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## West Coast Environmental Law

### ***Bill C-69 – Achieving the Next Generation of Impact Assessment***

Brief to the House of Commons Standing Committee on Environment and  
Sustainable Development

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April 6, 2018

Thank you for this opportunity to submit comments on Part 1 of Bill C-69, and for the invitation to appear as a witness before the Committee during its review of the Bill. This brief discusses Part 1 of Bill C-69, the proposed new *Impact Assessment Act*. We are providing a separate brief on Part 3, respecting amendments to the *Navigation Protection Act*.<sup>1</sup>

West Coast Environmental Law Association (West Coast) is a British Columbia-based non-profit environmental law organization dedicated to safeguarding the environment through law. One of Canada's oldest environmental law organizations, West Coast has provided legal support to British Columbians to ensure their voices are heard on important environmental issues and worked to secure strong environmental laws for over 40 years.

Since its founding, West Coast has been involved with various aspects of provincial and federal environmental assessment (EA). West Coast was involved in the development of the *Canadian Environmental Assessment Act*<sup>2</sup> (CEAA) and its seven year review, and made submissions to the House of Commons and Senate committees that reviewed the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).<sup>3</sup> In addition to providing legal services to First Nations, community groups and individuals involved in EA processes, West Coast co-Chairs the Environmental Planning and Assessment Caucus of the Canadian Environmental Network, and is a delegate on the Minister of Environment and Climate Change's (the Minister) Multi-Interest Advisory Committee. Since the review of federal EA processes began in 2016, we have been deeply involved in advancing leading-edge thinking on next generation EA for Canada.

#### **Summary**

In many regards, the proposed new *Impact Assessment Act* (IAA) is ambitious. Bill C-69 follows more than 18 months of consultation on federal EA processes, and purports to fulfill the Minister's mandate to introduce new, fair processes to ensure decisions are based on science and Indigenous knowledge, and to regain public trust.

Some elements of the IAA are encouraging: sustainability as a purpose and factor to guide decisions; expansion of factors to consider to include social, health, gender and economic considerations; explicit acknowledgment of Indigenous rights; the elimination of the standing test and mention of "meaningful" public participation; the introduction of an assessment

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<sup>1</sup> RSC, 1985, c N-22.

<sup>2</sup> SC 1992, c 37.

<sup>3</sup> SC 2012, c 19.

planning phase led by the (renamed) Impact Assessment Agency of Canada (the Agency); the Minister's power to determine that assessments not be conducted where projects will not receive necessary federal authorizations or would cause unacceptable effects; and the establishment of an expert committee to provide scientific advice to the Agency.

However, we are concerned that the broad discretion in the Act, along with a few critical gaps and problematic provisions, will greatly impede achieving its goals and the Minister's mandate. CEAA 2012 was a major step backward in EA in Canada, and we are pleased that Bill C-69 repeals that Act and replaces it with the new IAA. At the same time, impact assessments (IAs) under the IAA are likely to suffer the same problems experienced under CEAA 2012, including lack of scientific rigour, lack of public trust, lack of respect for Indigenous rights and authority, and lack of sustainable, climate-safe decisions.

In this brief, we have attempted to focus our recommendations on amendments that we believe will align with the purposes of the Act while better achieving them. In the interest of concision, we have limited our submission to summaries of needed amendments; specific amendments are provided in the Appendix.

### **Recommendation 1: Make the planning phase work**

One of the more encouraging new elements introduced in the IAA, the planning phase is intended to facilitate collaboration, assist with scoping, identify information requirements, and create participation opportunities that suit the public's needs. In short, its goal is to plan an assessment that is tailored to the specific project, actors and circumstances.

However, the Act does not guarantee that this objective will be reached, or that the planning phase will be any more than a process focused on whether designated projects should proceed to an assessment. Furthermore, the Act requires only that the Agency "offer to consult" with other jurisdictions and affected Indigenous groups during the planning phase, but not that any particular outcome be achieved. We recommend:

- Amend the section 16(1) determination of whether an assessment is necessary so that the Agency's power to decide that an assessment is not necessary is limited to cases where there are no impacts on federal jurisdiction;
- Amend section 16(2) to require the Agency, where there is federal jurisdiction and an assessment is therefore required, to produce an assessment plan that describes the scope of the assessment, information collection and analysis, opportunities for meaningful public participation, multijurisdictional collaboration, suggested timelines, criteria to guide decisions, and any other relevant information; and
- Include a provision requiring that, prior to issuing a notice of commencement for an impact assessment under s. 18(1), the Agency must develop a conduct of assessment agreement in collaboration with jurisdictions and Indigenous groups referenced in section 12(1), informed by public comment provided under s. 11, in relation to the assessment plan.

### **Recommendation 2: Ensure sustainability, credibility and accountability**

We are pleased to see sustainability as a purpose of the Act and a factor to guide decisions in section 63, as well as the requirement to provide reasons for decision. However, the Act provides little assurance that decisions will actually advance sustainability, biodiversity and climate change goals. Under the Act, the Minister and Cabinet will have discretion to consider factors beyond those listed in section 63 when determining whether a project is in the public

interest, and the Act provides no guidance about how factors considered are to be weighted. Therefore, projects that are incompatible with Canada's climate change and environmental objectives may be approved.

Further, reasons for decision need not provide justification for the public interest determination or any adverse effects that are accepted. While 100% *agreement* on decisions may not be possible, the goal should be 100% *acceptance* of them, both to ensure public trust and encourage better decisions. Finally, the legislation should ensure that participants, Indigenous groups, jurisdictions and the affected public have access to legal remedies, to ensure compliance with the Act. To this end, we recommend:

- Amend the section 2 sustainability definition and section 6(1)(a) sustainability purpose to focus on lasting, equitably-distributed environmental, social, and economic well-being and mutually reinforcing, cumulative and lasting sustainability gains;
- Amend sections 22(1)(i) and 63(e) to add reference to biodiversity, and clarify that "obligations" refers to international and national environmental, climate and biodiversity commitments;
- Amend sections 22(1)(f), 28(3) and 63 to ensure that alternatives are meaningfully evaluated and compared;
- Add a power to enact regulations specifying criteria to guide the section 60 decision, and add a section 63(f) requirement to consider those criteria when making the determination;
- Add a section 63.1 prohibiting the Minister or Cabinet from determining that a project is in the public interest if it: will result in significant adverse effects or the crossing of an ecological threshold; is likely to significantly hinder Canada's environmental, climate change and biodiversity obligations; is inconsistent with an assessment conducted under sections 92, 93 or 95; would be likely to result in infringements of Aboriginal or treaty rights, or Indigenous human rights as set out in UNDRIP in the absence of consent from affected Indigenous groups;
- Amend sections 65(1) and (2) to make decisions public rather than merely issued to the proponent, and to require detailed reasons for decision that provide justification for the public interest determination and any adverse effects; and
- Add a right of appeal.

### **Recommendation 3: Achieve binding regional and strategic assessments**

The attempt at providing greater emphasis on regional and strategic assessments in the IAA is encouraging, and the requirement for the Minister to respond to any request for an assessment under sections 92, 93 or 95 is welcome. However, the Act provides little assurance that assessments under those provisions will be conducted, that they will provide the analysis and outcomes required to address cumulative effects and broader policy issues, or that they will be applied at the project level. There is broad consensus among environmental, industry and Indigenous groups that greater attention to regional and strategic assessments should be a priority of the IAA. To help achieve that goal, we recommend:

- Add a definition of regional assessment that specifies they are assessments of the effects of historical, existing and future activities in, and alternative development and protection scenarios for, a region, and a requirement for regional assessments to identify ecological limits and include cumulative effects of alternative development scenarios;

- Amend sections 17(1)(b) and 63 to require project decisions to be consistent with the outcomes of regional and strategic assessments;
- Add provisions enabling the Minister to refer issues to regional or strategic assessments before or during a project assessment;
- Delete the limitation in section 95(a) that the Minister may only establish a committee or authorize the Agency to conduct a strategic assessment of a policy, plan or program that is relevant to conducting IAs;
- Enable the Minister to establish regulations prescribing the conduct of regional and strategic assessments, and require assessments to be conducted in accordance with those regulations;
- Amend section 97 to explicitly authorize the expert committee to recommend a regional or strategic assessment to the Minister;
- Add provisions respecting Ministerial or Governor-in-Council responses to regional and strategic assessment reports, which can serve as policy direction for project-level decision-making; and
- Add a provision requiring periodic updates to regional assessments.

