



Comments on the Final Report of the Expert Panel for the Review of Environmental Assessment Processes

Overview

The Final Report of the Expert Panel for the Review of Environmental Assessment Processes (EA Expert Panel) provides a strong foundation for restoring public trust in how natural resources are developed. Nature Canada congratulates the Expert Panel on an excellent report. If implemented by legislation, the Expert Panel's recommendations would greatly assist in achieving sustainability, reducing Canada's greenhouse gas emissions, protecting biodiversity, and promoting reconciliation with Indigenous people.

The Final Report provides a critical, in some ways innovative, framework for that next-generation law. Some of the key recommendations include:

- Focusing impact assessments on determining whether a proposed project or policy contributes a net benefit to environmental, economic, social, health and cultural well-being;
- Establishing an independent body to conduct federal impact assessments using a full range of dispute-resolution processes;
- Transferring impact assessment responsibilities from the National Energy Board and Canadian Nuclear Safety Commission to the new Impact Assessment Commission;
- Engaging Indigenous peoples in decision-making at all stages of impact assessment, in accordance with their laws and customs;
- Considering Indigenous rights in all impact assessments;
- Establishing planning as the first stage in all impact assessments so that there can be early coordination among governments, and tailoring of the impact assessment process to the circumstances of the project or policy;
- Requiring strategic environmental assessments and regional environmental assessments in certain circumstances.

Nature Canada has identified several concerns with the Final Report that should be addressed in the government's response and legislative process:

- It is unclear what projects will be required to be assessed under the new law. The Expert Panel stated that there would be more projects assessed than under CEAA 2012, but fewer than under CEAA 1992. For example, there is no clear recommendation requiring impacts assessments of development projects in National Parks or National Wildlife Areas, nor projects that produce high levels of greenhouse gas emissions;



- The engagement of Indigenous peoples in decision-making relating to impact assessment will require more consideration as well as consultations between Indigenous People and governments.
- The report promotes a collaborative approach to impact assessment, but it is uncertain how impact assessment can work if other parties (such as provincial governments) are unwilling to collaborate.
- The scope of responsibilities of the proposed independent Commission should be scaled back. This body should be structured more to resemble the impact assessment boards established under statutes implementing northern comprehensive claims agreements. The proposed board should make recommendations to Cabinet, but Cabinet's authority to substitute its views for those of the board should be constrained as they are under these statutes.

Nature Canada is the oldest national conservation charity in Canada. Since our founding in 1939, we have been working to protect habitats and the species that depend on them, as well as connecting Canadians to nature. Nature Canada is the national voice for nature representing 45,000 members and supporters and a network of provincial and local nature organizations across Canada.

Nature Canada has been an active intervener in federal environmental assessment reviews since the 1980s including, most recently, the National Energy Board reviews of the Energy East and Trans Mountain projects, and the Joint Panel Reviews of the Northern Gateway, EnCana Shallow Gas Infill Development, and Mackenzie Gas projects.

The balance of this submission focuses on several areas in the Final Report that require reconsideration as well as issues relating to implementation of the Final Report that the Expert Panel may not have considered:

Triggering of Project Impact Assessment

The Expert Panel recommends three mechanisms to trigger project impact assessments, the first of which is a Project List similar to the regulated project list under CEAA 2012. This Project List would be broader than CEAA 2012 project list and without the screening process (a discretionary decision on whether assessment of a project is required).

Only those projects "that are likely to adversely impact matters of federal interest in a way that is consequential for present and future generations" would be included on the Project List. This threshold could be interpreted to tightly restrict the categories of projects included on the Project List. The Expert Panel does not provide guidance as to which categories of projects would satisfy this threshold test (e.g., should all projects that propose to release large amounts of GHGs be included on the Project List?). Depending on the interpretation of the proposed test, there



could well be fewer categories of projects subject to mandatory impact assessment than under CEAA 2012 currently.

