TP 14602 E

Proponents' Guide for Environmental Assessment

Pursuant to the Canadian Environmental Assessment Act

June 2006

Transport Canada Transports Canada

Canada

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PREFACE

The *Canadian Environmental Assessment Act* (the CEAA) is federal legislation that applies to any federal authority that is considering taking an action in support of a project. While the CEAA applies to federal authorities, a proponent plays an important role in the efficient and effective execution of the act through:

- the exchange of information with federal authorities;
- the preparation of the environmental assessment (EA) for the federal authorities upon request; and,
- the implementation of the project consistent with the decisions taken by the federal authorities.

This Proponents' Guide has been prepared to provide guidance to proponents that have projects that are being assessed under the CEAA by Transport Canada.

The purpose of this guide is to:

- provide an overview of the CEAA
- describe Transport Canada's expectations as to how the CEAA elements should be addressed, either by the department or by another proponent; and,
- describe Transport Canada's expectations for points of contact for reviewing the progress of the EA.

In addition, this guide also describes Transport Canada's expectations as to how the CEAA elements should be addressed when a *Navigable Waters Protection Act* (*NWPA)* Approval is required.

Note: Depending on the trigger, the region or the program area, there may be some additional requirements. Communication with Transport Canada staff throughout the EA process is therefore very important.

This Guide is organized into **Modules** as follows:

Module 1 provides an **Overview of the CEAA** focusing on when the act applies.

Module 2 provides the answers to **When does the CEAA apply**.

Module 3 describes the step-by-step process for **Addressing the CEAA requirements.**

Module 4 describes what is involved in **Preparing the CEAA Documentation**. This is done by reviewing Transport Canada's screening template which is used to document information gathered through the CEAA process. This template is used for screenings prepared by either Transport Canada or by the proponent (or their consultant).

A common trigger, or reason that Transport Canada is required to undertake an EA under the CEAA, is that Transport Canada is considering exercising a regulatory duty identified in the *Law List Regulations*. For Transport Canada, the most common Law List trigger is the Navigable Waters Protection Act (NWPA). As a result, **Addressing the Navigable Waters Protection Act and the CEAA** is described in **Module 5**.

A series of appendices have also been prepared to assist the proponent in addressing the CEAA requirements. These include:

Appendix 1 Glossary of Terms

Appendix 2 Transport Canada Template for the CEAA Environmental Screening Report

Appendix 3 List of Reference Documents

Appendix 4 List of Transport Canada Offices

Appendix 5 List of Canadian Environmental Assessment Agency Offices

MODULE 1: OVERVIEW OF THE CEAA

1.1 Introduction to the Canadian Environmental Assessment Act (CEAA)

The CEAA is a federal law that applies when there is a federal authority that is performing one or more of the following functions with respect to a project:

- is the proponent of a project;
- provides financial assistance to enable a project to proceed;
- leases, sells or disposes of land to enable a project to proceed; and/or,
- exercises a regulatory duty that is included in the *Law List Regulations* in relation to a project.

The intent of the CEAA is to ensure that each federal decision-maker, called a Responsible Authority (RA), assesses the potential environmental effects of a project early on in the project development process, before they determine whether or not to exercise their authority through one of the four CEAA triggers listed above.

Section 4 of the CEAA describes its purpose as to:

- ensure environmental effects of projects are considered;
- promote sustainable development;
- promote cooperation and coordination between federal and provincial governments with respect to environmental assessment (EA) processes;
- promote communication and cooperation with Aboriginal peoples with respect to EA;
- ensure that projects within Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out; and,
- ensure timely and meaningful public participation in the EA process.

The CEAA is a self-assessment process. It is considered self-assessment because the RA:

- determines whether the CEAA will apply;

- determines the scope of the project (i.e. what components of a project will be assessed);

- determines the scope of the assessment (i.e. what components of the environment will be considered when assessing the project);

- conducts or manages the EA process consistent with the requirements of the CEAA; and,

- determines whether or not a project will likely have significant adverse environmental effects taking into account mitigation measures before a decision is taken whether or not to take an action in support of a project.

The first step before embarking on the CEAA assessment process is determining if the CEAA applies. As noted above, this decision is the responsibility of the federal authority. In order that the federal authority can make this decision, it requires information on the project. While the final decision rests with the federal authority, a proponent, as part of project planning, may still wish to consider if their undertaking may require an assessment under the CEAA. However, a potential proponent should check with the Canadian Environmental Assessment Agency (the Agency) or Transport Canada to confirm an EA is required before proceeding with the EA (see the list of TC contacts and the Agency contacts in **Appendices 4 and 5** at the end of the Guide).

MODULE 2: WHEN DOES THE CEAA APPLY?

The following section provides direction on when the CEAA applies.

2.1 When does the CEAA apply?

The CEAA applies to the federal government where there are specific federal decisions or approvals that must be made or granted in support of a proposed project. Since CEAA applies to the federal government, it is the federal government's responsibility to determine if a proposed project will be subject to the act. A series of questions must therefore be answered by the federal authority in order to determine if the CEAA applies. These questions are as follows:

1. Does the proposed undertaking meet the definition of "project" under the CEAA?

2. Is the project excluded from having to undergo an environmental assessment?

3. Does the project necessitate an action or decision of a federal authority? and;

4. Does the specified federal decision "trigger" an obligation to ensure that an environmental assessment is conducted*?*

These four questions should be addressed in sequence. The decision chart (**Figure 2.1**) provides an overview of the sequence and implications of decisions at each step. Each decision point is discussed in detail in the subsequent sections.

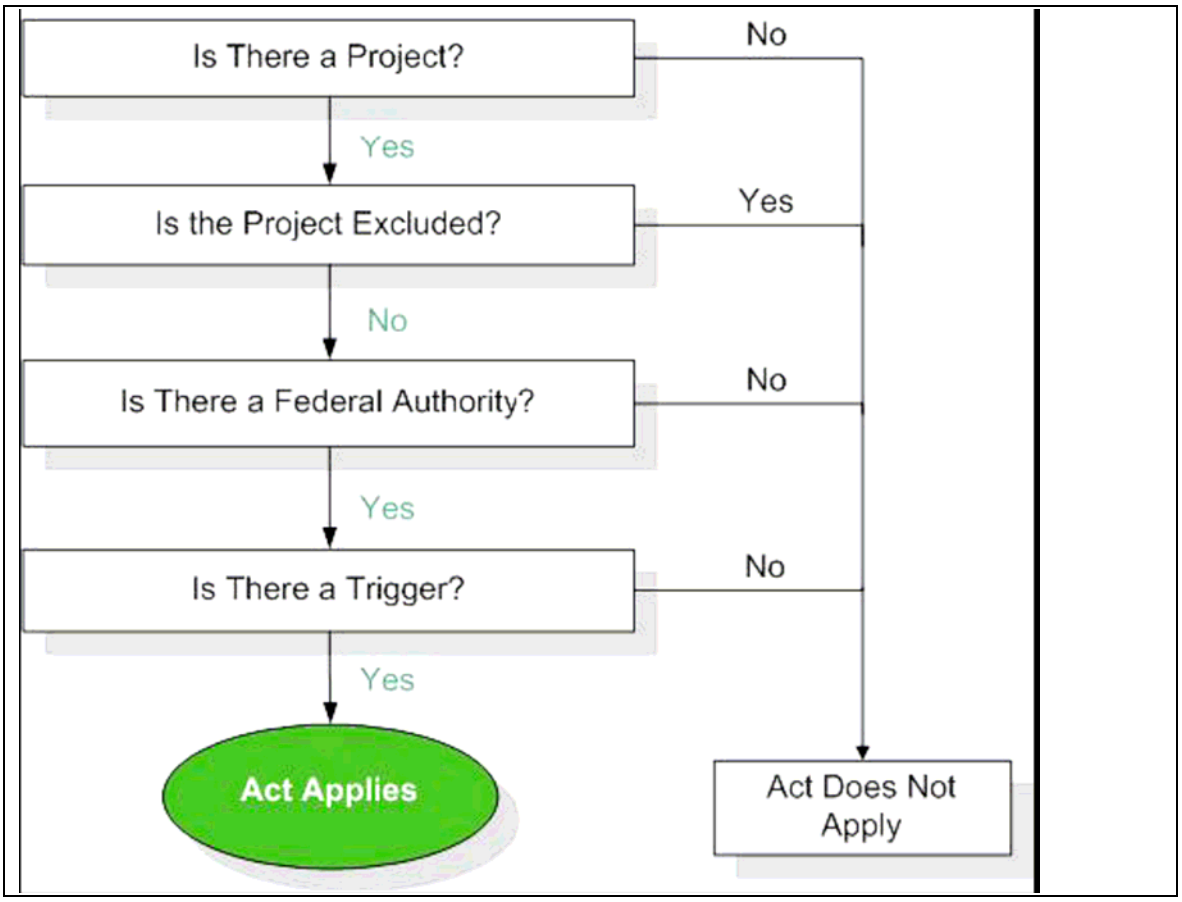
2.2 Question #1: Is there a project?

To determine whether an environmental assessment is required, the first task is to determine whether there is a proposed project as defined by the CEAA.

Definition of a project
Under the CEAA, a project is defined as:

- any proposed undertaking in relation to a physical work; or
- any proposed physical activity not relating to a physical work that is set out in the CEAA *Inclusion List Regulations.*

Figure 2.1: Decision Chart



Undertaking in relation to a physical work

A **physical work** is generally considered to be a structure that is fixed in place, has been constructed by humans and has an element of permanence (i.e. not temporary in nature). Examples include a permanent bridge, building or pipeline. A "physical work" would not include things such as vessels or ships.