#### **Recommendation 4: Ensure meaningful public participation**

The IAA makes improvements over the status quo with respect to public participation. The inclusion of the word “meaningful,” the lack of any standing test, and the participation opportunity in the planning phase are improvements on CEAA 2012.

However, the IAA lacks assurance that, despite the apparent intention, participation will in fact be meaningful or have the ability to influence decisions, helping gain public trust in assessments. Instead, much appears to be left to guidance, despite the fact that decades of guidance on meaningful public participation have failed to achieve the goal. Further, mandatory timelines in CEAA 2012 have proven to be a significant impediment to participation, and will likely continue to be in the IAA.

To better ensure that participation opportunities are meaningful and offered at all stages of assessments, we recommend:

- Add a definition of meaningful public participation to section 2, and amend section 6(1)(h) to include participation throughout assessments as a purpose of the IAA;
- Amend sections 18(1), 28(2) and 37(1) to eliminate legislated timelines, and replace them with timelines established by the Agency in the assessment plan under our proposed new section 16(2);
- Amend sections 51(1)(d)(iii) and 65(2) to require consideration of public comments and demonstration of how those comments were considered;
- Amend sections 11, 27 and 51(1)(c) to require more than one opportunity to participate in the planning phase, Agency assessments and panel reviews, include an opportunity to ask oral questions in panel reviews, and add the word “meaningfully” throughout;
- Amend section 75(2) to require participant funding for substituted processes that do not offer equivalent funding; and
- Add a power to enact regulations respecting meaningful public participation.

### **Recommendation 5: Enhance collaboration and implement enhanced safeguards for substituted assessments**

West Coast has serious concerns regarding the substitution provisions in the IAA. In our opinion, decisions are better when all decision-makers are involved throughout, and collaboration should be the goal of multijurisdictional assessment. Where substitution is allowed, the legislation should require and ensure that substituted processes will uphold the standards of the IAA. To this end, we recommend:

- Amend section 31(1) to better ensure that substituted processes fulfill the conditions set out in section 33;
- Add a requirement to obtain the consent of affected Indigenous groups prior to approving a substitution to a non-Indigenous jurisdiction;
- Amend sections 31, 33(e) and 33(f) and add a new section 33.1 to better ensure meaningful public participation in substituted assessments;
- Add a power to enact regulations prescribing conditions for allowing substituted processes; and
- Add a provision prohibiting substitution to a non-Indigenous jurisdiction if an Indigenous group opposes it.

### **Recommendation 6: Get the federal house in order**

A fundamental purpose of the IAA is to foster sustainability. By limiting impact assessments to projects that are designated either on a list or by the Minister, the Act is severely narrowed in application compared with the original CEEA. The slightly enhanced requirements for assessments of projects on federal lands, and projects with federal proponents or federal funding outside Canada are a small step towards ensuring that federal projects also contribute to sustainability. However, the failure to extend the application of even the modest process in sections 81-90 to projects with federal proponents or federal funding within Canada *outside of federal lands* means that a significant proportion of federal projects will go unassessed. The sections 81-90 requirements fall far short of what is required to ensure that these projects avoid causing significant adverse environmental effects and provide opportunities for meaningful public participation.

We believe that in order for the federal government to credibly impose requirements on non-federal proponents and aim to foster sustainability, it must first ensure its own house is in order, especially given that federal projects are generally not subject to provincial assessment processes. To that end, we make the following recommendations to broaden the application of the sections 81-90 provisions, and better ensure that these assessments contribute to sustainability:

- Amend section 81 and add a new section 82.1 to include projects with federal proponents or federal funding within Canada that are not on federal lands (and make consequential amendments to relevant provisions);
- Amend sections 82, 83, 84, 85, 90(1), 90(2) and 90(3) to make the Agency, not federal authorities, responsible for assessments of federal projects;
- Add a provision respecting participant funding for assessments of federal projects;
- Amend sections 86(1) and 86(2), and add a new 86(3), to lengthen public comment periods, include a comment period on draft determinations, and provide the public with information about the project necessary to participate in the assessment;

- Amend section 88(1) so that only the Minister, by regulation, may designate classes of projects that are exempt from sections 81-90, add a new regulation-making power, and consequently amend section 89(1);
- Amend section 87 to enhance requirements for designating physical activities; and
- Amend section 81 so that the definition of environmental effects includes changes to the project caused by the environment.

**Recommendation 7: Provide greater transparency**

Access to information is fundamental to ensuring meaningful public participation, collaboration with Indigenous and provincial jurisdictions, respecting Indigenous rights, and achieving credible outcomes. We commend the requirement to provide reasons for decision, which is essential to ensuring credibility. However, we are concerned that the provisions in the IAA respecting the information that the Agency must post on the Internet site do not require all information to be posted; instead, in many cases the Agency is only required to provide summaries or lists of documents, and information about how to obtain the information. Also, there is no requirement for the Agency to maintain information in the Registry or on the Internet site beyond follow-up, despite the fact that follow-up information is integral to continual learning and improvement.

Therefore, we recommend:

- Amend sections 105(3), 106(1) and delete section 106(2) and paragraph 105(4)(c) to require the Agency to maintain all records indefinitely;
- Amend paragraphs 105(2)(b), 105(2)(c), 105(2)(d), 105(2)(e), 105(3)(c), 105(3)(d), 105(3)(e) and 105(3)(h) to require all information, not just summaries or lists, to be posted on the Internet site; and
- Add paragraphs 105(2)(i) and 105(3)(j) to include public comments on the Internet site.

**Recommendation 8: Respect Indigenous jurisdiction, rights and decision-making authority**

The preamble to the Act recognizes a federal commitment to reconciliation, and the Act's purposes include respecting Indigenous rights. These elements are welcome. However, while the Act requires the consideration of Indigenous rights and Indigenous traditional knowledge at various stages in assessments, they are among several factors to be considered. The Act offers no safeguard that constitutionally protected rights and Indigenous human rights will not be trumped by other considerations. Further, an enhanced degree of collaboration, and delegation or substitution of Indigenous IA processes is only available under the Act for a narrow range of Indigenous jurisdictions that are established or recognized in Canadian law.

Perhaps most significantly, despite the federal government's commitment to implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the Act is completely silent on UNDRIP and fails to embody the UNDRIP standard of free, prior, informed consent. Furthermore, in the Act, the "Indigenous peoples of Canada" is narrowly defined in reference to "Indians, Inuit and Métis" rather than by reference to the inherent jurisdiction and laws of Indigenous peoples or international human rights law/UNDRIP. Similarly, throughout the Act "Indigenous rights" are defined with reference to Canadian law. Additional issues of concern are that new Act purports to restrict the Minister from altering his or her decision about a project, even if the outcomes of consultation would require this, and the fact the Act is silent on the involvement of Indigenous peoples in follow-up and monitoring.

We support the submission of Indigenous groups from British Columbia that the Act be amended throughout to acknowledge Indigenous decision-making authority in their territories

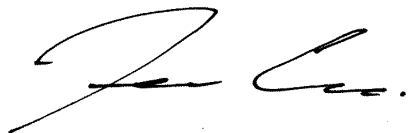
and the standard of free, prior and informed consent, including the specific recommendations set out below.

Therefore we recommend:

- Amend definitions of “Indigenous peoples” and “jurisdiction”, and references to Indigenous rights in sections 6(1)(e), 6(1)(g), 9(2), 16(2)(c), 22(1)(c), 61(3)(d) and 84(a), and add 6(1)(o) and 63.1(e), to reflect the inherent jurisdiction and rights of Indigenous peoples in international human rights law, as recognized in UNDRIP.
- Add commitments to implement UNDRIP in the preamble and purposes of the Act.
- Add section 9(9) requiring the Minister to designate a project when asked to do so by an Indigenous group based on potential impacts to Indigenous rights.
- Add section 12.1 requiring the Agency to develop a conduct of assessment agreement in collaboration with jurisdictions and Indigenous groups prior to issuing a notice of commencement for an impact assessment under s. 18(1).
- Add a new “safeguard” provision following s. 63 to ensure that adverse effects identified in an assessment may **not** be determined to be in the public interest in the absence of Indigenous consent.
- Amend s 68(1) to delete language restricting the Minister from amending a decision statement to change the decision included in it.
- Add section 114(1)(i) explicitly providing for the role of Indigenous groups and particularly Indigenous guardians in follow-up and monitoring.