Nature Canada proposes a threshold test for including projects on the proposed Project List that is less onerous than that proposed by the Expert Panel, and that specific categories of projects identified in Nature Canada's submission to the Expert Panel (e.g., in situ oil sands projects, high-carbon projects, oil and gas fracking projects, interprovincial and international electricity transmission lines) be included on the Project List.

The Expert Panel also does not address the question as to the process for recommending additions or deletions to the Project List. Nature Canada recommends entrenching an expert advisory committee (separate from the current Multi-Interest Advisory Committee) in the next-generation law to propose changes to the Project List. Cabinet or the Environment Minister would be required to publicly respond to these proposed changes with reasons but otherwise would have discretion to reject them. This process would help ensure that the Project List includes projects that are likely to be most consequential to sustainability and that the Project List is kept up to date.

The Expert Panel recommends two other triggering mechanisms for projects not included on the Project List. The recommendation that any proponent or individual may request/petition that a project be subject to a project IA makes sense. However, the legislation should also require the Minister of Environment and Climate Change to respond with reasons within a prescribed time limit and to proceed with the EA unless prescribed criteria are not met." (p 20-21). Further challenges are to ensure that the new law clearly lays out the request/petition process for policies, plans, and programs as well as projects, and is both practical and clearly defined in terms of applicability, decision-making criteria and processes, and appeals.

The other triggering mechanism based on so-called "Statutory Criteria" is vague and needs substantial elaboration to be effective. Crucially, the Expert Panel does not recommend that regulatory provisions of the *Fisheries Act*, *Navigation Protection Act* or other statutes be listed as mandatory triggers for impact assessment as had been the case under CEAA 1992. The parliamentary committee reviews of the *Fisheries Act* and *Navigation Protection Act* also failed to recommend regulatory triggers that would ensure that projects of all sizes that at least partially fall within federal jurisdiction would receive some kind of oversight or assessment.

Nature Canada recommends that these decision-based triggering mechanisms (especially the *Fisheries Act*) be included as regulatory triggers for project impact assessment.

Comment: Triggering of project impact assessment should be informed by an expert advisory committee that proposes changes to the Project List and decision-based triggering mechanisms must be included as regulatory triggers for IA.



Is the Proposed Consequential Impact Test a *de facto* Significance Test for Triggering?

Nature Canada strongly supports the recommendation of the Expert Panel that environmental assessment, or “impact assessment” should move beyond the significance test to a sustainability test which requires projects result in a net benefit to environmental, social, economic, health and cultural well-being in order to gain approval. The government should clarify the distinction between the significance test under the *Canadian Environmental Assessment Act, 2012* and the Expert Panel’s recommendation that a New Project List be created that requires project IA only for those projects that are “likely to adversely impact on matters of federal interest in a way that is consequential for present and future generations” (Report at pg 56).

The Expert Panel is recommending that projects should not be subject to IA unless they meet this consequential impact threshold for inclusion on the Project List, otherwise meet a statutory test for consequential impact, or IA is requested (Report pg 57). Whether a project is likely to cause unjustified significant adverse effects or is likely to cause adverse impacts in a way that is consequential for present and future generations may be a distinction only in terms.

Applying the proposed consequential impact test to determine whether a project should be subject to IA may result in the same effect of the significance test, in that the purpose of both tests is to measure the significance of adverse project impacts. This is inconsistent with the Expert Panel’s recommendation that IA should include a review of the net benefits and trade-offs between benefits and negative effects (Report at pg 20), in that the consequential impact test operates as a *de facto* significance test to determine whether a project ought to even be subject to IA.

Comment: A more defined and meaningful test for determining project listing and triggering is required by the legislation to ensure clarity and transparency in the determination of what projects are subject to IA.

On What Basis Does the Expert Panel Expect an Increase in the Annual Number of Assessments?

