ensure, in prescribed circumstances or on any prescribed terms and conditions,

(i) federal authorities that, notwithstanding subsection 5(1), are not required to conduct environmental assessments of those projects, and

(ii) federal authorities for whom the requirements under this Act in respect of those projects, other than those set out in subsections 20(1) and 37(1), are deemed to be satisfied by the environmental assessment of those projects whose conduct the Crown corporation ensures;

59.(i.2) for the purposes of subparagraph (i.1)(ii), varying subsection 20(1) or 37(1) in its application to federal authorities prescribed under that subparagraph in the case of projects that are to be carried out outside Canada and outside any federal lands;

Explanation Paragraph 59(i) empowers Cabinet to make regulations varying or excluding any requirement of the Act’s environmental assessment process to adapt the process in certain circumstances.

Subparagraph 59(i)(ii) covers projects to be carried on outside Canada and any federal lands. The amendments replace the wording of that sub-clause to include in it federal lands described in the paragraph 2(1)(a) definition of “federal lands”.

This change empowers Cabinet to make regulations varying or exempting the environmental assessment process for projects outside Canada or lands owned or controlled by the federal government.

New paragraph 59(*i.1*) is added, and applies to projects to be carried out outside Canada and any federal lands, which are subject to an assessment by a Crown corporation under the Act.

This new paragraph allows regulations to be made prescribing, in specified circumstances and on any specified terms and conditions:

- the federal authorities that are not required to conduct an assessment of such projects to be carried out outside Canada and any federal lands; and
- the federal authorities for whom the requirements under the Act are deemed to be satisfied by the assessment carried out by the Crown corporation in accordance with new section 8.

New paragraph 59(*i.2*) authorizes the development of additional regulations to vary the decision-making powers of the foregoing federal authorities under subsection 20(1) and new subsection 37(1) for projects outside Canada.

Rationale

The amendments recognize the unique circumstances associated with the assessment of projects outside Canada.

2.9.9 Regulations for Crown Corporations

Act reference 59(j)

Amendments Paragraph 59(j) of the Act is replaced by the following:

59.(j) for the purposes of section 8, designating Crown corporations that are not federal authorities individually or by class and respecting the manner in which those corporations or classes of corporations conduct environmental assessments of, and follow-up programs for, projects, as well as any action to be taken in respect of projects during the assessment process, which manners and actions may vary by corporation or class of corporation;

(j.1) for the purposes of section 8, respecting the application to a Crown corporation that is designated, or is a member of a class that is designated, under a regulation made under paragraph (j) of the laws from time to time in force in any province;

(j.2) varying or excluding any procedure or requirement of this Act or the regulations as it applies to Crown corporations that are federal authorities, individually or by class;

(j.3) for projects to be carried out outside Canada and any federal lands, prescribing, in relation to Crown corporations to which this Act applies, any physical activity or class of physical activities in replacement of those prescribed under paragraph (b);

Explanation New paragraph 59(j) modifies current paragraph 59(j) with respect to environmental assessments by Crown corporations.

New paragraph 59(j) authorizes regulations to be made:

- designating Crown corporations that are not federal authorities, either individually or by class; and
- prescribing the manner in which such corporations are to carry out environmental assessments and follow-up programs, as well as any action to be taken regarding projects during the assessment process.
(Regulations developed under this heading may vary by corporation or class of corporation. Authority is also provided to make regulations regarding the application of provincial laws.)

Three new paragraphs are added regarding Crown corporations.

New paragraph 59(*j.1*) authorizes regulations to be made prescribing, in replacement to any counterpart (Inclusion List) regulations that may be made under current paragraph 59(*b*), the physical activities or classes of physical activity for which an environmental assessment must be carried out by the corporations that have been designated by regulations under new paragraph 59(*j*).

New paragraph (*j.2*) provides authority to vary or exclude, through regulations, any procedure or requirement of the Act for Crown corporations. This will allow for the development of a tailored process that takes into account the unique circumstances and competitive situations of specific Crown corporations or classes of Crown corporations. If regulations are not made under this paragraph, a Crown corporation would be subject to the same requirements in the Act that apply to other federal authorities.

New paragraph (*j.3*) provides new authority to create the separate Inclusion List in a regulatory regime that applies to Crown corporation projects outside of Canada. The Inclusion List requires an assessment of proposed activities that do not relate to a physical work and therefore would not normally be considered a “project” under the Act.

Rationale

Parent Crown corporations will become federal authorities three years after royal assent of Bill C-9. The amendment allows for the environmental assessment process to be tailored to Crown corporations through regulations. If regulations are not in force, parent Crown corporations are covered under the Act in the same manner as other federal authorities.

The revisions accommodate the amendments to new section 8 and enable the establishment, through regulation, of an assessment regime for wholly-owned subsidiaries of Crown corporations.

The provisions ensure that appropriate projects involving Crown corporations are covered by the Act, in a manner that respects their special circumstances.

2.9.10 Regulations for Harbour Commissions and Canada Port Authorities

Act reference 59(k), (k.1), (k.2)

Amendments 59.(k) *for the purposes of section 9, respecting the manner of conducting environmental assessments of, and follow-up programs for, projects, as well as any action to be taken in respect of projects during the assessment process and, for those purposes, respecting the application of the laws from time to time in force in any province;*

(k.1) *prescribing the provisions of any Act of Parliament or any regulation made pursuant to an Act of Parliament that confer powers, duties or functions on a person or body referred to in subsection 9(1), the exercise or performance of which requires an environmental assessment under paragraph 9(2)(d);*

(k.2) *prescribing the circumstances in which an environmental assessment of a project to be carried out in whole or in part on federal lands must be conducted under paragraph 9(2)(e);*

Explanation Paragraph 59(k) applies to the entities (harbour commissions and port authorities, etc.) referred to in section 9.

Paragraph 59(k) authorizes regulations to be made prescribing the manner in which harbour commissions and port authorities must conduct environmental assessments and follow-up programs, as well as the manner in which any action is to be taken in relation to projects during the assessment process.

For these purposes, regulations may also be developed regarding the application of provincial laws.

The amendments delete absolute references to certain harbour commissions and their respected actions.