Physical activities not relating to a physical work

The second category of "project" is physical activity not relating to a physical work. These are listed in the *Inclusion List Regulations* accessed through the Canadian Environmental Assessment Agency's website.

Examples include the removal or destruction of a wreck, dredge or fill operations in a navigable water way or establishment or relocation of a temporary road for use in winter.

This category seeks to bring into the EA process certain activities that have the potential for adverse environmental effects.

If the undertaking meets the definition of a "project" under the CEAA then the second question, "Is the project excluded", is then considered. If the undertaking does not meet the definition of a project under the CEAA then no environmental assessment is required.

2.3 Question #2: Is the project excluded?

The next step is determining whether an environmental assessment is required, the second task is to determine whether an identified project is exempt from the requirement to conduct an environmental assessment. The CEAA does not apply to proposed projects that are excluded.

Definition of excluded

"Excluded" means that no environmental assessment is required under the CEAA.

Exclusions under the CEAA

A project may be excluded from the need to undergo an environmental assessment if it meets any of the following conditions from section 7 of the CEAA:

- it is described on the *Exclusion List Regulations* accessed through the Canadian Environmental Assessment Agency's website

- it is in response to a national emergency for which special temporary measures are being taken under the *Emergencies Act*;

- it is in response to an emergency, and it is important to carry out the project immediately in the interest of preventing damage to property or the environment or in the interest of public health or safety; or,

- when the essential details of the project are not specified before, or at the time the power to provide financial assistance is being exercised by a Responsible Authority (RA) that will enable the project to proceed.

The *Exclusion List Regulations* are the most common means of excluding projects from an EA. These regulations list undertakings in relation to a physical work that are considered to have an insignificant impact on the environment, such as, simple renovations and routine operations. Examples include:

- the construction, installation, expansion or modification of a railway traffic control signal structure on an existing railway right of way,
- modification of existing aircraft maneuvering lights or navigation aids
- proposed maintenance or repair of an existing physical work such as a bridge.

Many of the exclusions are set by thresholds or conditions, such as distance to the nearest water body, or the size of building. If the project is not on the *Exclusion List Regulations*, or otherwise excluded, consideration can be given to the next question: "Is There a Federal Authority?" If the project is excluded no EA is required.

2.4 Question #3: Is There a Federal Authority?

To determine whether an environmental assessment is required under the CEAA, the third task is to determine whether there is a federal authority involved with the proposed project. There must be a federal authority involved for the CEAA to apply.

Definition of Federal Authority

In the context of the CEAA, the term federal authority refers to a federal body (e.g. a department or agency) that may have expertise or a mandate relevant to a proposed project.

Federal authority is defined by the CEAA in subsection 2(1). The *Financial Administration Act* (Schedules I and II) and regulations of the *Canadian Environmental Assessment Act,* (e.g., the *Federal Authorities Regulations),* are used to support this definition.

Ministers, departments, departmental corporations and agencies of the Government of Canada are federal authorities. Any other body created by

statute and accountable through a minister to Parliament may also be a federal authority, if designated as such.

Transport Canada is a federal authority. Other federal authorities frequently involved in environmental assessments include:

- Fisheries and Oceans Canada
- Natural Resources Canada
- Indian and Northern Affairs Canada
- Public Works and Government Services Canada
- Health Canada
- Environment Canada
- Canadian Transportation Agency

Canada Port Authorities, while not considered a federal authority, are governed by the *Canada Port Authority Environmental Assessment (CPA EA) Regulations.* These CEAA regulations outline an environmental assessment process that must be followed for Canada Port Authorities.

Additionally, as of June 11, 2006, federal parent Crown corporations will be required to comply with the *Canadian Environmental Assessment Act* either by direct compliance with the Act or by a modified environmental assessment process set out in regulations. The following list the Crown corporations under the responsibility of the Minister of Transport.

- Federal Bridge Corporation Limited
- The Great Lakes Pilotage Authority
- Laurentian Pilotage Authority
- Atlantic Pilotage Authority
- Pacific Pilotage Authority
- Ridley Terminals Inc.
- Marine Atlantic Inc.
- Via Rail Canada Inc.
- Canadian Air Transport Security Authority
- Canada Post Corporation
- Canada Lands Company Limited
- Queen's Quay West Land Corporation

- Royal Canadian Mint
- National Capital Commission

If the project involves a federal authority then the final question can be asked: “Is There a Trigger”. If the project does not involve a federal authority, then no environmental assessment is required under the CEAA (unless specific regulations such as the CPA EA Regulations have been passed for that purpose for that body).

2.5 Question #4: Is there a trigger?

To determine whether an environmental assessment is required under the CEAA, the fourth task is to determine whether a federal authority may take an action which triggers the CEAA. There must be a triggering decision or action by a federal authority for the CEAA to apply.

Definition of “trigger”

A trigger occurs when a federal authority exercises one or more of the following duties, powers or functions in relation to a project:

- proposes a project as its proponent;
- grants money or other financial assistance to the proponent for the purpose of enabling a project to be carried out;
- grants an interest in land to enable a project to be carried out (i.e. sells, leases, or otherwise transfers control of land); or,
- exercises a regulatory duty in relation to a project, such as issuing a permit or licence that is covered under the *Law List Regulations* accessed through the Canadian Environmental Assessment Agency’s website.

The four triggers

There are four different triggers for an EA under the CEAA. These four triggers are summarized in **Table 2.1**. For some projects, more than one trigger may apply.

If there is a trigger under the CEAA and all other questions have indicated that the CEAA applies, then an environmental assessment is required. If there is not a trigger under the CEAA, then no environmental assessment is required under the CEAA.

Table 2.1: CEAA Triggers

If a federal authority…	**and…**	**then an environmental assessment of the project is required before approval is given due to the…**
Is the proponent of the project	does any act or thing that commits the federal authority to carrying out the project in whole or in part	proponent trigger. Paragraph 5(1)(*a*)
Makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance to the proponent	it is for the purpose of enabling the project to be carried out in whole or in part	funding trigger. Paragraph 5(1)(*b*)
Has the administration of federal lands and sells, leases or otherwise disposes of those lands or any interests in those lands, or transfers the administration and control of those lands or interests to a province	it is for the purpose of enabling the project to be carried out in whole or in part	land trigger. Paragraph 5(1)(*c*)
Issues a permit or licence, grants an approval or takes any other action specified in the *Law List Regulations*	it is for the purpose of enabling the project to be carried out in whole or in part.	*Law List Regulations* trigger. Paragraph 5(1)(*d*)

Reference: How to Determine if the Act Applies, Canadian Environmental Assessment Agency, October 2003.

MODULE 3: ADDRESSING THE CEAA REQUIREMENTS

3.1 Steps Followed in Addressing the Canadian Environmental Assessment Agency (CEAA) Requirements

The purpose of **Module 3** is to provide an overview of the steps that are followed to address the CEAA requirements. Either Transport Canada, the proponent or a third party for the proponent can prepare the environmental assessment (EA) document but only Transport Canada as the RA can make the decision on the EA report. While these steps are presented sequentially, some of the steps may overlap.

The steps described below are written as if Transport Canada is FEAC (i.e. the Federal Environmental Assessment Coordinator or the department that will lead the environmental assessment, (FEAC)).

Note: that there may be circumstances when there are other RAs. In these cases, the RAs will identify who the FEAC will be and therefore, who will be the key contact.

The following are the steps that are followed when the CEAA is addressed. The remainder of this module provides additional details on each of these steps.

Note: these steps may not occur necessarily in this specific order

Step 1: Communicating with Transport Canada

Step 2: Considering the Applicability of the CEAA

Step 3: Preparing and Submitting the Project Description

Step 4: Addressing the *Federal Coordination Regulations*

Step 5: Identifying the type of Environmental Assessment

Step 6: Addressing Canadian Environmental Assessment Registry **(**CEAR) Requirements

Step 7: Identifying the Scope of the Project and Assessment

Step 8: Completing the Environmental Assessment

Step 9: Making the Environmental Assessment Decision and Sign-off

Step 10: Undertaking Mitigation and Follow-up

Both Transport Canada and the proponent will have responsibilities throughout the EA process. The extent of these responsibilities will vary depending on which party is preparing the EA document. **Table 3.1** is a summary of the responsibilities associated with each of these steps and how they will vary depending on who is taking the lead on the EA preparation.

Step 1 Communicating with Transport Canada

One of the keys to a successful and timely EA is effective and regular communication with Transport Canada and other Federal Authorities. Early in the process, the proponent should initiate contact with Transport Canada to discuss the nature of the project. While presented as Step 1 in this overview, it is an activity that will need to be carried out throughout the EA process. The amount and frequency of communication will vary depending on the complexity of the project and whether Transport Canada or the proponent is preparing the EA documentation.