The Expert Panel is recommending that all projects on federal lands no longer require a determination that the project is not likely to cause significant adverse effects or that such effects are justified; instead, the Expert Panel recommends that only those projects on federal lands included on the Project List, or which otherwise meet the test for IA, be subject to assessments (Report at pg 57).



The Expert Panel makes further recommendations to contract the scope of projects subject to federal IA by limiting the definition of projects to physical activities or undertakings that “affect one or more matters of federal interest” (Report at pg 56). See below for further comments on matters of federal IA jurisdiction.

Given that the Expert Panel has recommended a continuance of the Project List approach, with some modifications, the limiting of the definition of projects subject to federal IA, as well as the reduction in the scope of projects on federal lands subject to assessments, it is difficult to expect, as the Expert Panel has done in their Report, that there will be an increase of a few hundred assessments per year under the new IA act (Report at pg 74).

Comment: Given the serious risks posed by multiple environmental crises at local, regional, national and global levels, the Government of Canada must work to fulfill its duties to assess, monitor, mitigate and prohibit the impacts of projects that independently and/ or cumulatively contribute to these crises. The scope of federal roles in IA should be expanded in the context of modern risks, not limited.

Project Application Quality Standards and Measures of Sustainability Should Be Legislated

Nature Canada strongly supports the Expert Panel’s conclusion that IA must be entirely based on evidence that is, and is seen to be, unbiased, accurate, accessible and complete (Report at pg 14). Project applications that are deliberately confusing, inaccessible, difficult to navigate or search and unnecessarily voluminous or technical must not be accepted by the IA authority.

As the Expert Panel states in the Report, “In order to be meaningful, participation needs to be informed. The information regarding the proposed activities and the assessment processes must be easily accessible and understandable for members of the public, stakeholders and Indigenous Peoples” (Report at pg 40).

IA legislation, not the regulations, should set clear and enforceable project application quality standards that meet the Expert Panel’s standard for meaningful participation. This should include accessibility standards that integrate geographic information system interfaces through which the public can easily access information related to an application based on local or regional maps.

Nature Canada also supports the Expert Panel’s recommendation that the public is engaged in the early planning stages of IA (Report at pg 19). The Expert Panel’s suggestion, however, that because sustainability “means different things to different people in different contexts” that IAs should begin with a process of defining the sustainability framework for each project, is inappropriate. While the public should be engaged at the earliest stages of the planning process,



including processes to address specific aspects of a project's impacts on the five pillars of sustainability, the act should clearly define sustainability and set clear and objective criteria for determining whether or not a project results in a net benefit to sustainability. What is or is not sustainable must be measured objectively and must not be determined by the subjective interests involved in any particular project.

Comment: Strong standards for clarity, accessibility and navigability of project applications should be set out under the act and strictly enforced; additionally, a clear and objective definition of sustainability and criteria to meet net benefits to sustainability for project approval should be included in the act.

Procedural Rights for Public Participants and Parties to Proceedings Must Be Clarified

The Expert Panel's assertion that public participation opportunities in IA processes must be meaningful (Report at pg 36) is a very important point, but one which raises additional questions. The Expert Panel correctly points out that meaningful participation is participation that has the inherent potential to influence decisions, provide opportunities for early and on-going engagement, and provide the capacity required for active participation (Report at pg 36).

Nature Canada agrees that public participation must meet all these requirements; however, there are nuances that the Expert Panel did not address in the matter of meaningful participation.

The Potential to Influence Decisions

First, the Expert Panel did not make recommendations regarding how various products of public participation should impact decision making. While the Expert Panel recommends that results of public participation should have the potential to impact decisions (Report at pg 36), it did not specify how such "results of public participation" should be addressed by the Commission or the processes and procedural rights that should attach to public participation.