Two new paragraphs are also added regarding the port and harbour authorities, etc., referred to in section 9.

- New paragraph 59(k.1) provides authority for regulations to be made prescribing a regulatory “trigger” for which an environmental assessment must be carried out under new paragraph 9(2)(d), with respect to any power, duty or function conferred on the harbour and port authorities.

- New paragraph 59(k.2) authorizes regulations to be made prescribing the circumstances in which harbour and port authorities must conduct an environmental assessment under new paragraph 9(2)(e) in relation to projects to be carried out in whole or in part on federal lands managed or administered by them.
-

Rationale The provisions ensure that appropriate projects involving harbour commissions and Canada Port Authorities are covered by the Act.

Regulations Amendments have been made to the *Canada Port Authority Environmental Assessment Regulations*, originally brought into force in 1999.

2.9.11 Regulations for “Prescribed Authorities”

Act reference 59(k), (k.3), (k.4), (k.5)

Amendments *59.(k) for the purposes of section 9, respecting the manner of conducting environmental assessments of, and follow-up programs for, projects, as well as any action to be taken in respect of projects during the assessment process and, for those purposes, respecting the application of the laws from time to time in force in any province;*

(k.3) for the purpose of section 9.1, prescribing by class authorities other than federal authorities and respecting the manner in which those classes of authorities shall conduct environmental assessments of, and follow-up programs for, projects, as well as any action to be taken in respect of projects during the assessment process — which manners and actions may vary by class of authority — and, for those purposes, respecting the application of the laws from time to time in force in any province;

(k.4) prescribing the provisions of any Act of Parliament or any regulation made pursuant to an Act of Parliament that confer powers, duties or functions on an authority prescribed in regulations made under paragraph (k.3), the exercise or performance of which requires an environmental assessment under paragraph 9.1(2)(d);

(k.5) for the purposes of paragraph 9.1(2)(e), prescribing the circumstances in which an environmental assessment of a project to be carried out in whole or in part on federal lands must be conducted, and specifying the right or interest that the authority prescribed in regulations made under paragraph (k.3) must have in the federal lands;

Explanation New paragraph 59(k.3) applies to “authorities” other than federal authorities that may be required to carry out an environmental assessment under new section 9.1 if they are “prescribed” authorities.

This new paragraph 59(k.3) thus authorizes regulations to be made:

- prescribing, by class, authorities other than federal authorities for the purposes of new section 9.1; and

- prescribing the manner in which the prescribed classes of authorities must conduct environmental assessments and follow-up programs, as well as the manner in which any action is to be taken in relation to projects during the assessment process. The manner in which these matters are to be dealt with may vary by class of authority. Furthermore, for the foregoing purposes, regulations may be made regarding the application of provincial laws.

New regulatory authority, is also provided in relation to “prescribed authorities” under new paragraphs 59(*k.4*) and (*k.5*).

- New paragraph 59(*k.4*) authorizes regulations to be made prescribing as a “trigger” for which an environmental assessment must be carried out under new paragraph 9.1(2)(*d*), with respect to any power, duty or function conferred on the prescribed authority under any act of Parliament or regulation.
- New paragraph 59(*k.5*) authorizes regulations to be made specifying the circumstances in which prescribed authorities must conduct an environmental assessment under new paragraph 9.1(2)(*e*) regarding projects to be carried out in whole or in part on federal lands managed or administered by them or in relation to which they have any right or interest. Regulations may also be made specifying the right or interest that these authorities must have in relation to such lands.

Rationale

The provisions ensure that appropriate projects involving non-governmental prescribed authorities operating on federal lands, such as National Airport System Airport Authorities, can be covered by the Act.

2.9.12 Regulations for Band Councils

Act reference 59(l) - (l.001)

Amendment *59.(l) for the purposes of section 10, designating bands individually or by category and respecting the manner of conducting environmental assessments of, and follow-up programs for, projects that are to be carried out in whole or in part on a reserve that is set apart for the use and benefit of a designated band and that is subject to the Indian Act, as well as any action to be taken in respect of projects during the assessment process, which manners and actions may vary by band or category of band;*

(l.001) prescribing, for the purposes of paragraph 10(1)(c), provisions of any Act of Parliament or any instrument made under an Act of Parliament that confer powers, duties or functions on a band council;

Explanation New paragraph 59(l) amends previous paragraph 59(l), which deals with the assessment of projects on Indian reserves.

New paragraphs 59(l) and (l.001) authorizes regulations to be made for the purposes of section 10:

- designating bands individually or by category; and
 - prescribing the manner in which those bands or classes of bands must carry out an environmental assessment and follow-up plan in relation to projects that are to be carried out, in whole or in part, on an Indian reserve that is set apart for the use and benefit of a designated band, as well as regulations prescribing the manner in which any action is to be taken in relation to projects during the assessment process. Regulations made in relation to the foregoing matters may vary by band or category of band.
-

Rationale The amendment provides the scope and flexibility required in the development of regulations for the assessment of projects by band councils on reserve lands where the band council has decision-making authority.

2.9.13 Regulations for the Canadian International Development Agency

Act reference 59(1.01), (1.02)

Amendments 59.(1.01) *for the purposes of section 10.1,*

- (i) varying the definition “project” in subsection 2(1),*
- (ii) respecting the manner of conducting environmental assessments of, and follow-up programs for, projects for which the Canadian International Development Agency exercises a power or performs a duty or function referred to in subsection 10.1(2) and respecting any action to be taken in respect of those projects during the assessment process,*
- (iii) providing that, in the case of a project in respect of which an agreement or arrangement entered into by the Canadian International Development Agency in accordance with subsection 54(2) applies, no environmental assessment need be carried out by that agency,*
- (iv) varying or excluding any of the provisions of section 54 in their application to the Canadian International Development Agency, or*
- (v) providing for the application of section 55.6 to the Canadian International Development Agency as if it were a responsible authority;*

59.(1.02) *varying or excluding any of the provisions of sections 55 to 55.5 in their application to the Canadian International Development Agency;*

Explanation New paragraph 59(1.01) authorizes regulations to be made for the purposes of new section 10.1, which applies exclusively to the Canadian International Development Agency (CIDA). The regulations could include:

- varying the definition of “project” in current subsection 2(1);
- the manner in which an environmental assessment and follow-up program must be carried out regarding projects in relation to which CIDA is the proponent or to which it provides financial assistance under new subsection 10.1(2), as well as regulations regarding any action to be taken with respect to those projects during the assessment process;

- exempting CIDA from having to carry out an environmental assessment in cases where an agreement or arrangement has been entered into with another jurisdiction or person under new subsection 54(2);
- varying or excluding any of the provisions of section 54 in their application to CIDA (section 54 deals with certain types of federally funded projects governed by a federal–provincial agreement or an international agreement); and
- providing for the application of section 55.4 to CIDA. This section protects specified entities from being sued or prosecuted in relation to specified matters.