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## Appendix: Table of Proposed Amendments

### Recommendation 1: Making the planning phase work

Section	Provision	Amendment	Rationale
Add 12(2)	For the purpose of preparing for a possible impact assessment of a designated project, the Agency must offer to consult with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project and any Indigenous group that may be affected by the carrying out of the designated project.	<i>12(2) Prior to issuing a notice of commencement for an impact assessment under s. 18(1), the Agency must develop a conduct of assessment agreement in collaboration with jurisdictions and Indigenous groups referenced in section 12(1), informed by public comment provided under s 11.</i>	Subsection 12 currently requires only that the Agency “offer” to consult with affected jurisdictions Indigenous groups, without any requirement to actually collaborate on an assessment plan.
16(1)	After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must, subject to section 17, decide whether an impact assessment of the designated project is required.	Strike ability of Agency to determine IA not required for any reasons but jurisdiction by changing “must” to “may” and adding “if it determines that there is no potential for impacts on areas within federal jurisdiction”: <i>“After posting a copy of the notice on the Internet site under subsection 15(3), the Agency <del>must</del> may, subject to section 17, decide whether an impact assessment of the designated project is required <b>if it determines that there is no potential for impacts on areas within federal jurisdiction.</b>”</i>	Section confers too much discretion. Restrict Agency’s ability to declare no IA is required only to cases where there is no federal jurisdiction or no potential for adverse effects.
16(2)	In making its decision, the Agency must take into account the following factors:	Strike the factors to guide a decision under 16(1) (assuming amendment above is made), and add a requirement for a decision statement setting out an assessment plan: <i>“If the Agency does not make a decision under section 16(1), it must issue an assessment plan to the proponent, and any relevant jurisdictions, that sets out the following:</i> <i>a) The scope of the review, including the factors to be considered;</i> <i>b) The plan for collecting and analyzing information, including what information must be provided, who is responsible for providing that</i>	



		<p>information, and who may be appointed to review the information;</p> <p>c) The opportunities that will be provided for meaningful public participation during the assessment;</p> <p>d) Any other matter addressed in a collaboration agreement that the Agency or Minister has entered into with any provincial or Indigenous jurisdiction or affected Indigenous group;</p> <p>e) Suggested timelines for the assessment;</p> <p>f) Criteria to guide the Minister or Cabinet's, as the case may be, determination under section 63;</p> <p>g) Any environmental, social, economic and health values, concerns, priorities and plans; and</p> <p>h) Any other information relevant to the assessment.</p>	
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**Recommendation 2: Ensuring sustainability, credibility and accountability**

<b>Section</b>	<b>Provision</b>	<b>Amendment</b>	<b>Rationale</b>
6(1)(a)	[The purposes of this Act are] to foster sustainability	<p>Add:</p> <p><b><i>by selecting options that would make the greatest positive contribution to sustainability by protecting, restoring or enhancing each of the following to achieve among them mutually reinforcing, cumulative and lasting gains:</i></b></p> <p><b><i>i. ecological integrity, including the ecological basis for the meaningful exercise of Indigenous and treaty rights and community health,</i></b></p> <p><b><i>ii. Canada's ability to meet its international and national environmental, climate change or biodiversity commitments or obligations,</i></b></p> <p><b><i>iii. the community and social well-being of potentially affected people,</i></b></p> <p><b><i>iv. the health of potentially affected people, especially vulnerable populations,</i></b></p> <p><b><i>v. long-term economic wellbeing,</i></b></p>	To ensure sustainability.

		<p><b>vi. livelihood sufficiency and opportunity over the short and long-term,</b></p> <p><b>vii. intra-generational equity,</b></p> <p><b>viii. inter-generational equity, and</b></p> <p><b>ix. resource maintenance and efficiency.</b></p>	
22(1)(f)	[The impact assessment of a designated project must take into account]... any alternatives to the designated project;	<p>Add “and the effects of those alternatives”:</p> <p><i>any alternatives to the designated project <b>and the effects of those alternatives</b></i></p>	To ensure meaningful consideration of alternatives.
22(1)(i)	the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change	<p>Add “lifecycle and lifespan direct, indirect and cumulative,” “international and national” and “climate change and biodiversity”, and delete “obligations” and “in respect of climate change”:</p> <p><i>the extent to which the <b>lifecycle and lifespan direct, indirect and cumulative</b> effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its <b>international and national environmental obligations, climate change and biodiversity obligations</b> and its commitments <del>in respect of climate change</del></i></p>	To include lifecycle and lifespan effects, and capture international biodiversity commitments.
28(3)	<b>Effects set out in Agency report:</b> The report must set out the effects that, in the Agency’s opinion, are likely to be caused by the carrying out of the designated project. It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are adverse direct or incidental effects, and specify the extent to which those effects are adverse.	<p>Add after “likely to be caused by the carrying out of the designated project” ...”and the effects of any alternatives to the designated project that were considered in the assessment.”</p> <p><i>The report must set out the effects that, in the Agency’s opinion, are likely to be caused by the carrying out of the designated project <b>and the effects of any alternatives to the designated project that were considered in the assessment.</b> It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are adverse direct or incidental effects, and specify the extent to which those effects are adverse.</i></p>	To ensure decisions meaningfully consider alternatives.

63	The Minister's determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must include a consideration of the following factors:	Change "include" to "be based on" and add "select the best option from among the alternatives, and": <i>The Minister's determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must <b>select the best option from among the alternatives, and include be based on</b> <del>a consideration</del> the following factors:</i>	To ensure decisions cannot consider additional factors, and consider the alternatives meaningfully.
63(e)	the extent to which ...	Amend "international and national environmental, <b>climate change and biodiversity</b> obligations" and delete the period and add ";": <i>the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its international and national environmental, <b>climate change and biodiversity</b> obligations and <del>its</del> commitments; <b>and</b></i>	To add "biodiversity" and provide clarity.
Add 63(f)		Add: <i><b>Any criteria set out in an assessment plan issued under section 16(2)(f), or in the regulations.</b></i>	To ensure decisions consider criteria developed in regulations or assessment plans.
Add 63.1		<i><b>The Minister may not determine under paragraph 60(1)(a), and the Governor in Council may not determine under section 62, that the effects that are indicated in the report that the Minister or the Governor in Council, as the case may be, takes into account are in the public interest, if the project</b></i>	To introduce bottom-line rules for decisions.
Add 63.1(a)		<i><b>will result in a significant adverse environmental effect, unless the alternative is a more significant adverse environmental effect;</b></i>	To ensure projects avoid significant adverse effects.
Add 63.1(b)		<i><b>can reasonably be anticipated to result in the crossing of an ecological limit;</b></i>	To ensure projects do not result in the crossing of an ecological limit (note; limits are

			easier to define than thresholds).
Add 63.1(c)		<b><i>is likely to significantly hinder Canada's ability to meet its international or national environmental, climate change or biodiversity commitments or obligations;</i></b>	To ensure decisions are consistent with environmental and climate obligations
Add 63.1(d)		<b><i>is inconsistent with the outcomes of an assessment under sections 92, 93 or 95;</i></b>	To ensure projects are consistent with regional and strategic assessments
Add 63.1(e)		<b><i>infringes Aboriginal or treaty rights, or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples, without the consent of the affected Indigenous group; or</i></b>	To ensure decisions to not infringe Indigenous rights without consent.
Add 63.1 (f)		<b><i>is likely to result in a region, people or community, current or future, bearing a disproportionate share of the adverse effects, risks or cost.</i></b>	To ensure intra and inter-generational equity.
65(1)	The Minister must issue a decision statement to the proponent of a designated project that	Delete "to the proponent" and add "provides detailed reasons for decision, and":  <i>The Minister must issue a decision statement <del>to the proponent of a designated project that</del> <b>provides detailed reasons for decision</b></i>	To ensure reasons are detailed. Reasons should be issued to the public, not just proponent.
65(2)	The reasons for the determination must demonstrate that the Minister or the Governor in Council, as the case may be, considered all of the factors referred to in section 63.	Add: "and demonstrate how the public interest determination under section 63 was reached, including justification for any adverse effects":  <i>The reasons for the determination must demonstrate that the Minister or the Governor in Council, as the case may be, considered all of the factors referred to in section 63 <b>and demonstrate how the public interest determination under section 63 was reached, including justification for any adverse effects.</b></i>	To enhance transparency of decisions.
Add 65.1		Add: <b><i>(1) An appeal from a determination made under section 60(1)(a) on any question of law or jurisdiction lies to the Federal Court.</i></b>	Provides the proper degree of deference to review panels and Cabinet by requiring leave of the Federal