When Transport Canada is preparing the EA, the communication will focus on making sure Transport Canada has a thorough understanding of the:

- project components for construction, operation and decommissioning stages of the project
- related works
- timing of the project
- involvement of other federal agencies
- involvement of other levels of government
- other approval requirements
- public concerns and other issues affecting the project

Table 3.1 Responsibilities in Preparing an EA

Steps in Completing an Environmental Assessment	Who is responsible?
1. Communicating with Transport Canada	The proponent and Transport Canada will need to help ensure effective communication.
2. Considering the applicability of the CEAA by contacting Transport Canada	Transport Canada makes the decision on the applicability of the CEAA.
3. Preparing and submitting the project description to Transport Canada	The proponent is responsible for preparing and submitting a project description.
4. Addressing *Federal Coordination Regulations*	Transport Canada is responsible for circulating the project description. Federal authorities are responsible for determining their role in the environmental assessment.
5. Identify the type of environmental assessment	Transport Canada and other RAs will determine whether the project is subject to a screening or a comprehensive study. If it is subject to a screening they will determine if there are any applicable class screenings.
6. Addressing CEAR Requirements	Transport Canada or another RA will initiate the registry.
7. Identifying the scope of the project and assessment	Transport Canada and any other RA will determine the scope of the project and the scope of the environmental assessment. If a p**roponent** is preparing the environmental assessment documentation, it must conform to the scoping decisions prescribed by the RAs.
8. Completing the environmental assessment	Either Transport Canada or other another RA will complete the environmental assessment, or it will be completed by the p**roponent**' under the direction of the RAs.
9. Making the environmental assessment decision and sign-off	Transport Canada and any other RA are responsible for the CEAA decision. Include proponent sign-off
10. Undertaking Mitigation and Follow-up	The **proponent** is responsible for the implementation of the mitigation measures while Transport Canada and any other RA are responsible for ensuring mitigation measures are implemented. This is normally enforced through terms or conditions of an approval (i.e. law list, funding, etc)

This information ideally is provided in the project description; however, there may be a need for follow-up communication with Transport Canada to obtain additional details or clarification from the proponent. This communication may be conducted by mail, phone or in person meeting.

When the proponent is conducting the EA it is expected that the communication will be carried out through the EA process. In addition to the information noted above, Transport Canada will need to be kept apprised of changes that arise during the EA process such as changes to the project description (addition of new project components or changes in design), new approval requirements, emerging issues and public concerns. The proponent should have a good idea of the project before initiating the EA process, as changes to the project may delay the EA or require a new EA altogether.

Note: The CEAA applies to Transport Canada and possibly other RA(s) and as such, the EA must address all federal concerns and issues as identified by the RA(s).

Module 4 provides additional details on communication expectations.

Step 2 Considering the Applicability of the CEAA

As outlined in **Module 2,** Transport Canada will determine the applicability of the CEAA by considering whether:

- the proposed project meets the definition of "project" under the CEAA;
- the project is excluded from having to undergo an EA;
- the project will necessitate an action or decision of a federal authority; and,
- the specified federal decision "triggers" an obligation to ensure that an EA is conducted.

This may be an explicit step if Transport Canada is made aware of the proposed project in advance of a project description being submitted, or it may occur after the project description has been submitted (i.e. Step 3). If a proponent anticipates that the CEAA may apply, they should contact Transport Canada or the Canadian Environmental Assessment Agency as early as possible to confirm the CEAA requirements. Contact information for Transport Canada offices and the Canadian Environmental Assessment Agency offices are provided in **Appendices 4 and 5** of this Guide.

Step 3 Preparing and Submitting the Project Description

The level of detail provided in a project description should be appropriate to the scale and complexity of the project and to the sensitivity of its location. In some cases proponents may know if there are other federal authorities that may have CEAA requirements. For example:

- if federal funding is being sought, CEAA will likely need to be addressed, by the funding agency;
- if there are other approvals that are noted in the *Law List Regulations*, the approving organization may have CEAA responsibilities (e.g. Fisheries and Oceans for the *Fisheries Act*); and,
- if there are any interests in federal lands to facilitate the projects, the federal land owner may have CEAA requirements.

If the proponent knows that other federal authorities may have CEAA requirements, the proponent is encouraged to identify for Transport Canada in their project description which other departments they believe may have an interest.

Proponents should be aware that information requirements may vary from region to region due to specific provincial requirements or harmonization agreements for environmental assessment. The nearest regional office of the Canadian Environmental Assessment Agency can assist the proponent in identifying RAs and other jurisdictions they may have to contact for project-specific information.

Table 3.2 serves as a general guide for proponents and federal authorities. The level of detail will vary according to the nature of the project, with greater detail required for larger, complex projects, such as those undergoing a comprehensive study.

A project description based on **Table 3.2** does not, however, preclude a federal authority from requesting additional clarification of the information submitted by a proponent in order to determine if a federal authority has a decision-making responsibility for the project. It should be noted that complete and detailed project descriptions will facilitate efficient review of projects under the CEAA.

Information disclosed through a project description to the federal government, including confidential information, is given the same protection under section 55 of the CEAA as under the *Access to Information Act* (ATIA). Information identified as being protected under the ATIA, and thus not for public consumption, is also protected under section 55 of the CEAA. This information would not be part of the Public Registry.

Proponents are encouraged to submit a project description once the essential details are known, with any gaps or uncertainties in relation to project details identified.

The project description should be submitted to the federal authority or authorities likely to require an environmental assessment under the CEAA. Detailed guidance on identifying federal authorities and applicable federal legislation and regulations can be provided by the Canadian Environmental Assessment Agency.

For complex projects, the Canadian Environmental Assessment Agency will provide additional assistance to proponents, such as helping them navigate through the federal EA process. In these cases, proponents could submit their project description directly to the Canadian Environmental Assessment Agency which will then ensure that it goes to the appropriate authorities. The CEAA process is formally initiated when Transport Canada receives the project description. The information in this project description will assist Transport Canada in addressing the *Federal Coordination Regulations* (Step 4), determine the type of EA (Step 5), address Canadian Environmental Assessment Registry (CEAR) requirements (Step 6) and identify the scope of project and scope of assessment (Step 7).

The project description includes information such as:

- General information on the nature of the project including its location
- Contact information
- Any known federal involvement
- Authorizations required
- Project information
- Project Site information
- Information on Navigable Waters

Additional details on project description requirements are found in **Table 3.2**.

Table 3.2 Detailed Project Description

1. General Information

General

- the nature of the project
- the name and proposed location of the project
- a copy of the distribution list of the parties who received the project description
- information on consultations held on the project with federal authorities, provincial or municipal governments, Aboriginal groups, the public, etc. and
- information on other EA regimes to which the project has been or could be subjected to (i.e., provincial, territorial, land claim EA processes, etc.).

Contacts

- the name of the proponent
- the name of any co-proponent, such as a federal government department or agency and
- the name and coordinates (address, telephone, fax, e-mail) of one or two contact persons from whom federal authorities can obtain more information.

Federal Involvement

- information identifying any federal government department or agency that is, or may be, providing financial support to the project and
- ownership of the land to be used or required by the project, and in particular, whether any federal land is involved.

Authorizations Required

- information relating to federal permits and authorizations that the proponent believes must be obtained for the project to proceed and
- information on applicable provincial and municipal permits.

2. Project Information

Project Components/Structures

- the main components of the project, including any permanent and temporary structures, associated infrastructure, associated construction and type of equipment used
- the interaction of the projects and how they are linked together
- production capacity and the size (e.g., length of road, acreage used) of the main components of the project.

Project Activities

- the construction, operation and decommissioning phases, and the timing and scheduling of each phase
- schedule (time of year, frequency, duration, magnitude and extent of activities)
- site plans/sketches with project location, features, activities on map
- engineering design details (when applicable, e.g., temporary diversion works, dam) and
- identification of requirements for off-site land use.

Resource/Material Requirements

- the production processes to be used in the project
- the project's raw materials, energy and water requirements and sources, including associated infrastructure (such as access roads and pipelines)
- excavation requirements and quantity of fill added or removed and
- identification of any toxic/hazardous materials to be used or by-products of the project.

Waste Disposal

- the nature of any solid, liquid or gaseous wastes likely to be generated by the project, and of plans to manage these wastes and
- disposal procedures for any toxic/hazardous materials to be used or by-products of

the project.

3. Project Site Information

Project Location

- the location of the project, including a legal land description or geographical coordinates (latitude/longitude or UTM) and
- a map indicating the location of the project including the project site, the site layout of the main components of the project, and the environmental features in the area that could be affected by the project.

Environmental Features

- a summary of the physical and biological components in the area likely to be affected by the project, such as terrain, water, air, vegetation, fish and wildlife (including migratory birds)

Land Use

- current and past land use(s) (e.g., agricultural, traditional, recreational, industrial) at the project site and in the adjacent area
- potential contamination of site from past land use
- proximity of the project to Indian reserves and lands that are currently used or have been traditionally used by Aboriginal people
- proximity to important or designated environmental or cultural sites, such as national parks, heritage sites, historic canals, sensitive sites and other protected areas and
- proximity to residential and other urban areas.

4. Required Information Related to Navigable Waters

- The following information should also be provided for components of the project to be constructed or activities which will occur in a watercourse or within 30 metres of a watercourse. For more information related to navigable waters, please contact www.tc.gc.ca. For more information for the purposes of developing a project description, please contact a Transport Canada Environmental Assessment Office. Environmental Features
- description of freshwater/marine environmental features in the area (e.g., water bodies including name of watercourse, coastal areas, etc.)
- physical characteristics of the waterway, i.e., length, width, depth, seasonal flow and fluctuations
- information on natural site features and characteristics (e.g., wetlands) and
- photos/video of the site.

Use of Waterway

- existing use of the waterway, (e.g., kind, size and frequency of vessels, description of existing obstructions in the waterway) and
- information on commercial, recreational or Aboriginal/subsistence fisheries in the area.

Further Guidance on project descriptions can be found in the Canadian Environmental Assessment Agency's Operational Policy Statement: *Preparing Project Descriptions under the Canadian Environmental Assessment Act* (August 2000). This can be found on their website at **http://www.ceaa.gc.ca/013/0002/ops_ppd_e.htm.**

Step 4 Addressing the *Federal Coordination Regulations*

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

The *Federal Coordination Regulations* were introduced in 1997 to improve efficiency and timeliness in the federal environmental assessment process. One of the important provisions of the Federal Coordination Regulations are the time lines for a federal authority to determine if an environmental assessment is likely to be required for a proposed project or if the federal authority has specialist or expert information or knowledge that is necessary to conduct the environmental assessment.