New paragraph 59(1.02) authorizes regulations to be made varying or excluding any of the provisions for the new Canadian Environmental Assessment Registry (sections 55 to 55.5) in their application to CIDA.

Objectives of regulatory regime

- Maintain the core principles and requirements of the Act.
 - Provide flexibility for certain requirements, such as the posting of information on the Internet site of the Canadian Environmental Assessment Registry, that take into account the special nature of overseas development assistance.
 - Include the assessment of environmental effects for some types of projects, such as tourism promotion programs, not normally assessed by federal authorities within Canada.
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Rationale

Assessments of overseas development assistance confront special constraints and challenges, such as the need to respect the sovereignty and cultural setting of foreign states.

The provisions ensure that appropriate projects involving CIDA undergo an environmental assessment, while recognizing the unique circumstances associated with providing overseas development assistance.

2.9.14 Regulations for the Requirement of Public Participation in Screenings

Act reference 59(1.03)

Amendments *59.(1.03) prescribing, for the purposes of subsection 18(3), circumstances in which a responsible authority shall give the public an opportunity to participate in the screening*

Explanation New paragraph 59(1.03) will allow Cabinet to make regulations prescribing circumstances in which responsible authorities will be required to allow public participation in screenings.

Rationale The original Act mentioned regulations respecting public participation in screenings in section 18, but did not include a corresponding regulation-making power in section 59. This amendment corrects that situation.

2.10 The Canadian Environmental Assessment Agency

Introduction This chapter discusses the amendments to the sections of the Act under the heading “Canadian Environmental Assessment Agency”.

Contents The table below identifies the sections of the Act under the heading “Canadian Environmental Assessment Agency” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See...	
	Act	Guide Page
2.10.1 Objects of Agency	62(e-g)	175
2.10.2 Consultation with Aboriginal Peoples on Policy Issues	62(h)	176
2.10.3 Agency Duties: Establish Quality Assurance Program	63(1)	177
2.10.4 Agency Powers: Coordinate Government Response to Review Panel’s Report	63(2)(b.1)	178
2.10.5 Agency Powers: Dispute Resolution	63(2)(f)	179
2.10.6 Agency Powers: Request for Information	63(2)(g)	180

2.10.1 Objects of Agency

Act reference	62(e-g)
Amendment	<p>Section 62 of the Act is amended by striking out the word “and” at the end of paragraph (d) and by replacing paragraph (e) with the following:</p> <p>(e) <i>to promote, monitor and facilitate compliance with this Act and the regulations;</i></p> <p>(f) <i>to promote and monitor the quality of assessments conducted under this Act;</i></p> <p>(g) <i>to ensure an opportunity for timely public participation in the environmental assessment process; and</i></p>
Explanation	<p>The amendments establish a new object of the Canadian Environmental Assessment Agency to promote, monitor and facilitate compliance with the Act and the quality of assessments conducted under the Act.</p> <p>They also create a new duty of the Agency to establish and lead a quality assurance program.</p> <p>Provide the Agency with the power to request information from federal authorities and others (e.g., port authorities, prescribed authorities, band councils) about the environmental assessments they conduct, in support of the quality assurance program.</p> <p>The amendments add the adjective “timely” to the obligation in the original Act related to ensuring opportunities for public participation.</p>
Rationale	<p>High-quality environmental assessments can contribute to better decisions in support of sustainable development, and can help build a more accountable planning process.</p> <p>Efforts to ensure high-quality environmental assessments must be founded on compliance with the Act.</p>

2.10.2 Consultation with Aboriginal Peoples on Policy Issues

Act reference 62(*h*)

Amendment The following is added after amended paragraph 62(*e*) of the Act:

62.(h) to engage in consultation with aboriginal peoples on policy issues related to this Act.

Explanation The amendment creates a new object for the Agency to consult Aboriginal peoples with respect to policy issues related to the Act.

The Agency will establish an Aboriginal advisory committee. The committee will provide advice on environmental assessment issues such as consultation during an assessment and traditional knowledge.

Rationale Aboriginal peoples have a unique role to play in many environmental assessments, particularly those involving reserve lands, and treaty and land claim areas.

The goal of this amendment and other changes to the Act is to strengthen the incorporation of Aboriginal perspectives in environmental assessment.

2.10.3 Agency Duties: Establish Quality Assurance Program

Act reference	63(1)
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Amendment	<p>Subsection 63(1) of the Act is amended by striking out the word “and” at the end of paragraph (b), by adding the word “and” at the end of paragraph (c) and by adding the following after paragraph (c):</p> <p><i>(d) establish and lead a quality assurance program for assessments conducted under this Act.</i></p>
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Explanation	<p>The amendments create a new duty of the Agency to establish and lead a quality assurance program for assessments conducted under the Act.</p> <p>Related provisions regarding the Agency’s proposed quality assurance program are contained in new section 56.1.</p> <p>The quality assurance program will operate on two levels:</p> <ul style="list-style-type: none"> • verifying that the specific requirements of the Act are being properly fulfilled; and • examining issues related to the quality of assessments, such as the use of guidance material or best practices for determining the scope of an assessment. <p>The Agency will use the results of the program to:</p> <ul style="list-style-type: none"> • refine training and guidance materials; • identify areas where responsible authorities and other federal authorities need assistance in meeting the requirements of the Act; and • promote high-quality assessments.
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Rationale	<p>High-quality environmental assessments can contribute to better decisions in support of sustainable development, and can help build a more accountable planning process.</p> <p>Efforts to ensure high-quality environmental assessments must be founded on measures to promote compliance with the Act.</p>
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2.10.4 Agency Powers: Coordinate Government Response to Review Panel's Report