Nature Canada recommends that the Expert Panel further elaborate on its recommendations that IA legislation provide public participation opportunities that have the potential to impact decisions; specifically, the Expert Panel should address whether there should be a standing requirement to participate in public participation proceedings; whether there are specific procedural rights that should attach to participating in these proceedings; whether the results of these proceedings should constitute evidence and, if so, how the Commission should be required to address such evidence; and distinguish between public participation in public participation proceedings and the participation of members of the public in formal, quasi-judicial proceedings (i.e., what are the standing requirements for intervenor status?)



The Expert Panel asserts that the “standing test” adopted by the National Energy Board has greatly hindered trust in the assessment process, and that it is necessary for a “suite of engagement opportunities” to be made available based on the context and communities involved (Report at pgs 38-39). In fact, it is the lack of clarity and certainty of procedural entitlements that has undermined trust in the NEB’s assessment processes. While the public participation processes must be flexible given the context, there must also be clear procedural guarantees for public participants and parties to formal hearing processes.

Comment: Meaningful participation requires an opportunity for members of the general public to be heard and for the Commission to listen; however, there must also be guaranteed opportunities for individuals and organizations more directly impacted by proposed projects or which have special knowledge or expertise on the relevant matters to be heard, and the principles of fairness require that their procedural entitlements are greater than members of the general public. The Expert Panel must work to make clearer recommendation on what legislative procedural guarantees should be afforded to the various types of participants in IA processes.

Opportunities for On-going Participation

Second, the Expert Panel should provide greater detail on its recommendations for opportunities for early and on-going public participation in proceedings. As the Board is recommending that the results of public participation have the potential to influence decisions, there must be a process for the submission of those results to the Commission and an opportunity for participants to respond to those submissions. At what point in the IA process must public participation be completed in order for its results to be submitted and responded to in the hearing processes?

Comment: The contours of public participation and the relationship between the results of public participation and formal tribunal proceedings must be elaborated.

Capacity Requirements

Finally, public participation, and the participation of interveners, cannot meaningfully influence decisions without the capacity to access, address and provide and test evidence before the decision maker. While each project will demand different allocations of resources to facilitate public and intervener participation, there must be some legislated metric for determining minimum resource allocation requirements.

The Expert Panel has correctly identified a need for sufficient time and financing allocations to facilitate participation capacity. The Expert Panel states in the Report that “meaningful participation costs money... The current Participant Funding Program provides an insufficient



amount of funding and it does so too late in the process” (Report at pg 39). Nature Canada strongly agrees; however, deficiencies in the participant funding program are not limited to quantity of funding.

Limits on eligible expenses in participant funding agreements constrain the ability of civil society organizations to adequately review project applications and prepare evidence for submission to the responsible authority. By prohibiting the use of participant funding to pay wages of employees for the purpose of project review and the preparation of submissions, the participant funding program externalizes the cost of assessment, evidence gathering and evidence testing away from the proponents and on to civil society. It is unfair that NGOs, Charities and community groups and organizations should incur the costs of assessing whether or not a proponent’s proposed project should be approved.

Comment: Meaningful participation costs money, but these costs should be the responsibility of proponents, not the public or civil society. To that end, improvements in the quantity of intervener funding and more appropriate and fair eligible expense categories are necessary.

The Scope of Responsibilities of the Independent Body

Nature Canada supports the Expert Panel’s recommendation that the federal IA functions should be led by a single, quasi-judicial body with strong regional presence and authority. Nature Canada supports the Expert Panel’s view that the National Energy Board (NEB), and Canadian Nuclear Safety Commission (CNSC) should not conduct impact assessments under a next generation impact assessment law. A centralized approach would promote consistency, timeliness, improved public participation and efficiency, and avoid conflicts of interest and problems of regulatory capture that plague NEB and CNSC. While sustainability assessments would be conducted by the CEA Agency or review panels, the NEB and CNSC would presumably continue to exercise their other regulatory functions.