Within 10 days of determining that an EA is required, Transport Canada, other Federal Authorities or the Canadian Environmental Agency will provide the project description to other Federal Authorities that are likely to have a CEAA trigger or expert knowledge needed for completing the EA. The Federal Authorities that receive the project description will have no more than 30 days to provide a response indicting a trigger, interest or no interest in the project.

Note: The provision of an adequate project description by the proponent is critical to enabling federal authorities to determine whether a federal environmental assessment is required and, if one is required, to facilitate its efficient conduct. The quality and completeness of the project description have a direct bearing on the ability of responsible authorities and federal authorities with specialist or expert information or knowledge to meet the time lines set out in the Federal Coordination Regulations. Incomplete or inadequate information will lead to delays in initiating the environmental assessment process. Information on preparing project descriptions is provided in Table 3.2

In some cases Federal Authorities may request additional information from the proponent in order to help the Federal Authority determine if they have any CEAA responsibilities. Transport Canada will provide a response to any requests for further information from a potential FA within 10 days of receiving the request.

One of the goals of the *Federal Coordination Regulations* is to ensure that RAs carry out their responsibilities in a coordinated manner with a view to eliminating unnecessary duplication in the EA process. Coordination under the CEAA is facilitated in part by a Federal Environmental Assessment Coordinator (FEAC). The FEAC's role is to coordinate input where there are multiple RAs and/or where there is another EA process (e.g. provincial EA) that applies to the

project. The FEAC role may be carried out by Transport Canada, other RAs or the Canadian Environmental Assessment Agency.

Step 5 Identifying the Type of Environmental Assessment

Types of Assessments

Initially there are two types of EAs that can be undertaken: **screenings and comprehensive studies**. The vast majority of the CEAA assessments are screenings.

Screening

While the title "screening" suggests a cursory review, screenings involve the systematic assessment of environmental effects and mitigation measures in order that a RA can make a decision on the significance of environmental effects and whether or not to take an action in support of the project. For smaller projects, screening may be carried out over a few weeks, with primarily secondary source information as the primary data source. For larger projects with the potential for more notable environmental effects, the screening process may be much more involved taking months or in unique situations, even several years to complete.

All projects are subject to screenings unless they are identified on the *Comprehensive Study List Regulations* or are identified in a **Class Screening**

Class Screening

Some projects are repetitive in nature and have predictable environmental effects. In these instances screenings can also be addressed through the declaration and use of Class Screening Reports. A class screening is considered appropriate when, in the opinion of the Canadian Environmental Assessment Agency, the class is not likely to cause significant adverse environmental effects when the design standards and mitigation measures described in the class screening report are applied.

For a list of Class Screenings that have been declared (i.e. approved) please see the Canadian Environmental Assessment Agency website at: **http://www.ceaa.gc.ca/050/CS_Listing_e.cfm**

Comprehensive Study

Projects on the *Comprehensive Study List Regulations* must be assessed as a comprehensive study, in accordance with the CEAA. Projects listed on the *Comprehensive Study List Regulations* are typically, large-scale and environmentally sensitive projects and for this reason a more intensive

assessment called a comprehensive study is required. One of the key differences with a screening is the requirement for mandatory public consultation.

Examples of comprehensive studies for which Transport Canada may be an RA include:

- The proposed construction, decommissioning or abandonment of:

  (a) a canal or any lock or associated structure to control water levels in the canal;

  (b) a lock or associated structure to control water levels in existing navigable waterways; or

  (c) a marine terminal designed to handle vessels larger than 25 000 DWT unless the terminal is located on lands that are routinely and have been historically used as a marine terminal or that are designated for such use in a land-use plan that has been the subject of public consultation.

- The proposed construction or decommissioning of:

  (a) an aerodrome located within the built-up area of a city or town;

  (b) an airport; or

  (c) an all-season runway with a length of 1 500 m or more.

- The proposed extension of an all-season runway by 1 500 m or more.

Guidance provided in **Modules 3 and 4** are for screenings. If a Comprehensive Study is being undertaken, additional direction will be provided by Transport Canada or the Canadian Environmental Assessment Agency.

Both **screenings and comprehensive studies** require that a RA determine, after accounting for the implementation of mitigation measures, whether the project is likely to result in significant adverse environmental effects. Based on this assessment the RA must determine whether to undertake any action that enables the project to proceed (e.g. act as proponent, provide funding, land and/or regulatory approval).

Note: For some projects it may not be clear if it will be addressed as a screening or comprehensive study. It may be dependent on how the RAs scope the project. For example, a new highway in excess of 50 km on a new right-of-way is subject to a comprehensive study. If the federal government's role is limited to *Fisheries Act* and *Navigable Waters Protection Act* authorizations/approvals for the bridges associated with the highway, the Federal Authorities will need to decide whether to scope the project as the bridge crossings or the highway. If it was scoped as just the bridge crossings, the EA process followed would be screenings. If it was scoped as the entire highway, the EA process followed would be a comprehensive study. The RA will make the decision on the scope of project. More direction on scoping is provided in Step 7 and in Module 4.

Early in the EA process the RA(s) will make a decision on scope of project and scope of assessment. These scoping decisions will define what needs to be looked at in the EA. Additional information on scoping decisions is provided in **Module 4**.

There are times when a project needs further in depth review and the CEAA provides such an opportunity in the referral to panel review or mediation process.

A review panel is an independent body appointed by the Minister of the Environment to review the project. The review panel prepares a report to the Minister of Environment that outlines conclusions and recommendations relative to the project.

Mediation involves a neutral party who has been appointed by the Minister of the Environment and works with affected parties to attempt to resolve their issues that have been identified in the EA process.

The RA can initiate such a referral to the Minister of Environment when:

For Screenings:

- During the completion of the screening, a screening can be referred to a review panel or mediator at any time where the RA is of the opinion that a project may cause significant adverse environmental effects or when the RA is of the opinion that public concern warrants referral to public review.

For Comprehensive Studies:

- For comprehensive studies, there is an explicit decision made early in the EA process on whether or not the project should continue to be assessed through the comprehensive study process or whether it should be

referred for mediation or panel review. This is done after consulting with the public as required under Section 21 of CEAA. At that time, if the RA is of the opinion that a project may cause significant adverse environmental effects or, if the RA is of the opinion that public concern warrants referral to a panel review or mediation, the RA will make a recommendation to the Minister of the Environment to refer the project to a review panel or mediator. The Minister of the Environment will then decide on the matter. If the Minister of the Environment decides that a comprehensive study should be continued, the project may not be referred to a mediator or review panel at a later date. Transport Canada and the Canadian Environmental Assessment Agency should be contacted for additional information and guidance on comprehensive studies.

In addition, there are also trans-boundary provisions which may allow a project to be subject to a review panel or mediator if there is potential for significant adverse trans-boundary environmental effects (international) and there is no federal power, duty, or function exists in relation to a project.

Step 6 Addressing Canadian Environmental Assessment Registry (CEAR) Requirements

The Canadian Environmental Assessment Registry is a government-wide mechanism to:

- facilitate convenient public access to information and records related to EAs conducted under the CEAA
- provide timely notice about the commencement of these EAs
- provide timely notice about opportunities for public participation in these EAs

The Registry consists of two complementary components: an Internet site and a project file. The **internet site** is an electronic registry administered by the Canadian Environmental Assessment Agency. A Responsible Authority or the Canadian Environmental Assessment Agency contributes specific records relating to an EA.

The **project file** component is a file maintained by a RA during an EA, and made available to the public in a convenient manner. The project file includes all records produced, collected, or submitted with respect to the EA of the project (including all records on the Internet site).

Only one Registry is established for an EA. If there are two or more RAs involved in an EA, one of them is designated as being responsible for

establishing and maintaining the Registry. The other RA(s) may still contribute records to the Registry, through the designated RA.

Note: A CEAA determination for a screening level review may not be made until the 15th day after posting a project in the CEAR.

Step 7 Identifying the Scope of the Project and Assessment

Determining the scope of project and scope of assessment are critical steps that dictate the type of EA and also which help to ensure a good quality EA is undertaken. While the environmental assessment does not necessarily have to be prepared by the RAs (e.g. can be prepared by a consultant or the proponent undertaking the project), RAs are the only party that can decide the scope of project and scope of assessment. These scoping decisions are strictly the responsibility of the RA(s).

Scope of project refers to those components of the proposed development that should be considered as part of the project for the purpose of the EA.

In deciding on the scope of project, depending on the CEAA trigger involved, Transport Canada and other RAs may consider including most components of the proposed development or may consider including a limited number of components of the proposed development. This should be discussed with Transport Canada.

On larger, more controversial or complex projects, a scoping document will be prepared to identify the issues the environmental assessment will address. The scoping document can include scope of project, factors that will be assessed, scope of factors, and proposed public consultation activities. Scoping documents can be prepared either by the RA or the proponent (or their consultant) and is used as a tool during public consultation. For comprehensive studies, the scoping document is generally prepared by the RA or the CEAA Agency. The proponent should discuss with Transport Canada how this task will be carried out.

Once the scope of project is defined, the next step is to determine the scope of assessment.

Scope of assessment refers to the determination of the environmental effects to be addressed, the scope of the environmental effects to be addressed and the effects to be considered in making decisions regarding the project (The Responsible Authority's Guide, CEAA).

In other words, the next step comprises of determining what components of the environment will be considered for the assessment of effects resulting from the

scoped project as well as defining what spatial and temporal boundaries will be considered for the environmental assessment.