Act reference	63(2)(b.1)
Amendment	<p>Subsection 63(2) is amended by adding the following after paragraph (b):</p> <p><i>63.(2)(b.1) coordinate the development of a response to a report required under paragraph 37(1.1)(a);</i></p>
Explanation	<p>This amendment provides the Agency with discretionary authority to coordinate the development of the government response to a review panel's report.</p>
Example	<p>Preparation of the government response to a review panel's report dealing with a proposed pipeline.</p> <p>Prior to the amendment, the Department of Fisheries and Oceans may have been responsible for the preparation of the government response, even though the National Energy Board (acting for the Governor in Council under subsection 5(2)), may have had more involvement in the project.</p> <p>Under the amended provision, the National Energy Board would be able to lead the preparation of the response, and the Agency could coordinate the development of the response.</p>
Rationale	<p>The new authority for the Agency responds to the need for coordination following assessment by a review panel where there may be several responsible authorities and federal authorities involved in the preparation of the government response.</p>

2.10.5 Agency Powers: Dispute Resolution

Act reference	63(2)(f)
Amendment	<p>Subsection 63(2) of the Act is amended by striking out the word “and” at the end of paragraph (d) and by adding the following after paragraph (e):</p> <p><i>63.(2)(f) assist parties in building consensus and resolving disputes; and</i></p>
Explanation	<p>The Canadian Environmental Assessment Agency gains new power to assist parties in building consensus and resolving disputes involving environmental assessments.</p> <p>Dispute resolution can cover a variety of voluntary approaches aimed at reaching common ground, including:</p> <ul style="list-style-type: none"> • mediation, outside the existing formal mediation track of assessment; • facilitation; and • unassisted negotiation. <p>The Agency could work to resolve disputes among, for example, federal authorities, proponents and members of the public.</p>
Rationale	<p>Resolving disputes involving environmental assessments outside litigation or formal bargaining can:</p> <ul style="list-style-type: none"> • result in direct savings in terms of litigation costs; • reduce delays and provide greater certainty in project planning; and • create greater public trust and accountability in the environmental assessment process. <p>Dispute resolution has a long history in public policy settings, such as family law, labour–management relations and community development. But there has been little experience with such approaches in environmental assessment in Canada.</p> <p>The new provision builds on work underway at the Canadian Environmental Assessment Agency to strengthen the use of mediation and other dispute resolution techniques.</p>

2.10.6 Agency Powers: Request for Information

Act reference	63(2)(g)
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Amendment	<p>Subsection 63(2) of the Act is amended by adding the following after new paragraph (f):</p> <p><i>(g) request federal authorities, and persons and bodies referred to in sections 8 to 10, to provide information respecting assessments that they conduct under this Act.</i></p>
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Explanation	<p>The amendments under 63(1) create a new duty of the Agency to establish and lead a quality assurance program for assessments conducted under the Act.</p> <p>This subsequent amendment to 63(2) enables the Agency to request certain federal entities to provide information regarding the assessments that they conduct under the Act. This information will be used for the quality assurance program.</p> <p>The following bodies may be requested to provide such information:</p> <ul style="list-style-type: none"> • federal authorities; • designated Crown corporations that are not federal authorities that are subject to regulations; • harbour commissions and port authorities; • prescribed authorities; and • band councils.
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Rationale	<p>This information will be necessary to evaluate and analyze assessments conducted by federal authorities and bodies subject to regulations.</p>
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2.11 Review and Transitional Provisions

Introduction This chapter discusses the amendments to the sections of the Act under the headings “Review and Report, Transitional Provision and Coming Into Force”.

Contents The table below identifies the sections of the Act under the headings “Review and Report, Transitional Provision and Coming Into Force” that have been amended, as well as where each amendment is explained in this chapter.

Topic	See...	
	Bill C-9	Guide Page
2.11.1 Review of the Act	clause 32	183
2.11.2 Transitional Provision	clause 33	184
2.11.3 Coming into Force	clause 34	185

2.11.1 Review of the Act

Reference Clause 32 of Bill C-9

Amendment *REVIEW AND REPORT*

Review

Within seven years after this Act receives royal assent, a comprehensive review of the provisions and operation of the Canadian Environmental Assessment Act shall be undertaken by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.

Report

The committee referred to in subsection (1) shall, within a year after a review is undertaken pursuant to that subsection or within such further time as may be authorized by the Senate, the House of Commons or both Houses of Parliament, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committee recommends.

Explanation This amendment will require that within seven years of the bill receiving royal assent, a comprehensive review of the provisions and operation of the Act must be undertaken by a parliamentary committee.

The committee will have one year to undertake its review and report to Parliament.

Rationale The Standing Committee on Environment and Sustainable Development that reviewed Bill C-9 believed strongly that a subsequent review of the Act would be necessary to determine if the revised process addresses problems identified in the Five Year Review.

A further review also provides an opportunity to update the Act and take advantage of developments with environmental law and policy.

2.11.2 Transition Provision

Reference	Clause 33 of Bill C-9
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Amendment	<i>Any environmental assessment or assessment of the environmental effects of a project commenced under the Canadian Environmental Assessment Act before this section comes into force shall be continued and completed as if this Act had not been enacted.</i>
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Explanation	An environmental assessment started before the amended Act is brought into force will continue under the old process, even if the amended and new provisions are brought into force at some point during the assessment.
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Rationale	<p>The “grandfathering” approach to transition:</p> <ul style="list-style-type: none"> • avoids the prospect of a change in rules and obligations in mid-assessment; and • provides greater certainty about process requirements for federal authorities, proponents and other participants. <p>A similar approach was taken in the transition period from the Environmental Assessment and Review Process Guidelines Order to the coming into force of the <i>Canadian Environmental Assessment Act</i> in 1995.</p>
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2.11.3 Coming into Force

Reference	Clause 34 of Bill C-9
Amendment	<i>The provisions of this Act, other than section 32, come into force on a day or days to be fixed by order of the Governor in Council.</i>
Explanation	The provisions of Bill C-9 come into force on a day or days to be fixed by order of the Governor in Council.
Rationale	This provides the government with the time necessary to prepare for the revised environmental assessment process.