However Nature Canada’s view is that the scope of responsibilities of the proposed independent Commission is too extensive and should be scaled back. This body should be structured more to resemble the impact assessment boards established under statutes implementing northern comprehensive claims agreements. The proposed board should make recommendations to Cabinet, but Cabinet’s authority to substitute its views for those of the board should be constrained as they are under these statutes. Cabinet decisions in response to IA recommendations would be required to be made public with reasons.



Comment: Federal IA functions should be led by a single, quasi-judicial body, as recommended by the Expert Panel; however, the scope of the responsibilities of this body should be scaled back and Cabinet's authority to substitute its views with those of that body should be constrained and require reasons.

Climate Change

Nature Canada strongly supports the Expert Panel's recommendation that IA should play a critical role in supporting Canada's efforts to address climate change, including the establishment of thresholds and targets for industrial sectors and regions and which are binding on project level IA.

The Commission should play an important role in the national accounting of GHG emissions and must not limit its information gathering only to "matters of federal interest". While the role of the Commission in addressing climate change should focus on co-operative processes, the federal government has jurisdiction to collect all relevant GHG emission data in Canada to inform the federal government's policy and decision-making functions.

The Expert Panel's recommendation for a Canada-led federal strategic IA or similar co-operative and collaborative mechanisms to address climate change is a good first choice; however, where provinces are reluctant or obstructive to IA processes to address climate change, IA legislation should mandate IA climate change mechanisms in the absence of provincial co-operation.

Comment: IA legislation should require IA processes at the strategic, regional and project levels to collect climate change related information, establish thresholds and targets, and bind federal decision-making to the confines of those targets.

Triggering of Regional Impact Assessments

The Expert Panel has proposed that: "Regional IA should be required in two cases:

1. On federal lands or marine areas with the potential for cumulative impacts; and
2. Outside of federal lands or marine areas where there is potential for, or existing cumulative impacts, on many federal interests." (p 79, 80)

The recommended framework for regional assessments is extended to include alternative regional scenarios, but without much specificity as to how they would be triggered and undertaken.



The recommendation for triggering of regional IAs has merit as far as it goes, but still invites the questions: how are regional IAs to be made legally binding in different circumstances? and how is a Cabinet Minister to be compelled to convene a regional IA even in circumstances where there is clear potential for cumulative effects on federal lands or marine areas? Without clear answers to these questions in the new law, one can safely predict that the use of regional IAs will be rare.

Regional IAs will be even more rare in situations where provincial cooperation is essential if there are no incentives for a province to participate and disincentives not to participate. A fund to support regional IAs established under a next-generation IA law would be a key incentive for provinces to cooperate.

The Expert Panel does not propose a process (such as an expert advisory committee) to recommend to the Minister that specific regional or strategic IAs be conducted. Nature Canada proposes that the Expert Advisory Committee referred to above with respect to Project List additions and deletions also have responsibility for recommending a list of regional IAs (e.g., Bay of Fundy, Ring of Fire) that should be convened by the federal government in cooperation with other governments and indigenous communities. The next-generation law should also establish a dedicated fund to finance these listed regional IAs.

Comment: IA legislation must set out where regional IAs are required and a fund to incentivise provincial cooperation should be established. An Expert Advisory Committee should be constituted under IA legislation to advise the government on which projects should be on the list of projects requiring project-level IA and which regions should be on a list of regions requiring regional-level IA.

Regional IA Information Gathering Must Not Be Limited to Traditional Matters of Federal Interest

Nature Canada strongly supports the Expert Panel's recommendation that IA legislation mandate regional IA to assess baseline conditions and cumulative effects of all projects and activities within a defined region (Report at pg 76); however, the Expert Panel's overly cautious and conservative approach to federal jurisdiction to conduct regional and project level IA is inconsistent with the principles of co-operative federalism and fails to recognize the inter-provincial and national nature of cumulative effects.