Step 8 Complete the environmental assessment considering environmental factors listed in the CEAA

The CEAA requires that a RA must determine whether the proposed project is likely to cause significant adverse environmental effects taking into account appropriate mitigation measures. In order to make this determination, an EA is undertaken, which culminates in the preparation of an EA document. The final determination on whether the project is likely to cause significant adverse environmental effects rests with the RA. However, the preparation of the EA documentation on which the CEAA decision will be based can be undertaken either by Transport Canada, the proponent, or the proponent's consultant.

Irrespective of who prepares the documentation, all screenings must consider the following information as defined in section 16(1) of the CEAA:

(a) environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and 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;

(b) the significance of the effects referred to in paragraph (a);

(c) comments from the public that are received in accordance with this act and the regulations;

(d) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and

(e) any other matter relevant to the screening such as the need for the project and alternatives to the project, that the responsible authority, or except in the case of a screening, the Minister after consulting with the responsible authority, may require to be considered.

In addition, for comprehensive studies, consideration must be given to the additional factors as defined in subsection 16(2) of the CEAA:

(a) the purpose of the project;

(b) alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;

(c) the need for, and the requirements of, any follow-up program in respect of the project; and

(d) the capacity of renewable resources that is likely to be significantly affected by the project to meet the needs of the present and those of the future.

Under the CEAA, **"environment"** is defined as: t*he components of the earth, and includes: land, water and air, including all layers of the atmosphere; all organic and inorganic matter and living organisms, and the interacting natural systems.*

Environmental effect under the CEAA is defined as:

(a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act,

(b) any effect of any change referred to in paragraph (a) on:

(i) health and socioeconomic conditions,

(ii) physical and cultural heritage,

(iii) the current use of lands and resources for traditional purposes by aboriginal persons, or

(iv) any structure, site or thing that is of historical, archaeological, pale ontological or architectural significance, or

(c) any change to the project that may be caused by the environment whether any such change or effect occurs within or outside Canada.

Transport Canada will use their CEAA Environmental Screening Report template (**Appendix 2**) when Transport Canada staff is completing the EA. The information in this report will be used when TC staff complete the EA screening report since the screening report may be completed in conjunction with other RA(s) who have different views on how the report should be presented. When the proponent is undertaking a screening, it is expected that either the TC CEAA Screening form will be completed or alternatively, the form can be used as a template to guide the preparation of the screening report.

Note: Some of the content of the TC CEAA Screening Report template will not be specifically applicable to the project proponent. Some portions of the form will be documented by the RA (e.g. federal coordination undertaken, need for public consultation, final CEAA determination etc). This will be dependent on the complexity of the EA that is being prepared. This matter will be discussed with the proponent during Step 1.

Details on addressing the content of the CEAA Environmental Screening Report template are provided in **Module 4**. This includes additional direction on assessing environmental effects, mitigation measures and determining significance.

Since the EA documentation is being prepared to allow Transport Canada and other RAs to address their CEAA requirements, it is critical that the documentation meet their requirements. Generally, Transport Canada will request the proponent to provide a draft of the screening for review by the RAs and any Expert Departments. A proponent should assume that this review will take a few weeks. After reviewing the proponent's EA document, Transport Canada may make a request for further information. Thus, it is important for the proponent to communicate often with Transport Canada during the development of the EA document.

Step 9 Environmental Assessment Decision and Sign-off

Once the RAs are satisfied that the CEAA screening is complete, Transport Canada (and any other RAs) will need to make a decision on whether or not there are likely to be significant adverse environmental effects, taking into account appropriate mitigation measures. If there are likely to be significant adverse environmental effects remaining for a project subject to a screening, after accounting for mitigation (or if there is uncertainty about the likelihood of significant adverse environmental effects, or if public concerns warrant), the federal government will need to decide either not to proceed with the project or recommend to the Minister that the project be subjected to further assessment (i.e. panel or mediation).

Note: The CEAA decision to allow a project to proceed does not automatically mean that the regulatory approval will be granted.

If the trigger was a regulatory approval *(e.g. Navigable Waters Protection Act)*, Transport Canada will still need to ensure that the appropriate information is available and the appropriate processes followed to allow them to provide their regulatory approvals. Regulatory triggers may occur late in the process even after the EA has long been completed. Many times project details are not

specifically known at the time an EA is being conducted causing the EA to have a broader scope. In cases such as these, the project proponent should be required to clearly indicate that all necessary approvals will be obtained, including the fulfillment of any terms and conditions of these approvals, as part of the required mitigation measures.

Furthermore, many times approval of the EA includes terms and conditions that require project proponents to submit, prior to project implementation and to the approval of the applicable RA(s), details of specific mitigation measures.

Finally, in some cases there may be more than one RA (e.g. Fisheries and Oceans may be providing *Fisheries Act* Authorization, another federal department may be providing funding in support of the project, or the project may be carried out on federal lands). If there is more than one RA, each RA must make its own CEAA decision on the EA document.

Step 10 Mitigation and Follow-Up

The CEAA requires the identification of technically and economically feasible measures that will mitigate a project's likely effects. The term 'mitigation' refers to the elimination, reduction or control of a project's adverse environmental effects including restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means. (*The Canadian Environmental Assessment Act – Responsible Authority's Guide*, 1994; p. 88) Mitigation does not include financial compensation, other than for financial impacts (e.g., loss of revenue).

The CEAA requires that mitigation measures be developed for significant adverse environmental effects. Typically, however, mitigation is used to address all adverse environmental effects, regardless of whether or not the effects are deemed significant. Mitigation measures may also encompass "best management practices" for environmental effects that are not considered significant.

In the environmental assessment report, it is important that each mitigation measure be related back to the effects they are intended to address in order to maximize the traceability of the assessment. This systematic documentation is also useful for post-assessment activities related to ensuring mitigation has been implemented or for undertaking follow-up. **Table 3.3** provides an example of the template that could be used for a mitigation table.

Note: The proponent will be required to implement the mitigation measures and follow up program or have the mitigation measures undertaken and demonstrate to Transport Canada that this has been done and a follow up program if required will be undertaken. For screening level EA documents the proponent must sign off on an acknowledgement that they have read and understood the environmental screening report and accept responsibility for the implementation of the mitigation measures and the design and implementation of follow-up programs identified in the Mitigation Measures included in the screening report.

Table 3.3 Mitigation Table

Department/Agency *	Mitigation Measure

MODULE 4: PREPARING THE CEAA DOCUMENTATION

While the Canadian Environmental Assessment Act (CEAA) decision rests with the Responsible Authority (RA), the RA may delegate the preparation of the CEAA documentation to another party, such as a proponent and their consultant. Whether Transport Canada is preparing the environmental assessment (EA) or the proponent is preparing the environmental assessment, it is expected that either the form will be completed or that the content of the form will be used to guide the preparation of the screening report. This module provides a detailed description of this template. The template is contained in **Appendix 2.** This module also highlights some considerations related to communication between Transport Canada and the proponent to help ensure that the Environmental Assessment (EA) is completed in a timely and effective manner.

The focus of this module is on the preparation of screenings. As described in **Module 3**, when comprehensive studies are prepared, a detailed scoping exercise is undertaken, followed by a decision on whether to continue with the Comprehensive Study or whether to proceed to a panel. Transport Canada and the Canadian Environmental Assessment Agency should be contacted for additional information and guidance on comprehensive studies.

4.1 When proponent[1] is completing the EA

When the proponent is preparing the environmental assessment report on behalf of the federal government the EA must address all federal concerns and issues. Therefore, good communication between the proponent and TC is imperative

Note: The CEAA applies to the federal government; consequently, if the proponent is preparing the EA it must be done to meet the requirements of the RA(s).

Key Communication Points
Start-up Meeting

A start-up meeting is useful for setting the stage for an effective environmental assessment. For small and less complex projects Transport Canada and the proponent would likely communicate via telephone conversation or in writing (mail/email/fax), while, for larger, controversial or complex projects, Transport

[1] Proponent could also mean a consultant or third party who is completing the EA documentation.

Canada may request that a start-up meeting be held with the proponent, as soon as possible after the need for an assessment has been identified. The types of items that may be addressed at the initial meeting include:

- project components for construction, operation and decommissioning stages of the project
- related works
- timing of the project
- timing constraints that might impact the completion of the EA (i.e. field seasons)
- the social and biophysical environment that may be impacted
- the nature of anticipated impacts
- potential involvement of other federal agencies
- potential involvement of other levels of government
- other approval requirements
- public concerns and other issues affecting the project and any plans for public consultation

In addition, Transport Canada would also review documentation expectations. Transport Canada has developed a CEAA Environmental Screening Report template that should be used. The template contains the following sections which are described in detail in Section 4.3:

- Project Identification
- Contacts
- The CEAA Trigger
- Project Description
    - Project Description
    - Project Scheduling
    - Project Justification - Need
- Description of Existing Environment
    - Description of Biophysical Environment
    - Description of Socio-economic and Cultural Environment
- Environmental Effects & Mitigation
    - Discussion of Effects and Proposed Mitigation
        - Construction
        - Operation and Maintenance
        - Decommissioning and Abandonment
    - Accidents and Malfunctions
    - Effects of the Environment on the Project
    - Cumulative Effects

    - Any Other Matter
    - Environmental Effects Summary Checklist
- Consultation
    - Consultation with the Public
    - Consultation with Aboriginal Peoples
    - Consultation with Other Federal Departments and Agencies
    - Consultation with Other Jurisdictions
- References

The documentation must be prepared in a manner that allows the RAs to delineate the federal decision making related to federal responsibilities. The documentation must be clearly based on the scope of project and scope of assessment determined by Transport Canada and other federal RAs. Both the scope of the project and scope of the assessment will be based on federal authorities' jurisdiction.