Part 3. Key Word Index

Introduction to Part 3 Part 3 of this guide provides an index of key words related to the *Canadian Environmental Assessment Act* and information on where information on these key words may be found, both in Bill C-9 and in this guide.

Note: This index is for the purpose of identifying main amendments relating to the key terms listed below. It is not an index of the *Canadian Environmental Assessment Act* and should not be used as such. There may be additional sections related to the key terms which are not listed in the following chapter.

Contents of Part 3 The following index contains the key words listed below.

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3.1 Index by Key Words

Introduction This chapter provides details regarding where information pertaining to key words may be found, both in the amended Act and in this guide.

Aboriginal peoples and knowledge

Topic	See...	
	Act	Guide
Purpose of Act – communication and cooperation	4(1)(b.3)	2.2.3
Aboriginal traditional knowledge	16.1	2.4.1
Environmental effects on lands of federal interest	48(3)(c)	2.5.1
Notice	48(5)(f)	2.5.2
Consultation on policy issues	62(h)	2.10.2

Access to information

Topic	See...	
	Act	Guide
Publication of determinations	16.3	2.4.3
Publication of declaration – class screening	19(4)	2.4.7
Publication	19(9)	2.4.11
Establishment of Registry	55(1) - (3)	2.7.1
Information that may be made publicly available	55.5(1) - (3)	2.7.5
Protection from civil proceeding or prosecution	55.6	2.7.5
Regulations for dissemination of information	59(h)	2.9.7

Adaptive management

Topic	See...	
	Act	Guide
Follow-up programs	38(5)	2.4.35

Band councils

Topic	See...	
	Act	Guide
Definition of “federal authority”	2(1)	2.1.3
Assessments by band councils under regulations	10(1) - (2)	2.3.6
Environmental effects of projects carried out on reserve lands	48(2)	2.5.1
Environmental effects lands of federal interest – notice	48(5)(e), (g)	2.5.2
Regulations for band councils	59(l), (l.001)	2.9.12

**Canadian
Environmental
Assessment
Agency**

Topic	See...	
	Act	Guide
Duties of the Government of Canada	4(2)	2.2.5
Agency as coordinator	12.4(1) - (3)	2.3.10
Class screening reports	19(1)	2.4.6
Public notice and consideration of public comments	19(3)	2.4.7
Declaration to remove class screening report	19(8)	2.4.11
Minister's decision	21.1(1)(a)	2.4.18
Copy of records requested from Registry	55(3)	2.7.1
Establishment and maintenance of Internet site	55.1(1)	2.7.2
Contents of Internet Site	55.1(2)(h)(u)	2.7.2
Form and manner of Internet site	55.1(3)	2.7.2
Duty to contribute records – Agency	55.2(1) - (2)	2.7.3
Statement and time for inclusion of report	55.3(2) - (3)	2.7.3
Establishment and maintenance of project files	55.4(1)(b)	2.7.4
Information that may be made publicly available	55.5(1)(b)	2.7.5
Applicability of <i>Access to Information Act</i>	55.5(2)	2.7.5
Protection from civil proceeding or prosecution	55.6	2.7.5
Information in support of quality assurance program	56.1	2.8.2
Regulations for dissemination of information	59(h.1)	2.9.7

**Canadian
Environmental
Assessment
Registry**

Topic	See...	
	Act	Guide
Definition of “registry”	2(1)	2.1.5
Public participation	18(3)(b)	2.4.5
Public notice and consideration of public comments	19(3)(b)	2.4.7
Prohibition of actions in furtherance of project	20(3)	2.4.16
Prohibition – proceeding with project	37(3)	2.4.29
Establishment of Registry	55(1) - (3)	2.7.1
Establishment, contents and maintenance of Internet site	55.1(1) - (3)	2.7.2
Duty to contribute records to Internet site – Agency	55.2(1) - (2)	2.7.3
Duty to contribute records to Internet site – responsible authority	55.3(1) - (3)	2.7.3
Establishment, contents and maintenance of project files	55.4(1) - (2)	2.7.4
Information that may be made publicly available	55.5(1) - (3)	2.7.5
Protection from civil proceeding or prosecution – <i>Access to Information Act</i>	55.6	2.7.5

**Canadian
International
Development
Agency (CIDA)**

Topic	See...	
	Act	Guide
Excluded projects	10.1(1) - (3)	2.3.7
Exclusions for Crown corporations and CIDA	59(c.1)	2.9.5
Regulations for CIDA	59(l.01 - l.02)	2.9.13

Class screening

Topic	See...	
	Act	Guide
Class screening reports	19(1)	2.4.6
Use of class screening report	19(2)	2.4.6
Public notice and consideration of public comments	19(3)	2.4.7
Publication of declaration	19(4)	2.4.7
Use of a class screening report as a replacement	19(5)	2.4.7
Use of class screening report as a model	19(6)	2.4.9
Necessary adjustments	19(7)	2.4.10
Declaration to remove class screening report	19(8)	2.4.11
Internet site contents	55.1(2)(a), (d), (k), (r)	2.7.2

Comprehensive study

Topic	See...	
	Act	Guide
The definition of “comprehensive study”	2(1)	2.1.1
Federal environmental assessment coordinator role	12.1	2.3.9
Agency as coordinator	12.4(1)	2.3.10
Screening	18(1)	2.4.4
Public consultation, report and recommendation	21(1) - (2)	2.4.18
Minister's decision	21.1(1) - (2)	2.4.18
Public participation	21.2	2.4.19
Decision of Minister	23(1) - (3)	2.4.20
Decision of responsible authority	37(1)	2.4.24
Federal authority	37(1.2)	2.4.25
Approval of Governor in Council	37(1.3)	2.4.26
Mitigation measures	37(2.1) - (2.2)	2.4.27
Assistance of other federal authority	37(2.3)	2.4.28
Prohibition – proceeding with project	37(3)	2.4.29
Time for decision	37(4)	2.4.30
Mandatory follow-up	38(2)	2.4.32
Scope of follow-up program	38(3)	2.4.33
Assistance of other federal authority	38(4)	2.4.34
Follow-up programs	38(5)	2.4.35
Copy of records requested	55(3)	2.7.1
Contents of Internet site	55.1(2)(j)(k)	2.7.2
Duty to contribute records – responsible authorities	55.3(1)	2.7.3
Powers to facilitate environmental assessments	58(1)(i)	2.9.1
Participant funding	58(1.1)	2.9.2
Review and report	Na	2.11.1