		<p><b>(2) An appeal from a determination made under section 62 on any question of law or jurisdiction lies to the Federal Court of Appeal, with leave of that court.</b></p> <p><b>(3) An appeal under subsections (1) or (2) may be brought by anyone with a genuine interest in the determination or by anyone that the Court, in its discretion, considers a proper party.</b></p>	<p>Court of Appeal in those instances. Directly affected persons have standing, as would those the court considers to be proper parties, such as those with public interest standing.</p>
Add 109(h)	The Governor in Council may make regulations	Add: <b>respecting criteria established in an assessment plan issued under section 16(2).</b>	To enable regulations providing further guidance on project-specific decision-criteria.

### Recommendation 3: Achieving binding regional and strategic assessments

Section	Provision	Amendment	Rationale
Add 2 definition of <b>regional assessment</b>		Add: <b>Regional assessment means an assessment of the effects of historical, existing and future activities in, and alternative development and protection scenarios for, a prescribed region of Canada</b>	To ensure regional assessments study historical effects and provide guidance for project decision-making.
17(1)(b)	At any time before the Agency provides the proponent with a notice of the commencement of the impact assessment of a designated project under subsection 18(1), the Minister may make an order directing the Agency to not conduct that impact assessment if...  the Minister is of the opinion that it	Add, “, or would be inconsistent with the outcomes of a relevant assessment referred to in section 92, 93 or 95”:  <i>... the Minister is of the opinion that it is clear that the designated project would cause unacceptable effects within federal jurisdiction or unacceptable direct or incidental effects, or would be inconsistent with the outcomes of a relevant assessment referred to in section 92, 93 or 95.</i>	Projects should be required to be consistent with the outcomes of regional and strategic assessments.

	is clear that the designated project would cause unacceptable effects within federal jurisdiction or unacceptable direct or incidental effects.		
Add 17.1		Add: <b><i>At any time before the Agency provides the proponent with a notice of the commencement of the impact assessment of a designated project under subsection 18(1), the Minister may refer a matter to a committee or the Agency under sections 92, 93 or 95, and make an order directing the Agency not to conduct the impact assessment until the conclusion of the assessment under sections 92, 93 or 95.</i></b>	To enable the Minister to order a regional or strategic assessment before an assessment commences to address broader policy issues or cumulative effects.
Add 58.1		Add: <b><i>At any time during an impact assessment, the Minister may make an order directing the Agency or review panel to pause the assessment until an assessment she has referred to a committee under sections 92, 93 or 95 is complete.</i></b>	To enable the Minister to order a regional or strategic assessment during an assessment to address broader policy issues or cumulative effects.
Add 63(f)		Add: <b><i>any relevant assessment referred to in section 92, 93 or 95.</i></b>	To better ensure that project decisions are consistent with the outcomes of regional and strategic assessments.
Add 93.3		Add: <b><i>An assessment under section 92 or 93 must identify ecological thresholds and include an analysis of the cumulative effects associated with alternative development scenarios in the region subject to the assessment.</i></b>	To ensure that regional assessments are more than just regional studies, and help inform project decision-making and land-use planning.
95(a)	The Minister may establish a committee — or authorize the Agency — to	Delete “that is relevant to conducting impact assessments” and add “and its alternatives”:	This provision should not be limited to strategic assessments of policies, plans and programs relevant to

	conduct an assessment of (a) any Government of Canada policy, plan or program — proposed or existing — that is relevant to conducting impact assessments; or	<i>The Minister may establish a committee — or authorize the Agency — to conduct an assessment of (a) any Government of Canada policy, plan or program — proposed or existing — <b>and its alternatives</b> that is relevant to conducting impact assessments; or</i>	IA, and include assessment of alternative, consistent with the Cabinet Directive.
Add 95.2		Add: <b><i>An assessment under sections 92, 93, 95 or 95.1 must be conducted in accordance with regulations prescribed under section 109.</i></b>	
Add: 95.4		Add: <b><i>Where an assessment has been conducted under sections 92, 93 or 95, the Minister shall establish a committee - or order the Agency - to conduct an update to that assessment within the prescribed time limit.</i></b>	
Add 112(h)	The Minister may make regulations	Add: <b><i>respecting the procedures, requirements, time periods and outcomes relating to regional or strategic assessments, including follow-up programs, monitoring and reviews;</i></b>	
97	The Minister must respond, with reasons and within the prescribed time limit, to any request that an assessment referred to in section 92, 93 or 95 be conducted. The Minister must ensure that his or her response is posted on the Internet site.	Add “, or a recommendation by the expert committee,”: <b><i>The Minister must respond, with reasons and within the prescribed time limit, to any request, or a recommendation by the expert committee, that an assessment referred to in section 92, 93 or 95 be conducted. The Minister must ensure that his or her response is posted on the Internet site</i></b>	
Add 103.1(1)		Add:	

		<p><b>Following the receipt of the report under section 102. the Minister must</b></p> <p><b>(a) make a determination regarding whether to accept the report's recommendations, accept the report with modifications, or reject the report; or</b></p> <p><b>(b) refer to the Governor in Council the matter of a determination.</b></p>	
Add 103.1(2)		<p>Add:</p> <p><b>If the Minister refers the determination to the Governor in Council, he or she must ensure that a notice of the referral is posted on the Internet site.</b></p>	
Add 103.2(2)		<p>Add:</p> <p><b>When the Minister or Governor in Council, as the case may be, makes a determination under paragraph 103.1(1)(a), the Minister must issue the decision statement no later than 90 days after the day on which the report of the assessment is posted on the Internet site.</b></p>	
Add 103.2(3)		<p>Add:</p> <p><b>The Minister may extend the time limit referred to in subsection (2) by any period — up to a maximum of 90 days — for any reason that the Minister considers necessary.</b></p>	
Add 103.2(4)		<p>Add:</p> <p><b>The Agency must post on the Internet site any determination that the Minister issues above.</b></p>	

#### **Recommendation 4: Ensuring meaningful public participation**

<b>Section</b>	<b>Provision</b>	<b>Amendment</b>	<b>Rationale</b>
6(h)	to ensure that opportunities are provided for meaningful public participation during an impact assessment, a regional assessment or a strategic assessment;	<p>Add “beginning in the earliest stages and occurring throughout the process, and that participation has the ability to influence decisions”:</p> <p><i>to ensure that opportunities are provided for meaningful public participation during an impact assessment, a regional assessment, or a strategic assessment,</i></p> <p><b><i>beginning in the earliest stages</i></b></p>	Participation opportunities should be offered throughout and participation should have the ability to influence decisions.