In addition, the documentation must clearly delineate how the determination of significance of environmental effects has been reached. This includes clear linkages between project components, effects on the environment and the significance of these effects after mitigation measures have been taken into account.

In some cases, a project may also be subject to provincial requirements. In these cases, the Canadian Environmental Assessment Agency will be the Federal Environmental Assessment Coordinator (FEAC). This role is discussed in **Module 3**. Explicit decisions will need to be made on how the CEAA documentation requirements will be addressed. This in part will be dependent on any Federal-Provincial Coordination agreements that are in place. Federal considerations will differ from provincial requirements, and it must be clear that federal authorities are making their final determination of the significance of environmental effects (as required by the CEAA section 20) based on federal considerations.

4.2 When TC is completing the EA

In some circumstances, Transport Canada will prepare the environmental assessment documentation. In order that Transport Canada can address their requirements under the CEAA in a timely manner the proponent must ensure that Transport Canada has the information required for the assessment. Specifically, the proponent and other RAs need to help ensure that Transport Canada has a thorough understanding of the:

- project components for construction, operation and decommissioning stages of the project

- Other existing or planned projects occurring in the area (for the purposes of the cumulative effects assessment)
- related works
- timing of the project
- timing constraints that might impact the completion of the EA (i.e. field seasons)
- the social and biophysical environment that may be impacted
- the nature of anticipated impacts
- potential involvement of other federal agencies
- potential involvement of other levels of government
- other approval requirements
- public concerns and other issues affecting the project and any plans for public consultation.

This information may be provided to Transport Canada in written form or through meetings or telephone discussions (at the discretion of Transport Canada). During the preparation of the EA, Transport Canada may also request supplemental information to assist in the completion of the EA.

4.3 Transport Canada EA Screening Template

As noted earlier, the Transport Canada CEAA Environmental Screening Report is the screening template that Transport Canada utilizes to record the pertinent information required to make the CEAA determination. The specific details will vary dependent upon the complexity of the project, though the headings in the template should be used to cover the basic CEAA and project information requirements.

The following sections of this module provide additional details on the information that will be included in the assessment.

4.3.1 Project Identification

The Project Title, Estimated Cost and Project Location will be provided by the proponent while the remaining information requirements will be provided by Transport Canada.

4.3.2 Contacts

The names of the pertinent contacts should be included. The FEAC is the Federal Environmental Assessment Coordinator who has the specific role of ensuring the coordination of federal authorities, and facilitating communication and cooperation among them and with other participants. The FEAC role can be assumed by either Transport Canada or the Canadian Environmental Assessment Agency. If the proponent is preparing the EA, Transport Canada should be contacted to identify who the FEAC will be and any other RAs.

4.3.3 The CEAA Trigger

A trigger occurs when a federal authority exercises one or more of the following duties, powers or functions in relation to a project:

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

The appropriate trigger should be noted.

4.3.4 Project Description

In this section the following information should be provided:

- the nature of the project;
- the main components of the project, including any permanent and temporary structures, associated infrastructure, associated construction and type of equipment used;
- the interaction between the project components and how they are linked together;
- production capacity and the size (e.g., length of road, acreage used) of the main components of the project;
- the construction, operation and decommissioning phases, and the timing and scheduling of each phase;
- schedule (time of year, frequency, duration, magnitude and extent of activities);

- site plans/sketches with project location, features, activities on map;
- engineering design details (when applicable, e.g., temporary diversion works, dam); and,
- identification of requirements for off-site land use;
- the production processes to be used in the project;
- the project's raw materials, energy and water requirements and sources, including associated infrastructure (such as access roads and pipelines);
- excavation requirements and quantity of fill added or removed;
- identification of any toxic/hazardous materials to be used or by-products of the project;
- the nature of any solid, liquid or gaseous wastes likely to be generated by the project, and of plans to manage these wastes; and,
- disposal procedures for any toxic/hazardous materials to be used or by-products of the project.

4.3.5 Scope

4.3.5.1 Scope of the Project

One of the initial steps in the preparation of the environmental assessment is to determine the scope of the project and the scope of the assessment. As indicated in **Module 3**, the responsibility for determining the scope of project (i.e. what components are to be part of the project for the purpose of the assessment) and scope of assessment (i.e. factors to be considered and scope of those factors) rests with the RAs.

Integrated into the screening template are a **Project Component Identification Table** (Table 1 in the Transport Canada CEAA Environmental Screening Report template) and a **Project Component Description Table** (Table 2 in the Transport Canada CEAA Environmental Screening Report template) which are used to systematically ensure that all parts of the project have been identified. This information can assist Transport Canada and other RAs in defining the scope of project. In some cases, Transport Canada may ask that Tables 1 and 2 be prepared prior to the completion of the rest of the EA in order to provide them with sufficient background to make scoping decisions.

The assessments that are undertaken must consider all project components associated with the project and consider the full life cycle of the project (e.g. construction, operation, modification, decommissioning or abandonment). Table

1, the Project Component Identification Table, lists the main project components associated with each of the project phases that are likely to be most relevant to Transport Canada projects (i.e. construction, operation, decommissioning). Table 2 is needed for more complex projects. It lists all the proposed physical works and activities that may be associated with the construction, operation, modification, decommissioning or abandonment of each project component. When a proponent completes Table 2 they should provide a brief description of each phase and component, including the likely timing of the physical works and activities (time of year, frequency, duration), their location, extent and magnitude. The description should also identify any resource or material requirements. Reference or attach a map and/or site plan to indicate the project location and/or its key features.

4.3.5.2 Scope of Assessment

As indicated in **Module 3**, scope of assessment refers to the determination of the environmental effects to be addressed, the scope of the environmental effects to be addressed and the effects to be considered in making decisions regarding the project.

In other words, the next step comprises of determining what components of the environment will be considered for the assessment of effects resulting from the scoped project. In establishing scope of assessment, consideration is given to the initial spatial and temporal boundaries to be used in the assessment. It should be noted that, as the assessment is undertaken, the scope of assessment might be modified to reflect new information. For example, an initial study area may be expanded if it appears that project effects are extending beyond the study area.

TC expects that all environmental components will be considered initially, and that a traceable process will be followed to systematically identify what environmental components need more in-depth assessment based on the potential for adverse environmental effects. A **Project-Environment Interaction Matrix** (Table 3 in the Transport Canada CEAA Environmental Screening Report template) is a useful tool to track this decision-making process. The two dimensional table consists of one axis that lists project components, and a second axis that lists environmental components. The matrix facilitates the identification of the potential for effects that may arise from the interaction between the project and specific environmental components. The matrix itself is not intended to assess the nature or magnitude of effects, but rather to focus the assessment on those environmental components that may potentially be affected by the project.

In some cases, Transport Canada may ask that Table 3 be prepared prior to the completion of the rest of the EA in order to provide them with sufficient background to make scoping decisions.

4.3.6 Description of Existing Environment

For the environmental components included in the scope of assessment, describe the existing conditions associated with the biophysical and the socio-economic and cultural environment. Maps, figures or photos are helpful to show the existing setting for the project.

4.3.7 Environmental Effects

4.3.7.1 Interaction of the Environmental Components with Project Components

The assessment of environmental effects section should focus only on those environmental components that were included in the scope of assessment. In many cases, this will be the environmental components for which there was potential for effects, as identified in Table 3. This will need to be confirmed with Transport Canada.

Environmental effects of projects must be considered for the construction, operation, modification, decommissioning, abandonment or other undertaking in relation to a project (as applicable to the proposed project). Environmental effects can be described as either direct or indirect. Direct effects are those in which a direct causal relationship exists between a project activity and its effect on the environment. Typically, direct effects result when a project component directly impacts on an environmental component.

Indirect effects are those that are at least one step removed from a project activity, and require intermediate steps before an effect on the environment is experienced. An example of a direct effect would be the loss of fisheries as a result of the construction of a project. An indirect effect would be the loss of income experienced by commercial fisherman.

The CEAA also requires consideration of effects of the environment on the project. This could include effects arising from such things as:

- flooding or drought conditions;
- severe winds,
- snow or ice conditions; and
- existing environmental contamination (i.e., disturbance of contaminated soils).

In addition, consideration must be given to environmental effects that may arise from malfunctions and accidents (e.g. leaks or process malfunctions; spills; fire and explosions; and collisions and other accidents.)

For many projects, contingency measures may be developed to address issues such as spills or other emergency situations. When describing the types of effects, it is appropriate to identify the existence of these plans and to provide a general overview of the types of information that they contain.

Species at Risk

The purpose of the *Species At Risk Act* (SARA) is to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and, to manage species of special concern to prevent them from becoming endangered or threatened.

Under certain conditions, the SARA prohibits activities that can affect or destroy protected species, its residence and its critical habitat(s).

The SARA provides an amendment to the CEAA definition of "environmental effect" to reinforce the obligation to consider the potential effects on SARA listed species. It bestows additional obligations to RAs whenever an environmental assessment must be conducted and the project is likely to affect a SARA listed species; and to federal departments when an authorization, licence, permit or any other authorization is required for a project, which may result in the destruction of critical habitat.

Whenever an assessment of environmental effects must be conducted and the project is likely to affect a SARA listed species (see SARA Schedule 1 at http://www.sararegistry.gc.ca/species/schedules_e.cfm?id=1 for a complete list of list species that receive protection under the Act) or its critical habitat(s), the department, as an RA, will have to ensure that its obligations under the SARA are met before making a determination for the proposed project. The RA has to notify the competent minister without delay, identify the adverse effects to any SARA listed species and, if the project is carried out, ensure that measures are taken to avoid or lessen those effects and to monitor them.