Crown corporations

Topic	See...	
	Act	Guide
Definition of “federal authority”	2(1)	2.1.3
Extended meaning of “administration of federal lands”	2(2)	2.1.6
Assessments by certain Crown corporations	8(1) - (3)	2.3.3
Deemed application – Access to Information Act	55.5(3)	2.7.5
Protection from civil proceeding or prosecution	55.6	2.7.5
Exclusions for Crown corporations – regulations	59(c.1),	2.9.5
Projects Outside Canada Regulations	59(i.1)	2.9.8
Regulations for Crown corporations	59(j)	2.9.9

Cumulative environmental effects

Topic	See...	
	Act	Guide
Regional studies	16.2	2.4.2
Necessary adjustments – class screening report	19(7)	2.4.10

Exclusions

Topic	See...	
	Act	Guide
Definition of “exclusion list”	2(1)	2.1.2
Exclusions	7(1)	2.3.1
Exclusions – block funding	7(2)	2.3.2
Screening	18(1)	2.4.4
Regulations for Crown corporations	59(j.2)	2.9.9
Regulations for CIDA	59(l.01 - l.02)	2.9.13

Expert information

Topic	See...	
	Act	Guide
Federal environmental assessment coordinator duties	12.2(a)	2.3.9
Federal environmental assessment coordinator powers	12.3(a)	2.3.9

Factors to be considered

Topic	See...	
	Act	Guide
Definition of “comprehensive study”	2(1)	2.1.1
Public participation	18(3)(a)	2.4.5
Time for decision	20.4(c)	2.4.17
Public consultation	21(1)	2.4.18
Report and recommendation	21(2)(a)	2.4.19
Time for statement	23(3)(c)	2.4.20
Conditions	41	2.4.38
Contents of Internet site	55.1(2)(j)	2.7.2

**Federal
authority**

Topic	See...	
	Act	Guide
Definition of “federal authority”	2(1)	2.1.3
Exclusions – block funding	7(2)	2.3.2
Assessments by certain Crown corporations	8(1)	2.3.3
Precedence of federal authority	8(3)	2.3.10
Obligation to comply with coordinator's requests	12.5	2.4.2
Regional studies	16.2	2.4.15
Assistance of other federal authority	20(2.1)	2.4.25
Federal authority	37(1.2)	2.4.28
Assistance of other federal authority	37(2.3)	2.4.34
Assistance of other federal authority	38(4)	2.5.1
Transboundary and related environmental effects	46(1)	2.5.1
International environmental effects	47(1)	2.5.1
Environmental effects of projects carried out on lands of federal interest	48(1)	2.5.1
Environmental effects of projects carried out on reserve lands, etc.	48(2)	2.5.1
International agreement or arrangement	54(2) - (3)	2.6.1

**Federal
environmental
assessment
coordinator**

Topic	See...	
	Act	Guide
Role	12.1	2.3.9
Duties	12.2	2.3.9
Powers	12.3	2.3.9
Agency as coordinator	12.4(1)	2.3.10
Responsible authority as coordinator	12.4(2)	2.3.10
Coordinator by agreement	12.4(3) - (4)	2.3.10
Obligation to comply with coordinator's requests	12.5	2.3.10
Timing of public participation	18(4)	2.4.5
Public participation	21.2	2.4.19
Copy of records requested from Registry	55(3)	2.7.1
Federal Coordination Regulations	59(a.1)	2.9.3

Follow-up program

Topic	See...	
	Act	Guide
Decision of Minister	23(1)(b)	2.4.20
Consideration of follow-up – decision under 20(1)(a)	38(1)	2.4.31
Mandatory follow-up – decision under 37(1)(a)	38(2)	2.4.32
Scope of follow-up program	38(3)	2.4.33
Assistance of other federal authority	38(4)	2.4.34
Follow-up programs	38(5)	2.4.35
Internet site contents	55(2)(s),(t)	2.7.2
Establishment and maintenance of project files	55.4(1)(a)	2.7.4
Contents of project file	55.4(2)(d)	2.7.4
Regulations for dissemination of information	59(h), (h.3)	2.9.7
Regulations for Crown corporations	59(j)	2.9.9
Regulations for harbour commissions and port authorities	59(k)	2.9.10
Regulations for “prescribed authorities”	59(k.3)	2.9.11
Regulations for band councils	59(l),	2.9.12
Regulations for CIDA	59(l.01)	2.9.13

Harbour commissions

Topic	See...	
	Act	Guide
Definition of “federal authority”	2(1)	2.1.3
Assessments by harbour commissions	9(1)	2.3.4
Regulations for harbour commissions and port authorities	59(k)	2.9.10

Indian ActSee “[Band councils](#)”**Internet site**

Topic	See...	
	Act	Guide
Public participation	18(3)(a)	2.4.5
Publication of declaration – class screening report	19(4)	2.4.7
Publication of declaration – removal of class screening	19(9)	2.4.11
Time for decision – screening	20(4)	2.4.17
Time for statement	23(3)	2.4.20
Time for decision – comprehensive study	37(4)	2.4.30
Canadian Environmental Assessment Registry	55(1)	2.7.1
Establishment, contents and maintenance of Internet site	55.1(1) - (3)	2.7.2
Duty to contribute records to Internet site – Agency	55.2(1) - (2)	2.7.3
Duty to contribute records to Internet site – responsible authority	55.3(1) - (3)	2.7.3
Contents of project file	55.4(2)(a)	2.7.4
Regulations for dissemination of information	59(h.1)	2.9.7