		<b><i>and occurring throughout the process, and that participation has the ability to influence decisions;</i></b>	
11	The Agency must ensure that the public is provided with an opportunity to participate in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.	Add “meaningfully” before “participate,” change “an opportunity” to “opportunities,” change “in” to “throughout,” add “or an assessment under sections 92, 93 or 95,” and add “in accordance with the regulations”: <i>The Agency must ensure that the public is provided with <b>opportunities to participate meaningfully</b> throughout its preparations for a possible impact assessment of a designated project, or an assessment under sections 92, 93 or 95, including by inviting the public to provide comments within the period that it specifies, and in accordance with the regulations.</i>	Participation should be meaningful, the Agency should issue participation plans for regional and strategic assessments, and regulations should be developed, to provide further guidance.
18(1)	If the Agency decides that an impact assessment of a designated project is required — and the Minister does not make an order under section 17 or approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with	Replace “If the Agency decides that an impact assessment of a designated project is required” with “Where an impact assessment of a designated project is required...” and add “or other time period determined by the Agency in the assessment plan issued under section 16(2)”: <b><i>“Where an impact assessment of a designated project is required...- the Agency must, within <del>180 days</del>, the time period determined by the Agency in the assessment plan issued under section 16(2), following <del>after</del> the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with”</i></b>	Timelines should be developed to suit the specific circumstances and needs of the assessment, jurisdictions and participants.
27	The Agency must ensure that the public is provided with an opportunity to participate in the	Change “an opportunity to participate” to “opportunities to participate meaningfully” after “participate” and “in accordance with the assessment plan issued	Participation should be meaningful, and in accordance with regulations and participation plans

	impact assessment of a designated project.	under section 16(2) and the regulations.”:  <i>The Agency must ensure that the public is provided with <b>opportunities to participate meaningfully</b> in the impact assessment of a designated project, <b>in accordance with the assessment plan issued under section 16(2) and the regulations.</b></i>	developed in the planning stage.
28(2)	After taking into account any comments received from the public, the Agency must, subject to subsection (5), finalize the report with respect to the impact assessment of the designated project and submit it to the Minister no later than 300 days after the day on which the notice referred to in subsection 19(4) is posted on the Internet site.	Delete “no later than 300 days after” and replace with “within the time period determined by the Agency under section 16(2) following”:  <i>After taking into account any comments received from the public, the Agency must, subject to subsection (5), finalize the report with respect to the impact assessment of the designated project and submit it to the Minister <b>within the time period determined by the Agency under section 16(2) following</b> <del>no later than 300 days after</del> the day on which the notice referred to in subsection 19(4) is posted on the Internet site.</i>	Timelines should be developed to suit the specific circumstances and needs of the assessment, jurisdictions and participants.
28(3)	The report must set out the effects that, in the Agency’s opinion, are likely to be caused by the carrying out of the designated project. It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are adverse direct or incidental effects, and specify the extent to which those effects are adverse.	Add: “, and a summary of any comments received from the public and demonstrate how those comments were considered and addressed”:  <i>The report must set out the effects that, in the Agency’s opinion, are likely to be caused by the carrying out of the designated project, <b>and a summary of any comments received from the public and demonstrate how those comments were considered and addressed.</b> It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are adverse direct or incidental effects, and specify the extent to which those effects are adverse.</i>	Comments should be summarized, and assessments should show how comments were considered.

28(6)	The Minister may extend the time limit referred to in subsection (2) or any time limit established under subsection (5) by any period — up to a maximum of 90 days — that is necessary to permit the Agency to cooperate with a jurisdiction referred to in section 21 or to take into account circumstances that are specific to the designated project.	Delete “— up to a maximum of 90 days —”: <i>“The Minister may extend the time limit referred to in subsection (2) or any time limit established under subsection (5) by any period —<del>up to a maximum of 90 days</del>— that is necessary to permit the Agency to cooperate with a jurisdiction referred to in section 21 or to take into account circumstances that are specific to the designated project”</i>	Timelines should be developed to suit the specific circumstances and needs of the assessment, jurisdictions and participants.
37(1)	If the Minister refers the impact assessment of a designated project to a review panel, the review panel must, subject to subsection (2), submit a report with respect to that impact assessment to the Minister no later than 600 days after the day on which he or she appoints to the panel the minimum number of members required.	Delete “no later than 600 days after the day on which he or she appoints to the panel the minimum number of members required” and replace with “within the time period determined by the Agency under section 16(2)” <i>If the Minister refers the impact assessment of a designated project to a review panel, the review panel must, subject to subsection (2), submit a report with respect to that impact assessment to the Minister <b>within the time period determined by the Agency under section 16(2)</b> <del>no later than 600 days after the day on which he or she appoints to the panel the minimum number of members required.</del></i>	Timelines should be developed to suit the specific circumstances and needs of the assessment, jurisdictions and participants.
51(1)(c)	A review panel must, in accordance with its terms of reference, ...hold hearings in a manner that offers the public an opportunity to participate in the impact assessment;	Add “meaningfully” after “participate” and “including an opportunity to ask oral questions,” and add at the end: “, and engage the public in accordance with the assessment plan issued under section 16(2) and the regulations”: <i>hold hearings in a manner that offers the public an opportunity to participate <b>meaningfully</b> in the impact assessment, <b>including an opportunity to ask oral questions, and engage the public in accordance with the</b></i>	Participation should be meaningful, and in accordance with regulations and participation plans developed in the planning stage.

		<b>assessment plan issued under section 16(2) and the regulations;</b>	
51(1)(d)(iii)	A review panel must, in accordance with its terms of reference... prepare a report with respect to the impact assessment that... sets out a summary of any comments received from the public, and	Add: “and demonstrates how those comments were considered and addressed”: <i>..sets out a summary of any comments received from the public and demonstrates how those comments were considered and addressed, and</i>	Comments should be summarized, and assessments should show how comments were considered.
65(2)	The reasons for the determination must demonstrate that the Minister or the Governor in Council, as the case may be, considered all of the factors referred to in section 63.	Add: “and demonstrates how it considered public comments”: <i>The reasons for the determination must demonstrate that the Minister or the Governor in Council, as the case may be, considered all of the factors referred to in section 63 and demonstrates how it considered public comments.</i>	Assessment decisions should show how comments were considered.
75(2)	[Participant funding program] The obligation does not apply with respect to any designated project for which the Minister has approved the substitution of a process under section 31.	Add “where that substituted process includes equivalent participant funding”: <i>The obligation does not apply with respect to any designated project for which the Minister has approved the substitution of a process under section 31 where that substituted process includes equivalent participant funding.</i>	Participant funding should be assured for substituted projects.
Add 112(i)	[The Minister may make regulations]	<i>respecting meaningful public participation in impact assessment, regional assessment or strategic assessment;</i>	

**Recommendation 5: Enhancing collaboration and implementing enhanced safeguards for substituted assessments**

Section	Provision	Amendment	Rationale
31(1)	Subject to sections 32 and 33, if the Minister is of the opinion that a process for assessing the effects of designated	Replace “Subject to sections 32 and 33” with “If” and “would be an appropriate substitute” with “fulfils the conditions set out in section 33”:	To lessen Ministerial discretion and better ensure that the conditions will be met

	<p>projects that is followed by a jurisdiction referred to in any of paragraphs (c) to (g) of the definition <i>jurisdiction</i> in section 2, that has powers, duties or functions in relation to an assessment of the effects of a designated project would be an appropriate substitute, the Minister may, on request of the jurisdiction and before the expiry of the time limit referred to in subsection 18(1), or any extension of that time limit, approve the substitution of that process for the impact assessment.</p>	<p><del>Subject to sections 32 and 33, if</del> <b>If the Minister is of the opinion that a process for assessing the effects of designated projects that is followed by a jurisdiction referred to in any of paragraphs (c) to (g) of the definition <i>jurisdiction</i> in section 2, that has powers, duties or functions in relation to an assessment of the effects of a designated project <del>would be an appropriate substitute</del> fulfils the conditions set out in section 33,</b> the Minister may, on request of the jurisdiction and before the expiry of the time limit referred to in subsection 18(1), or any extension of that time limit, approve the substitution of that process for the impact assessment.</p>	<p>in substituted processes.</p>
31(2)	<p>When the Minister receives a request for substitution, the Agency must post the request on the Internet site as well as a notice that invites the public to provide comments respecting the substitution within 30 days after the day on which the notice is posted.</p>	<p>Add: “, including a description of the substituted process.” <i>When the Minister receives a request for substitution, the Agency must post the request on the Internet site as well as a notice that invites the public to provide comments respecting the substitution within 30 days after the day on which the notice is posted, including a description of the substituted process.</i></p>	<p>The public should not be expected to weigh in on substitution without knowing what that process entails.</p>
Add 31(3.1)		<p>Add: <b><i>The Agency must post the Minister’s draft decision with respect to the request for substitution and draft conditions of the substitution on the Internet site as well as a notice that invites the public to provide comments respecting the substitution within 30 days after the day on which the notice is posted.</i></b></p>	<p>In addition to greater transparency about the substituted process, the public should have the opportunity to comment on the draft decision and conditions.</p>
31(4)	<p>The Agency must post a notice of the Minister’s decision with respect to the request for substitution and the</p>	<p>Add “and any conditions of substitution imposed by the Minister”: <i>The Agency must post a notice of the Minister’s decision with respect to the request for substitution, any</i></p>	<p>To enhance transparency and public participation in substitution decisions.</p>