The identification of SARA listed species will have to be done through searches in existing databases such as Conservation Authorities, and Transport Canada may request proponents to undertake specific field surveys in order to be in a position to determine the likely effect of the project on any SARA listed species.

Before issuing an authorization, licence, permit or any other authorization that may result in the destruction of critical habitat(s), the department will have to consult with the competent minister, consider the impact on the species' critical habitat(s), and come to the conclusion that all reasonable alternatives have been considered, the best solution has been adopted, and all feasible measures will be taken to minimize the impact of the activity on the species' critical habitat.

Transport Canada will be responsible to ensure its SARA obligations are met before making a CEAA determination on a project or before issuing an authorization, licence, permit or any other authorization that may result in the destruction of critical habitat.

The proponent will be responsible to ensure that any activities carried out as part of the proposed project will not result in any prohibited activities under the SARA and if they do, then the proponent will be responsible for obtaining the SARA permit/agreement before proceeding with the project.

The proponent should be aware that the issuance of a SARA permit or agreement is at the discretion of the competent minister (Environment Canada, Parks Canada or Fisheries and Oceans Canada) and might result in the obligation to revise or to cancel the project if the competent minister will not issue the SARA permit or agreement. Specific conditions will have to be met before the issuance of such SARA permits or agreements.

For more information visit the *Species at Risk Act* Public Registry at http://www.sararegistry.gc.ca/default_e.cfm.

4.3.7.2 Best Practices and Mitigation Measures

As described in Module 3, the CEAA requires the identification of technically and economically feasible measures that will mitigate a project's likely effects. The term 'mitigation' refers to the elimination, reduction or control of a project's adverse environmental effects including restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means. (*The Canadian Environmental Assessment Act – Responsible Authority's Guide*, 1994; p. 88)

The CEAA requires that mitigation measures be developed for significant or potentially significant adverse environmental effects. Typically, however, some measures may be used to address all adverse environmental effects, regardless of whether or not the effects are deemed significant or potentially significant. For effects not considered significant or potentially significant adverse environmental effects, general measures or best management practices may be identified to prevent any adverse effects on the environment. These tend to be measures that are general in nature and therefore not site specific. They also tend to be measures related to industry standards or in some cases, they simply remind the proponent of the legal obligations they have in working in a certain area. Some examples would include:

- The facility must be operated according to all federal, provincial and municipal regulations and guidelines for this type of facility.

- All spills or leaks should be promptly contained, cleaned-up and reported to the appropriate authorities.

- The site is to be cleaned and cleared of any debris. All debris will be disposed of in a provincially approved manner.

Where possible, best management practices or general mitigation measures that will be integrated as part of the works' design and/or operation should be described in the project description section of the environmental assessment report (Section 4 of the Transport Canada CEAA Environmental Screening Form) as opposed to the section on mitigation measures. TC encourages the proponent to also prepare a Table summarizing the mitigation measures and best management practices separately, in a similar fashion as presented in Section 13 and 14 of the Transport Canada CEAA Environmental Screening Form. TC expects that the proponent will conduct the project as described in the project description section of the EA.

Note: In the environmental assessment report, it is important that each mitigation measure be related back to the effects they are intended to address in order to maximize the traceability of the assessment. This systematic documentation is also useful for post-assessment activities related to ensuring mitigation has been implemented or for undertaking follow-up.

4.3.7.3 Significance of Residual Effects

The CEAA requires that an RA determine whether the project is <u>likely</u> to cause <u>significant adverse</u> environmental effects. In other words, only environmental effects that are both likely and adverse, must be considered in determining significance. The conclusions that are reached on these matters need to be systematically documented.

To assist in the systematic assessment of significance, a "significance framework" can be used.

In this framework, the first step is to determine if the effects are adverse. This is done by comparing the quality of the existing environment before the project with the predicted quality once the project is in place. The next step is to consider whether or not the adverse environmental effects are significant. Criteria to judge significance should be systematically applied. The criteria typically used include:

- Magnitude
- Geographic extent

- Duration
- Frequency
- Permanence or Reversibility
- Ecological context

The criteria are described as follows:

Magnitude refers to the predicted amount or level of disturbance to an existing condition. The magnitude of an effect is typically expressed as a measurable number or value. For example, the area of habitat lost, the level of noise anticipated, the concentration of a contaminant in water, are typical measures or values. Where appropriate, these measures or values should be described in the context of existing conditions, relevant regulatory standards or other guidelines.

Geographic extent refers to the area over which the effect is likely to occur or be noticeable. The geographic extent can be described according to specific study areas (i.e., site, site vicinity/local study area, regional), or more specifically in term of distance from the site or source of disturbance.

Duration refers to the length of time the effects of a project will last. The duration of an effect can be described qualitatively as either short, moderate or long term, or by listing the project phases (i.e., construction, operations, decommissioning) during which the effect is likely to occur. More quantitative descriptions are also possible by specifying time frames (days, months, years) for the duration of the effect. One should remember that the duration of an environmental effect might be longer than the duration of the project activities that cause it. Therefore, one should not assume that once a project activity has ceased, its effects on the environment are no longer of concern.

Frequency refers to the rate of re-occurrence of the effect and/or the phenomenon or event causing the effect. The frequency of an effect can be described qualitatively as rare, sporadic and frequent; or using more quantitative terms such as daily, weekly or number of times per year.

Permanence or Reversibility refers to the time the environment will take to recover from the initial effect after the source of the disturbance is removed or ceases. The reversibility of the effect can be either described in general terms as reversible or not reversible; or more quantitatively (e.g., less than one year or growing season, or between XX and YY years).

Ecological context refers to the sensitivity of the environment (e.g. wildlife habitat, terrestrial habitat, aquatic species) that will be affected by the project. Typical indicators for this criterion include percentage of population affected, importance of population and number of generations to recovery.

Each of these criteria should be defined in the context of the project that is being assessed, and the definitions should be clearly explained.

The last step is to assess whether the significant adverse environmental effects are likely. When drawing this conclusion consideration should be given to:
Probability of occurrence: the likelihood adverse effects will occur; and
Scientific uncertainty: the confidence level associated with results.
The final determination of significance of environmental effects rests with Transport Canada as the RA.

4.3.7.4 Cumulative Effects

Under the CEAA, an environmental assessment must consider "any cumulative environmental effects likely to result from the project in combination with other projects or activities that have been or will be carried out." The Cumulative Effects Assessment Practitioner's Guide (1999), defines cumulative effects as:

"An assessment of the incremental effects of an action on the environment when the effects are combined with those from other past, existing and future actions"
For example, a dredging project to create a new channel might have acceptable levels of suspended sediment, but if there is another project upstream (e.g., creek relocation) that results in elevated suspended sediments being transported into the area, and this occurs at the same time as the effects of the dredging project are being experienced, the cumulative effects may be significant.

Cumulative effects needs to be managed in a step-wise manner. The following is an example of an approach that can be used:

1. **Identify the residual environmental effects of the project**

   Residual effects are the adverse environmental effects of the project that are expected to remain after mitigation measures have been implemented. In some unique situations, there may not be any adverse residual environmental effects. If this is the case, it should be documented and noted that there will, therefore, be no cumulative effects. However, it should be noted that if a project has residual effects – even if they are not significant – it is still possible that cumulative effects could occur, and therefore the assessment should continue.

2. **Identify what *other projects* and activities are likely to occur**

   A cumulative effects assessment must include consideration of *other projects* and activities that are past, present and reasonably foreseeable. In identifying *other projects* and activities, contact appropriate government agencies to find out what projects they are aware of and to assess the likelihood of the project proceeding. Greater consideration should be given to projects that are certain to occur.

   If the proponent is preparing the EA they should also consult with Transport Canada for guidance on which *other projects* and activities should be included. Based on this feedback, determine the likelihood that the project will proceed during the same time period in which the environmental effects of the project under assessment are expected to occur.

3. **Determine if there are residual environmental effects from the *other projects* and activities that will affect the same environmental components affected by the principal project. If yes, determine what they are.**

   Through consultation with parties involved with the *other projects,* assess whether the *other projects* are likely to have residual adverse effects on the same environmental components affected by the project under assessment. If there is not likely to be residual adverse effects on the same environmental component, document this and note that there will therefore be no cumulative effects.

4. **Determine if there is an overlap in time and space of the residual environmental effects of the project and those of the other projects.**

   Through consultation with parties involved with the *other projects*, assess whether the *other projects'* residual adverse environmental effects will overlap in both time and space with the residual environmental effects of the project under assessment. Note that the focus is not on whether the *projects* will overlap in time and space, but whether the *adverse environmental effects* will overlap. If the residual adverse effects are not likely to overlap, document this and note that there will therefore be no

cumulative effects. It should be noted that the RAs have the responsibility to scope the spatial and temporal boundaries of the cumulative effects assessment and therefore this should be discussed with the RAs.

5. **Determine if the overlapping of residual environmental effects can be mitigated.**

   Through consultation with parties involved with the *other projects*, assess whether the overlapping residual adverse environmental effects can be mitigated.

6. **Determine if the residual cumulative environmental effects are significant.**

   Consider whether, following the implementation of mitigation measures, the overlapping residual adverse environmental effects are significant, using the significance criteria described in the preceding section.

   Note that the final determination of significance rests with the RA.

4.3.8 Consultation Activities

Under the CEAA an RA may undertake public consultation for a screening when appropriate. In some cases, projects will be so minor that a consultation program may not be appropriate. In other instances, the size, complexity or profile of a project may generate a high level of interest and therefore make public consultation an important part of the EA. TC and any other RAs will decide on a case-by-case basis if public consultation is needed. If public consultation is needed, the RAs will decide if it will actively participate in a consultation process, or if it will rely upon the information collected by the proponent during its consultation process.