Joint review panel

Topic	See...	
	Act	Guide
Review panels established jointly with another jurisdiction	40(2) - (3)	2.4.36 - 2.4.37
Conditions	41	2.4.38

Mediation

Topic	See...	
	Act	Guide
Report and recommendation	21(2)(b)	2.4.18
Minister's decision	21.1(1)(b) - (2)	2.4.18
When mediation fails	29(4)	2.4.21
Rapport du médiateur	32(1)	2.4.22
Decision of responsible authority	37(1)	2.4.24
Time for decision	37(4)	2.4.30
Transboundary and related environmental effects	46(1)	2.5.1
International environmental effects	47(1)	2.5.1
Contents of Internet site	55.1(2)(m) (n)(o)(p)(q)	2.7.2
In the case of mediation or review panel	55.2(2)	2.7.3
Establishment and maintenance of project files	55.4(1)(b)	2.7.4
Participant funding	58(1.1)	2.9.2

Minister of the Environment

Topic	See...	
	Act	Guide
Duties of the Government of Canada	4(2)	2.2.5
Ministerial orders	11.1(1)	2.3.8
Report and recommendation	21(2)	2.4.18
Minister's decision	21.1(1) - (2)	2.4.18
Decision of Minister	23(1) - (3)	2.4.20
When mediation fails	29(4)	2.4.21
Federal authority	37(1.2)	2.4.25
Approval of Governor in Council	37(1.3)	2.4.26
Review panels established jointly with another jurisdiction	40(2) - (3)	2.4.36 - 2.4.37
Transboundary and related environmental effects	46(1)	2.5.1
International environmental effects	47(1)	2.5.1
Environmental effects of projects carried out on lands of federal interest	48(1)	2.5.1
Ecological integrity	48(1.1)	2.5.1
Contents of Internet site	55.1(2)(g), (i),(j),(o)	2.7.2
Establishment and maintenance of project files	55.4(1)	2.7.4
Categories of information that may be made publicly available	55.5(1)	2.7.5

Protection from civil proceeding or prosecution	55.6	2.7.5
Powers to facilitate environmental assessments	58(1)(i)	2.9.1
Participant funding	58(1.1)	2.9.2

Ministerial orders and injunctions

Topic	See...	
	Act	Guide
Ministerial orders	11.1(1) - (4)	2.3.8
Injunction	11.2(1) - (2)	2.3.8

Mitigation

Topic	See...	
	Act	Guide
Class screening reports	19(1)	2.4.6
Use of a class screening report as a replacement	19(5)	2.4.8
Decision of responsible authority following a screening	20(1)(a)	2.4.12
Mitigation measures – extent of authority	20(1.1)	2.4.13
	37(2.1)	2.4.27
Responsible authority to ensure implementation of mitigation measures	20(2)	2.4.14
	37(2.2)	2.4.27
Assistance of other federal authority	20(2.1)	2.4.15
	37(2.3)	2.4.28
Decision of Minister	23(1)(a-b)	2.4.20
Internet site contents	55.1(2)(r)	2.7.2
Contents of project files	55.4(2)(e)	2.7.4

Model class screening

Topic	See...	
	Act	Guide
Use of class screening report	19(2)(b)	2.4.6
Public notice and consideration of public comments	19(3)(a)	2.4.7
Use of class screening report as a model	19(6)	2.4.9
Declaration to remove class screening report	19(8)	2.4.11

Participant funding

Topic	See...	
	Act	Guide
Participant funding	58(1.1)	2.9.2

Port authorities

Topic	See...	
	Act	Guide
Definition of “federal authority”	2(1)	2.1.3
Assessments by port authorities	9(1)	2.3.4
Regulations for harbour commissions and port authorities	59(k)	2.9.10

Precautionary principle

Topic	See...	
	Act	Guide
Purposes of the Act	4(1)(a)	2.2.1
Duties of the Government of Canada	4(2)	2.2.5

Prohibitions

Topic	See...	
	Act	Guide
Prohibition of actions in furtherance of project	20(3)	2.4.16
Prohibition: proceeding with project	37(3)	2.4.29

Project files

Topic	See...	
	Act	Guide
Public notice and consideration of public comments	19(3)(b)	2.4.7
Canadian Environmental Assessment Registry	55.1	2.7.1
Establishment and maintenance of project files	55.4(1)	2.7.4
Contents of project file	55.4(2)	2.7.4
Regulations	59(h)	2.9.7

Projects outside Canada
(also see “[Joint review panel](#)”)

Topic	See...	
	Act	Guide
International environmental effects	47.1	2.5.1
International agreement or arrangement	54(2) - (3)	2.6.1
Exclusions for Crown corporations and CIDA	59(c.1)	2.9.5
Projects Outside Canada Regulations	59(i)	2.9.8
Regulations for Crown corporations	59(j.3)	2.9.9

Public comment
(also see “[Public participation](#)”)

Topic	See...	
	Act	Guide
Public participation	18(3)	2.4.5
Public notice and consideration of public comments	19(3)	2.4.7
Decision of Minister	23(1)	2.4.20
Contents of project file	55.4(2)(c)	2.7.4

Public concern	Topic	See...	
		Act	Guide
	Report and recommendation	21(2)(a)(ii)	2.4.18
	More information required	23(2)	2.4.20

Public consultation	Topic	See...	
		Act	Guide
	Public consultation	21(1)	2.4.18
	Report and recommendation	21(2)	2.4.18

Public notice	Topic	See...	
		Act	Guide
	Public participation	18(3)(b)	2.4.5
	Public notice and consideration of public comments	19(3)	2.4.7
	Prohibition of actions in furtherance of project	20(3)	2.4.16
	Time for decision	20(4)	2.4.17
	Time for statement	23(3)	2.4.20
	Prohibition – proceeding with project	37(3)	2.4.29
	Canadian Environmental Assessment Registry	55(1)	2.7.1
	Contents of Internet site	55.1(2)(a), (f),(g),(h), (i),(m),(o), (s)	2.7.2
	Form and manner of Internet site	55.1(3)	2.7.2
	Protection from civil proceeding or prosecution	55.6	2.7.5