	reasons for it on the Internet site.	<b>conditions he or she imposes on the substitution, and the reasons for it on the Internet site.</b>	
Add 32.1(a) (new)		Add: <b>The Minister may not approve a substitution until the Agency posts a notice under section 15(3).</b>	To ensure that substitutions cannot be approved until the conclusion of the Planning Phase.
Add 32.1(b) (new)		Add: <b>The Minister may not approve a substitution to a jurisdiction referred to in paragraphs (c) or (d) of the definition of jurisdiction in section 2 without the consent of any Indigenous group that may be impacted by the designated project .</b>	To require Indigenous consent on substitutions.
33(1)(e)	the public will be given an opportunity to participate in the assessment and to provide comments on a draft report;	Delete and replace with <b>the Minister must be satisfied that the substituted process will comply with sections 24-28(1), and any other relevant regulations and policy.</b>	To better ensure that substituted processes uphold federal process standards.
33(1)(f)	the public will have access to records in relation to the assessment to enable its meaningful participation;	Add “all”: <i>the public will have access to all records in relation to the assessment to enable its meaningful participation;</i>	To ensure transparency and meaningful public participation.
Add: 33.1		Add: <b>If the Minister approves the substitution of a process under section 31, the Agency must post a report of the assessment on the Internet site.</b>	To ensure the report of substituted assessments is posted on the Registry and Internet site.
109(h)	The Governor in Council may make regulations	Add: <b>Prescribing conditions respecting substituted processes referred to in section 31(1).</b>	To enable further conditions of substitution.

#### Recommendation 6: Getting the federal house in order

Section	Provision	Amendment	Rationale
75(1)(b)	The Agency must establish a participant funding program to facilitate the participation of the public in... the impact assessment of, and the	Delete “and” from end <i>the impact assessment of, and the design or implementation of follow-up programs in relation to, designated projects that are referred to a review panel and that</i>	

	design or implementation of follow-up programs in relation to, designated projects that are referred to a review panel and that do not include physical activities that are designated by regulations made under paragraph 112(e) or that are not part of a class of activities designated by those regulations; and	<i>do not include physical activities that are designated by regulations made under paragraph 112(e) or that are not part of a class of activities designated by those regulations; <del>and</del></i>	
75(c)	regional assessments and strategic assessments;	Add “and” to end: <i>regional assessments and strategic assessments; <b>and</b></i>	
Add 75(d)		<i>A federal authority's preparations for a determination under sections 82, 82.1, 83 and 87.</i>	To ensure participant funding.
81	<b>environmental effects</b> means changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social or economic conditions.	Add “and changes to the project caused by the environment”: <i>means changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social or economic conditions, <b>and changes to the project caused by the environment.</b></i>	To make consistent with s 22(j).
81	<b>project</b> means (a) a physical activity that is carried out on federal lands or outside Canada in relation to a physical work and that is not a designated project; and (b) a physical activity that is designated under section 87 or that is part of a class of physical activities that is designated under that section.	ADD: <i>(b)...; <b>and</b></i> <i>(c) a physical activity that is carried out in Canada not on federal lands for which a federal authority is a proponent or provides funding, and that is not a designated project</i>	To include projects with federal proponents or federal funding.
82	An authority must not carry out a project on federal lands, exercise any power or perform any duty or function	Replace second and third “authority” with “Agency”: <i>An authority must not carry out a project on federal lands, exercise any power or perform any duty or</i>	To make the Agency responsible for all EAs within sections 81-90 (non-designated projects where the

	<p>conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless (a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or (b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.</p>	<p><i>function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless (a) the <del>authority</del> <b>Agency</b> determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or (b) the <del>authority</del> <b>Agency</b> determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.</i></p>	<p>feds are a proponent or provide funding, or exercise a power of authority on federal lands).</p>
New 82.1		<p>ADD: <i>An authority must not carry out a project within Canada, or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, within Canada, unless (a) the Agency determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or (b) the Agency determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.</i></p>	<p>To add a requirement for projects within Canada but not on federal lands be assessed where the proponent is a federal authority or where the feds provide funding for the project AND To reflect the suggestion that the Agency be the authority for all EAs in this section</p>
83	<p>A federal authority must not carry out a project outside Canada, or provide financial</p>	<p>Replace second and third “federal authority” with “Agency: <i>A federal authority must not carry out a project outside Canada, or</i></p>	<p>To make the Agency responsible for all EAs within sections 81-90 (non-designated</p>



	<p>assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, outside Canada, unless</p> <p>(a) the federal authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or</p> <p>(b) the federal authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.</p>	<p><i>provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, outside Canada, unless</i></p> <p><i>(a) the <del>federal authority</del> <b>Agency</b> determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or</i></p> <p><i>(b) the <del>federal authority</del> <b>Agency</b> determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.</i></p>	<p>projects where the feds are a proponent or provide funding, or exercise a power of authority on federal lands).</p>
84	<p>An authority's determination regarding whether the carrying out of the project is likely to cause significant adverse environmental effects must include a consideration of the following factors:</p>	<p>Replace "An authority's" with "The Agency's":</p> <p><del>An authority's</del> <b>The Agency's</b> determination regarding whether the carrying out of the project is likely to cause significant adverse environmental effects must include a consideration of the following factors:</p>	
84(e)	<p>[An authority's determination... must include a consideration of...] the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented.</p>	<p>Delete "and economically":</p> <p><i>the mitigation measures that are technically <del>and economically</del> feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented</i></p>	<p>There is no reason to limit mitigation measures being considered to those determined by the proponent to be economically feasible, and doing so could preclude consideration of important measures that should be considered.</p>
85	<p>Every federal authority that is in possession of specialist or expert information or knowledge with respect to a project must, on an</p>	<p>Replace "an authority's" with "the Agency's":</p> <p><i>Every federal authority that is in possession of specialist or expert information or knowledge with respect to a project must, on an</i></p>	<p>To reflect recommendation that Agency should lead assessments.</p>

	authority's request and within the period that it specifies, make that information or knowledge available to the authority.	<del>authority's</del> <b>the Agency's</b> request and within the period that it specifies, make that information or knowledge available to the authority.	
86(1)	<b>Notice posted on Internet site</b> Before making a determination under section 82 or 83, an authority must post on the Internet site a notice that indicates that it intends to make such a determination and, if the authority is of the opinion that it is appropriate in the circumstances, that invites the public to provide comments respecting that determination.	Delete and replace with:  <b>Notice and public participation</b> <i>86(1) Before making a determination under section 82, 82.1 or 83, <del>an authority</del> the Agency must:</i> <b>(a) post a notice on the Internet site that includes a copy of a description of the project, the location of the project, and any other relevant information; and</b> <b>(b) invite the public to participate in its assessment of the project.</b>	To ensure the public has all relevant information to participate meaningfully.
86(2)	No sooner than 15 days after the day on which it posts the notice referred to in subsection (1), the authority must post on the Internet site a notice of its determination, including any mitigation measures that it took into account in making the determination.	Replace 15 with 30, and everything after "must" with:  <i>No sooner than <b>30</b> days after the day on which it posts the notice referred to in subsection (1), the Agency must</i> <b>(a) post on the Internet site a draft report, including a draft determination, any mitigation measures that it took into account in making the determination, and any conditions attached to the determination; and</b> <b>(b) invite the public to comment on the draft determination.</b>	To increase the public comment period, ensure public has relevant information, and add a comment period on the draft determination.
Add 86(3)		<b>No sooner than 15 days after the day on which it posts the notice referred to in subsection (2), the Agency must post on the Internet site a notice of its determination, including any mitigation measures that it took into account in making the determination and any conditions attached to the determination.</b>	To reflect addition of an opportunity to comment on draft determination, and to require final determinations to be accompanied by relevant information.
87	An authority may designate a physical activity, or a class of	Change "may" to "must", change "on federal lands" to "within", add	To expand category of physical activities that