When the proponent undertakes consultation, Transport Canada will want to be informed of issues that arose and how the issues can be addressed. Issue tracking is therefore an important element of the consultation program. Typically, this involves the preparation of an issue response table that records the issues and provides direction on how the issue is being addressed.

Under section 18(3) of the CEAA, the RA may decide to make the screening report available for public review and comment. This may be done regardless of whether or not consultation on the project and the EA has been undertaken.

4.3.9 References

Provide a list of documents or records such as geotechnical or site investigation reports, plans or maps, correspondence or any other record used to complete the Environmental Screening Report.

4.3.10 CEAA Determination

The section of the screening template that documents the CEAA Determination should be completed by Transport Canada as the RA. However, if a proponent is preparing the environmental assessment they will have been expected to provide their conclusions on the significance of the effects for each of the environmental components. The final determination of significance rests with the RA.

4.3.11 Follow-up Program

If a follow-up program is identified, a description of any project specific follow-up activities that are required to verify the environmental effects or the effectiveness of the mitigation measures must be detailed. Also, the responsibilities of the parties that are involved in the follow-up activities must be described. The timeline and proposed length of the follow up program should be included as well.

4.3.12 Sign-Off

The sign-off section will be completed by Transport Canada as the RA.

MODULE 5: ADDRESSING THE NAVIGABLE WATERS PROTECTION ACT AND THE CEAA

5.1 Overview of the Navigable Waters Protection Act

As noted in the Preface, the most common Transport Canada trigger is the *Navigable Waters Protection Act* (NWPA). The purpose of the NWPA is to ensure the unimpeded navigation along navigable waters in Canada. The act ensures the protection of the public constitutional right to navigation by ensuring substantial interference to navigation is limited or mitigated prior to approving works in navigable waters.

The administrative definition of navigable waters is: any body of water which is capable, in its natural state, of being navigated by floating vessels of any description for the purpose of transportation, recreation or commerce, and includes a canal or any other body of water created or altered for pubic use as a result of the construction of any work.

Before Transport Canada can issue an approval under the NWPA, they must first address the *Canadian Environmental Assessment Act* (CEAA) by considering whether the proposed works will have significant adverse environmental effects.

Note: The Authority to determine the navigability of a waterway as it relates to the administration and enforcement of the NWPA is the sole responsibility of the Minister of Transport or his or her designated representative.

An Approval issued under NWPA authorizes site specific works and the associated plans and their effect on navigation.

Depending on type of work, there are two types of processes which are followed:

- Formal approval process – for Major works - named works, works requiring marking or conditions, works that may potentially cause substantial interference with navigation.

- Work Assessment Process - for works not named in the Act and works that are not expected to substantially interfere with navigation - consistent with structures in areas that are a safe distance from Navigation Channels, shoreline protection, inland work.

5.2 Obtaining NWPA Approval and Addressing CEAA

The following is a summary of the steps involved in obtaining NWPA approval and the associated CEAA requirements.

1. **Proponent Contacts Navigable Waters Protection Program office to discuss in general terms the works they are proposing to build**

   Depending on the available information on the proposed works, the Navigation Waters Protection Officer may be able to advise the proponent whether the NWPA will likely apply to their project. The Navigable Waters Protection Officer will provide the proponent with an application and information package on the NWPA (**Table 5.1**) and if appropriate, information about the CEAA.

2. **Proponent Submits the Application**

   The proponent will complete the application and submit it along with a preliminary set of plans of the proposed work, ensuring that they are clear accurate and complete. The application will be submitted to the local Navigable Waters Protection Program Office. If not all information on the works is available (e.g. plans have not yet been developed) and the CEAA is likely to be triggered, the proponent will be advised to submit all available information in order that the CEAA process may be commenced.

3. **Navigable Waters Protection Officer Reviews the Application**

   The Navigable Waters Protection Officer will review the application for completeness and request additional information as required.

4. **Navigable Waters Protection Officer will undertakes Navigability Assessment**

   The Navigable Waters Protection Officer will undertake a navigability assessment. Navigability is assessed either through visual inspection or review of secondary source information. If the water body is not deemed navigable, the Act does not apply. If the water body is deemed navigable, application for approval under the NWPA is required. The Navigable Waters Protection Program Office will advise the proponent of the conclusions.

Table 5.1 Information Required with NWPA Application

- Applicant: name of owner of the work, address, telephone number, fax number
- Representative (if applicable): name of agent acting on behalf of applicant and the address, telephone number and fax number
- Details of the work:
  - Latitude and longitude of the work site
  - Proposed construction schedule
  - Description of work, including dimensions
  - Status of work (existing, proposed, or both)
  - Name of waterway where work is or will be located, including width and depth
  - Chart and topographic map number
  - Legal description
  - Environmental assessment documents, if available
  - Identification of upland property owners and consent if applicable
  - Method of construction, for instance, equipment to be used, temporary construction that may impact on navigation
- Water lot Lease/Permit:
  - Have you obtained a water lot lease/permit? If yes, provide legal description and dimensions of the lease/permit area
  - Are you the owner of the upland property facing the work? If not, obtain the upland property owner's written consent
- Plans
  - Drawings
  - Include the required set of plans as dictated by the Navigable Waters Protection Officer
  - Indicate if any of the plans have been registered or deposited (and registration or deposit number) (note to avoid having to re-deposit and re-advertise, suggested do not deposit and advertise until advised to do so by Navigable Waters Protection Officer)
  - Identify other government regulatory agencies plans have been submitted to
  - Photos of waterway
  - Known waterway use
  - Location map and legal land description
  - Plan and profile view dimension drawings – 6 copies

Information on existing structure including

- Year built/approved (if replacement)
- Minimum vertical clearance above Normal High Water Level

Other relevant information

5. Determination if named work or Potential for Substantial Interference with Navigation.

If the proposed works are either a named work under the NWPA (bridge, boom, dam or causeway) or in the opinion of the Minister have the potential to substantially interfere with navigation, approval under the NWPA will be required (to be determined by Navigable Waters Protection Program (NWPP) personnel). The Transport Canada EA representative will determine if the CEAA will need to be addressed and will advise the proponent of the conclusions. The EA contact will advise the proponent on the CEAA requirements. This will include the level of assessment (screening or comprehensive study) and direction on whether it will be Transport Canada or the proponent preparing the EA documentation.

If the proposed works are not named under the NWPA, nor had the potential to interfere with navigation, the Navigable Waters Protection Officer may conclude that a Work Assessment Process is to be followed, and will provide an assessment document to the proponent. The proponent, upon receipt of the assessment document will verify it for any recommendations that should be followed to avoid interfering with navigation. They may then proceed with construction. When construction is complete, the proponent will notify the Navigable Waters Protection Officer. Final inspection may be done to verify work is constructed according to plans and that recommendations have been followed.

Note: Works assessed under the NWPA must not only include the project details but also any in-water compensation as may be required under the provisions of the *Fisheries Act*.

6. Preparation of the CEAA Report

The EA will be prepared following the steps described in **Module 3.** The documentation for screenings will be completed consistent with the steps described in **Module 4**. The Navigable Waters Protection Officer will provide input to and/or review the EA in order to ensure that the assessment has considered navigation issues and that any changes to the project or mitigation measures developed through the EA do not adversely impact navigation.

7. Review through NWPA Process

The Navigable Waters Protection Officer will make a preliminary determination if the proposed works interference with navigation is acceptable. If it is not acceptable from a navigation perspective the proponent will be advised and the works will not be approved as submitted. If the Navigable Waters Protection Officer makes a

preliminary determination that the interference is acceptable, the proponent will be advised by the NWPP to make the plans available for public review. This will involve:

- Depositing a full set of plans and supporting documentation at the Land Registry or Land Titles office or another office as identified by the NWPA officer which has jurisdiction over the proposed works site; and,

- Advertising the work in the legal section of two local newspapers and the Canada Gazette. A sample advertisement will be provided to the proponent. Following the publication, the proponent will cut out the advertisements, and attach them to the completed "Proof of Advertising" form supplied by Transport Canada. The "Proof of Advertising" form must be witnessed by Commissioner of Oaths and returned to Transport Canada.

In some rare cases, this consultation process may also be used to obtain comments on the EA prepared under the CEAA.

Comments received through the 30 day consultation process will be considered by a Navigable Waters Protection Officer or Environmental Assessment staff, as appropriate.

8. The CEAA Decision

Note: A decision under the CEAA must be made before the works are approved under the NWPA or other federal Acts.

If the CEAA determination is that Transport Canada can take an action in support of the project, the Navigable Waters Protection Officer may then make a decision on whether to approve the works under the NWPA. If the CEAA determination is that Transport Canada cannot take an action in support of the project, no NWPA approval can be issued. If the CEAA determination is that further assessment in the form of a **review panel** or **mediation** is required, no NWPA decision will be made until that process is complete.

9. NWPA Decision

The Navigable Waters Protection Officer will make a decision on whether or not to approve the works. If the decision is to approve the works, an Approval document is issued and the proponent may proceed with the works, assuming there are no other outstanding approvals required from other federal or provincial departments or agencies.

10. Monitoring and Follow-up

During or following the construction of the works, the Navigable Waters Protection Officer may undertake compliance monitoring and enforcement of the NWPA Approval provisions through site inspection. Follow-up identified through the CEAA process may also be undertaken at this time.

Additional information on the NWPA can be found at:

http://www.tc.gc.ca/marinesafety/Ships-and-operations-standards/nwp/menu.htm