Public participation	Topic	See...	
		Act	Guide
	Purposes of the Act	4.1(d)	2.2.4
	Federal environmental assessment coordinator – powers	12.3(c)	2.3.9
	Public participation	18(3)	2.4.5
	Timing of public participation	18(4)	2.4.5
	Time for decision	20(4)	2.4.17
	Public consultation	21(1)	2.4.18
	Public participation	21.2	2.4.19
	Categories of information that may be made publicly available	55.5(1)(b)	2.7.5
	Participant funding	58(1.1)	2.9.2
	Regulations for the requirement of public participation in screenings	59(l.03)	2.9.14
	Objects of Agency	62(g)	2.10.1

Quality assurance program

Topic	See...	
	Act	Guide
Information required in support of quality assurance program	56.1	2.8.2
Objects of Agency	62(f)	2.10.1
Duties of Agency	63(1)(f)	2.10.3

Replacement class screening

Topic	See...	
	Act	Guide
Use of class screening report	19(2)(a)	2.4.6
Public notice and consideration of public comments	19(3)(a)	2.4.7
Use of class screening report as a replacement	19(5)	2.4.8
Declaration to remove class screening report	19(8)	2.4.11

Reserve landsSee "[Band councils](#)"**Responsible authority**

Topic	See...	
	Act	Guide
Purposes of the Act	4.1(b.3)	2.2.3
Duties of the Government of Canada	4(2)	2.2.5
Ministerial orders	11.1(1)	2.3.8
Injunction	11.2(1)	2.3.8
Federal environmental assessment coordinator duties	12.2	2.3.9
Federal environmental assessment coordinator powers	12.3	2.3.9
Responsible authority as coordinator	12.4(2)	2.3.10
Coordinator by agreement	12.4(3)	2.3.10
Publication of determinations	16.3	2.4.3
Screening	18(1)	2.4.4
Public participation	18(3) - (4)	2.4.5
Use of a class screening report as a replacement	19(5)	2.4.8
Use of class screening report as a model	19(6)	2.4.9
Necessary adjustments	19(7)	2.4.10
Decision of responsible authority following a screening	20(1)(a)	2.4.12
Mitigation measures – extent of authority	20(1.1)	2.4.13
Responsible authority to ensure implementation of mitigation measures	20(2)	2.4.14
Assistance of other federal authority	20(2.1)	2.4.15
Prohibition of actions in furtherance of project	20(3)	2.4.16
Time for decision	20(4)	2.4.17
Public consultation, report and recommendation	21(1) - (2)	2.4.18
Minister's decision	21.1(1) - (2)	2.4.18
Public participation	21.2	2.4.19
Decision of Minister	23(1)	2.4.20
Time for statement	23(3)	2.4.20
Decision of responsible authority	37(1)	2.4.24

Federal authority	37(1.2)	2.4.25
Approval of Governor in Council	37(1.3)	2.4.26
Mitigation measures	37(2.1- 2.2)	2.4.27
Assistance of other federal authority	37(2.3)	2.4.28
Prohibition – proceeding with project	37(3)	2.4.29
Time for decision	37(4)	2.4.30
Consideration of follow-up – decision under 20(1)(a)	38(1)	2.4.31
Mandatory follow-up – decision under 37(1)(a)	38(2)	2.4.32
Scope of follow-up program	38(3)	2.4.33
Assistance of other federal authority	38(4)	2.4.34
Contents of Internet site	55.1(2)(f), (h),(j),(k), (r),(u)	2.7.2
Duty to contribute records – responsible authorities	55.3(1) - (2)	2.7.3
Establishment and maintenance of project files	55.4(1)	2.7.4
Information that may be made publicly available	55.5(1) - (3)	2.7.5
Protection from civil proceeding or prosecution	55.6	2.7.5
Regulations for dissemination of information	59(h),(h.1)	2.9.7
Regulations for CIDA	59(l.01)	2.9.13
Regulations for the requirement of public participation in screenings	59(l.03)	2.9.14

Review panel
(also see “[Joint review panel](#)”)

Topic	See...	
	Act	Guide
Report and recommendation	21(2)(b)	2.4.18
Minister's decision	21.1(1)(b) - (2)	2.4.18
Hearings to be public	35(3)	2.4.23
Non-disclosure	35(4.1)	2.4.23
Decision of responsible authority	37(1)	2.4.24
Time for decision	37(4)	2.4.30
Transboundary and related environmental effects	46(1)	2.5.1
International environmental effects	47(1)	2.5.1
Contents of Internet site	55.1(2)(m) (n)(p)(q)	2.7.2
In the case of mediation or review panel	55.2(2)	2.7.3
Establishment and maintenance of project files	55.4(1)(b)	2.7.4
Participant funding	58(1.1)	2.9.2

Scope of project

Topic	See...	
	Act	Guide
Public participation	18(3)(a)	2.4.5
Time for decision	20(4)(b)	2.4.17
Public consultation, report and recommendation	21(1) - (2)(a)	2.4.18
Time for statement	23(3)(b)	2.4.20
Contents of Internet Site	55.1(2)(c)	2.7.2

Screening
(also see "[Class screening](#)")

Topic	See...	
	Act	Guide
Federal environmental assessment coordinator – role	12.1	2.3.9
Screening	18(1)	2.4.4
Public participation	18(3) - (4)	2.4.5
Decision of responsible authority following a screening	20(1)	2.4.12
Mitigation measures – extent of authority	20(1.1)	2.9.13
Responsible authority to ensure implementation of mitigation measures	20(2)	2.9.14
Assistance of other federal authority	20(2.1)	2.4.15
Prohibition of actions in furtherance of project	20(3)	2.4.16
Time for decision	20(4)	2.4.17
Copy of records requested	55(3)	2.7.1
Contents of Internet site from Registry	55.1(2)(j), (k)	2.7.2
Duty to contribute records – responsible authorities	55.3(1)	2.7.3
Time for inclusion of report	55.3(3)	2.7.3
Contents of project file	55.4(2)	2.7.4
Regulations for the requirement of public participation in screenings	59(l.03)	2.9.14

Transboundary environmental effects

Topic	See...	
	Act	Guide
Transboundary and related environmental effects	46(1)	2.5.1