	physical activities, carried out on federal lands or outside Canada that is not in relation to a physical work and is not a designated project, but that, in the authority's opinion, may cause significant adverse environmental effects.	<p>limitation about “where a federal authority is...” and remove “in the authority’s opinion”:</p> <p><i>An authority <del>may</del> <b>must</b> designate a physical activity, or a class of physical activities, carried out on federal lands, or outside <b>or within</b> Canada <b>where a federal authority is carrying out the activity or providing financial assistance to any person for the purpose of enabling that activity to be carried out</b>, that is not in relation to a physical work and is not a designated project, <del>but that, in the authority’s opinion,</del> <b>if the physical activity may cause significant adverse environmental effects.</b></i></p>	can be designated to include activities within Canada, to limit the power to designate to only those activities for which a federal authority is carrying out the activity or providing financial assistance to enable it (this was likely a drafting oversight), and to reduce discretion to designate (authority must do so where the activity may cause SAEEs).
88(1)	An authority may designate a class of projects if, in its opinion, the carrying out of a project that is a part of the class will cause only insignificant adverse environmental effects.	<p>Change “An authority” to “The Minister” and add “by regulation” after “designate”:</p> <p><i><del>An authority.</del> <b>The Minister</b> may designate <b>by regulation</b> a class of projects if the carrying out of...</i></p>	Exempting classes of projects from these minor EAs should only be done by Ministerial regulation, which will increase oversight and accountability of such exemptions.
88(2)	Sections 82 and 83 do not apply to an authority in respect of a project that is part of a class of projects that is designated under subsection (1).	<p>Amend to add 82.1:</p> <p><i>Sections 82, <b>82.1</b> and 83 do not apply to an authority in respect of a project that is part of a class of projects that is designated under subsection (1).</i></p>	To reflect addition of 82.1.
89(1)	An authority that intends to designate a physical activity, or a class of physical activities, under section 87 or a class of projects under subsection 88(1) must post on the Internet site a notice that invites the public to provide comments respecting the designation within 30 days after the day on which the notice is posted.	<p>Delete “or a class of projects under subsection 88(1)”:</p> <p><i>An authority that intends to designate a physical activity, or a class of physical activities, under section 87 <del>or a class of projects under subsection 88(1)</del> must post on the Internet site a notice that invites the public to provide comments respecting the designation within 30 days after the day on which the notice is posted.</i></p>	To reflect that only the Minister should be able to exempt projects.
89(3)	An authority that designates a physical activity, or a class of	Delete or a class of projects under subsection 88(1):	To reflect that only the Minister should be

	physical activities, under section 87 or a class of projects under subsection 88(1) must post on the Internet site a notice that includes a description of the physical activity, the class of physical activities or the class of projects, as the case may be, and its reasons for making the designation.	<i>An authority that designates a physical activity, or class of physical activities, under section 87 <del>or a class of projects under subsection 88(1)</del> must post on the Internet site a notice that includes a description of the physical activity, the class of physical activities or the class of projects, as the case may be, and its reasons for making the designation.</i>	able to exempt projects.
90(1)	If the authority determines that the carrying out of a project on federal lands or outside Canada is likely to cause significant adverse environmental effects, the authority may refer to the Governor in Council the matter of whether those effects are justified in the circumstances.	Change “authority” to “Agency”: <i>If the <del>authority</del> <b>Agency</b> determines that the carrying out of a project on federal lands or outside Canada is likely to cause significant adverse environmental effects, the <del>authority</del> <b>Agency</b> may refer to the Governor in Council the matter of whether those effects are justified in the circumstances.</i>	To make consistent with Agency being RA.
90(2)	When the determination is made by an authority other than a federal Minister, then the referral to the Governor in Council is made through the Minister responsible before Parliament for that authority.	Delete “When the determination is made by an authority other than a federal Minister, then”, add ‘referred to in section (1)’, and change “that authority” to “the Agency”: <del><i>When the determination is made by an authority other than a federal Minister, then</i></del> <i>The referral to the Governor in Council <b>referred to in section (1)</b> is made through the Minister responsible before Parliament for <b>the Agency that authority.</b></i>	To reflect that Agency should be RA.
90(3)	When a matter has been referred to the Governor in Council, the Governor in Council must decide whether the significant adverse environmental effects are justified in the circumstances and must inform the authority of its decision.	Add “and Agency” after “authority”: <i>When a matter has been referred to the Governor in Council, the Governor in Council must decide whether the significant adverse environmental effects are justified in the circumstances and must inform the authority <b>and Agency</b> of its decision.</i>	To reflect that Agency should be RA.
91	Sections 82 and 83 do not apply to an authority in respect	Add “, 82.1”:	Consequential amendment.

	of a project	<i>Sections 82, 82.1 and 83 do not apply to an authority in respect of a project</i>	
Add 112 (h)		Designating, for the purposes of section 88(1), classes of projects;	To reflect recommendation for 88(1) that exemptions of classes of projects should only be done by Ministerial regulation.

### Recommendation 7: Providing greater certainty and transparency

Section	Provision	Amendment	Rationale
105(2)	The Agency must ensure that the following records and information relating to the impact assessment of the designated project that it conducts are posted on the Internet site:	Add “and maintained” after “posted”: <i>The Agency must ensure that the following records and information relating to the impact assessment of the designated project that it conducts are posted <b>and maintained</b> on the Internet site:</i>	Records should be made available permanently.
105(2)(b)	a description of the factors to be taken into account in the impact assessment and of the scope of those factors or an indication of how such a description may be obtained;	Delete “or an indication of how such a description may be obtained”: <i>a description of the factors to be taken into account in the impact assessment and of the scope of those factors <del>or an indication of how such a description may be obtained;</del></i>	All information should be readily accessible on the Internet site.
(c)	the report with respect to the impact assessment that is taken into account by the Minister under subsection 60(1), or a summary of the report and an indication of how a copy of the report may be obtained;	Delete “, or a summary of the report and an indication of how a copy of the report may be obtained”: <i>the report with respect to the impact assessment that is taken into account by the Minister under subsection 60(1), <del>or a summary of the report and an indication of how a copy of the report may be obtained;</del></i>	All information should be readily accessible on the Internet site.
(d)	any scientific information that the Agency receives from a proponent or federal authority, or a summary of the scientific information and an indication of	Delete “scientific” and “, or a summary of the scientific information and an indication of how that information may be obtained”: <i>any <del>scientific</del> information that the Agency receives <del>from a proponent or federal authority, or a summary</del></i>	All information should be readily accessible on the Internet Site, and information should not be limited to scientific information, or information

	how that information may be obtained;	<del>of the scientific information and an indication of how that information may be obtained;</del>	received from a proponent or federal authority.
(e)	a description of the results of the follow-up program that is implemented with respect to that designated project or a summary of the results and an indication of how such a description may be obtained;	Delete “or a summary of the results and an indication of how such a description may be obtained” and add, “and how follow-up and monitoring are applied” <i>a description of <b>how follow-up and monitoring are being applied</b> with respect to that designated project, <b>and</b> the results of the follow-up program that is implemented</i> <del>or a summary of the results and an indication of how such a description may be obtained,;</del>	All information should be readily accessible on the Internet site.
(g)	any other information that the Agency considers appropriate, including information in the form of a list of relevant records and an indication of how a copy of them may be obtained; and	Delete “, including information in the form of a list of relevant records and an indication of how a copy of them may be obtained” and “and”: <i>any other information that the Agency considers appropriate, including information in the form of a list of relevant records and an indication of how a copy of them may be obtained; and</i>	All information should be readily accessible on the Internet site.
(h)	any other record or information prescribed by regulations made under paragraph 112(f).	Delete “.” and add “; and”: <i>any other record or information prescribed by regulations made under paragraph 112(f); <b>and</b></i>	
Add (i)		<b><i>Any public comments received during an impact assessment or a determination under sections 82, 82.1, 83 or 87, and any records describing how the Agency or federal authority has considered those comments; and</i></b>	Public comments should be readily accessible.
Add (j)		<b><i>An assessment plan issued under section 16(2)</i></b>	Assessment plans should be available on the Internet site.
105(3)	The Agency must ensure that, in the case of an assessment conducted by a review panel or an impact assessment completed under section 59, the	Add “and maintained” after posted: <i>The Agency must ensure that, in the case of an assessment conducted by a review panel or an impact assessment completed</i>	Records should be made available permanently.

	following records or information are posted on the Internet site:	<i>under section 59, the following records or information are posted <b>and maintained</b> on the Internet site:</i>	
105(3)(c)	the report with respect to the review panel's impact assessment referred to in section 55 or the impact assessment completed under section 59, or a summary of the report and an indication of how a copy of the report may be obtained;	Delete ", or a summary of the report and an indication of how a copy of the report may be obtained":  <i>the report with respect to the review panel's impact assessment referred to in section 55 or the impact assessment completed under section 59, <del>or a summary of the report and an indication of how a copy of the report may be obtained;</del></i>	All information should be readily accessible on the Internet site.
(d)	any scientific information that the Agency or the review panel receives from a proponent or federal authority, or a summary of the scientific information and an indication of how that information may be obtained;	Delete: ", or a summary of the scientific information and an indication of how that information may be obtained"  <i>any <del>scientific</del> information that the Agency or the review panel receives from a proponent or federal authority, <del>or a summary of the scientific information and an indication of how that information may be obtained;</del></i>	All information should be readily accessible on the Internet site.
(e)	a description of the results of the follow-up program that is implemented with respect to that designated project or a summary of the results and an indication of how such a description may be obtained;	Delete "or a summary of the results and an indication of how such a description may be obtained" and add, "and how follow-up and monitoring are applied"  <i>a description of the results of the follow-up program that is implemented with respect to that designated project <del>or a summary of the results and an indication of how such a description may be obtained,</del> and how follow-up and monitoring are applied;</i>	All information should be readily accessible on the Internet site.
(h)	any other information that the Agency considers appropriate, including information in the form of a list of relevant documents and an indication of how a copy of them may be obtained; and	Delete ", including information in the form of a list of relevant documents and an indication of how a copy of them may be obtained" and "and":  <i>any other information that the Agency considers appropriate, <del>including information in the form of a list of relevant documents and</del></i>	All information should be readily accessible on the Internet site.

		<i>an indication of how a copy of them may be obtained; and</i>	
(i)	any other record or information prescribed by regulations made under paragraph 112(f).	Delete "." And add "; and": <i>any other record or information prescribed by regulations made under paragraph 112(f); and</i>	
Add (j)		Add: <b><i>Any public comments received and any records describing how the review panel has considered those comments.</i></b>	Public comments should be readily available on the Internet site.
105(4)(c)	The Agency must determine... when information may be removed from the Internet site.	Delete	Information should always be made available.
106(1)	Subject to subsection (2), in respect of every designated project, a project file must be established by the Agency on the day on which the notice referred to in subsection 10(1) in respect of the designated project is posted on the Internet site and maintained until the day on which any follow-up program in respect of that designated project is completed.	Add "and maintained" after "established" and "commencing" after "Agency", and delete "and maintained until the day on which any follow-up program in respect of that designated project is completed". <i>Subject to subsection (2), in respect of every designated project, a project file must be established <b>and maintained</b> by the Agency <b>commencing</b> on the day on which the notice referred to in subsection 10(1) in respect of the designated project is posted on the Internet site <del>and maintained until the day on which any follow-up program in respect of that designated project is completed.</del></i>	All records should be maintained.
106(2)	The obligation set out in subsection (1) ends on the earliest of the following days:....	Delete	All records should be maintained.

### Recommendation 8: Respecting Indigenous rights and authority

Section	Provision	Amendment	Rationale
Preamble		Add: Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples in impact assessment in Canada.	To recognize the importance of implementing UNDRIP.



2, definition of <i>jurisdiction</i> (f)	<b><i>jurisdiction</i></b> means... an Indigenous governing body that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project	Add (iii):  <b><i>under its own laws and inherent jurisdiction, where the Indigenous governing body has informed the Minister that it is a jurisdiction with powers, duties or functions in relation to impact assessment.</i></b>	To take a recognition- based approach that broadens the recognition of Indigenous jurisdictions.
6(1)(e)	to promote cooperation and coordinated action between federal and provincial governments, and the federal government and Indigenous governing bodies that are jurisdictions, with respect to impact assessments;	Delete “that are” and replace with “and”:  <i>to promote cooperation and coordinated action between federal and provincial governments, and the federal government and Indigenous governing bodies that are and jurisdictions, with respect to impact assessments;</i>	To broaden the purpose to include Indigenous governing bodies that are not “jurisdictions” as narrowly defined in the Act.
6(1)(g)	to ensure respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982, in the course of impact assessments and decision-making under this Act;	Add “and Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples”:  <i>to ensure respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 and Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples, in the course of impact assessments and decision- making under this Act</i>	To ensure that IAs under the Act uphold UNDRIP.
Add 6(1)(o)		Add:  <b><i>To implement the United Nations Declaration on the Rights of Indigenous Peoples in procedural and substantive decision-making related to impact assessment in Canada.</i></b>	To ensure implementation of UNDRIP is a purpose of the Act.
9(2)	Before making the order, the Minister must take into account any adverse impact that a	Add: “, or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples”:	To recognize Indigenous rights under UNDRIP.

	physical activity may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i> as well as any relevant assessment referred to 5 in section 92, 93 or 95.	<i>Before making the order, the Minister must take into account any adverse impact that a physical activity may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples, as well as any relevant assessment referred to 5 in section 92, 93 or 95,</i>	
Add 9(9)		Add: <b><i>The Minister must make the designation if requested by an Indigenous group on the basis of potential impacts to rights recognized and affirmed by section 35 of the Constitution Act, 1982 or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples;</i></b>	To ensure projects are designated where requested by an Indigenous group on the basis of potential impacts to Indigenous rights.
16(2)(c)	any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i> ;	Add “, or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples”:  <i>any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples.</i>	To recognize Indigenous rights under UNDRIP.
22(1)(c)	the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the	Add “, or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples”:  <i>the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 or Indigenous human rights as set out in the United Nations</i>	To recognize Indigenous rights under UNDRIP.

	Constitution Act, 1982;	<b><i>Declaration on Rights of Indigenous Peoples,</i></b>	
63(1)(d)	any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i> ; and	Add “, or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples”: <i>any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples and</i>	To recognize Indigenous rights under UNDRIP.
Add 63.1(e)		<b><i>infringes Indigenous rights recognized and affirmed by section 35 of the Constitution Act, 1982, or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples, without the consent of the affected Indigenous group.</i></b>	To ensure decisions uphold UNDRIP.
68(1)	The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Minister is not permitted to amend the decision statement to change the decision included in it.	Delete “However, the Minister is not permitted to amend the decision statement to change the decision included in it.”: <i>The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Minister is not permitted to amend the decision statement to change the decision included in it.</i>	The Minister should have the power to revoke approvals in the case of severe environmental impacts and infringement of Indigenous rights, or to reflect the outcomes of post-IA consultation with Indigenous groups.
84(a)	any adverse impact that the project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i> ;	Add “, or Indigenous human rights as set out in the United Nations Declaration on Rights of Indigenous Peoples”: <i>any adverse impact that the project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 or Indigenous human rights as set out in the United Nations</i>	To recognize Indigenous rights under UNDRIP.

		<b>Declaration on Rights of Indigenous Peoples</b>	
114(1)(e)	if authorized by the regulations, enter into agreements or arrangements with any Indigenous governing body not referred to in paragraph (f) of the definition <i>jurisdiction</i> in section 2 to	Delete "if authorized by the regulations,": <del><i>if authorized by the regulations,</i></del> <i>enter into agreements or arrangements with any Indigenous governing body not referred to in paragraph (f) of the definition jurisdiction in section 2 to</i>	To recognize the broader authority of Indigenous governing bodies beyond only those established or recognized under Canadian law.
Add 114(1)(i)		Add: <b><i>establish follow-up and monitoring committees in the area of impact assessment, including with respect to the interests and concerns of Indigenous peoples of Canada, and appoint as a member of any such bodies one or more persons</i></b>	To provide for the role of Indigenous groups and particularly Indigenous guardians in follow-up and monitoring.