While we agree with the Expert Panel that "regional IA can play a major role in managing cumulative impacts on matters of federal interest" (Report at pg 76), a model of baseline data collection in regional IA processes which is limited to the collection "information on all federal interests across the five pillars of sustainability" (Report at pg 77) would lack sufficient data to inform decision makers about the true baseline conditions of a region and the resilience of valued components to stressors.



As the Expert Panel explains, “regional IA may assist with providing information and management direction for those cumulative impacts that result from a combination of small activities that do not require federal project IA” (Report at pg 77). In fact, regional IA requires the collection of this information in order to identify baseline conditions and inform subsequent permitting, project approvals and other decision making. Importantly, the federal government likely does not require a decision-making authority to collect this regional IA information.

Because one of the central purposes of regional IA is to inform planning and government decision-making, it is important that there is co-operation among all levels of government in regional IA processes; however, the Expert Panel should not constrain its recommendations on the collection of regional IA information to traditional heads of power under which the federal government has decision-making authority.

Comment: The collection of regional IA information should not be restricted to “matters of federal interest” as this will result in complete information on baseline conditions, cumulative effects and valued component resilience. While the Expert Panel’s recommendation of a co-operative approach to regional IA and information gathering is a clear first choice, IA legislation should require the collection of sufficient regional IA data even in the absence of provincial co-operation.

Strategic Impact Assessment

The Expert Panel focuses on assessment of impacts of “existing federal plans, policies and programs where these initiatives have consequential implications for federal project or regional IA”. (p 7) “The Strategic IA model would apply to a federal initiative that: 1. is likely to affect many projects subject to federal IA and 2. lacks clear guidance on how it should be applied in project or regional IA.” (p 82) The Expert Panel specifically sets strategic IA, as undertaken by the IA Authority, as assessing the impacts of federal plans, policies and programs on federal project or regional IA. The sustainability impact of the policies themselves is left to the existing Cabinet Directive.

The Expert Panel does not recommend any amendment to the existing Cabinet Directive respecting assessment of new federal policies, plans or programs. Nor does it recommend that existing federal policies, plans or programs be subject to assessment, much less elaborate triggering or screening mechanisms to identify and initiate such reviews. It is not clear how this will accommodate the Expert Panel’s own endorsement of transparency and public participation, or the application of sustainability criteria.



A similar issue to that suggested above for regional IAs arises for strategic IAs: how are strategic IAs to be made legally binding in circumstances where there are many projects subject to federal IA and lack of guidance on application? As with regional IAs, strategic IAs will likely be rare based on the approach recommended by the Expert Panel.

As noted above, the Expert Panel does not propose that the next-generation law authorize the proposed expert advisory committee to recommend to the Minister that specific strategic IAs be conducted. Nature Canada supports the empowerment of such a committee with respect to strategic IAs, as well as to authorize the expert advisory committee to recommend a list of federal policies, program or plans that should be subject strategic IA as well as a dedicated fund to finance these listed strategic IAs.

The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals has not been effective in ensuring proposals are adequately assessed. Small, minor or inconsequential proposals should be subject to minimal strategic IA requirements and proposals with potentially significant impacts ought to be subject to enhanced strategic IA. Regardless of the details of how strategic IA should be mandated under IA legislation, without establishing legislative requirements for conducting strategic IA beyond the Cabinet Directive, this level of IA will not be adequately performed.

Comment: An Expert Advisory Committee, as recommended above regarding project listing and regional IA listing, should also be given the responsibility of recommending to the Minister that specific strategic IAs be conducted and to recommend a list of federal policies, programs and plans that should be subject to strategic IA.

IA Decisions Should Be Made Co-operatively but Within the Context of Broad Federal Jurisdiction

The Expert Panel's report exaggerated the limits of federal authority in IA processes. The frequent recommendations that the federal government approach IA co-operatively with the provinces and Indigenous Groups is an excellent first choice; however, there are strong arguments for federal jurisdiction for IA processes in a wide range of activities that are traditionally under provincial jurisdiction, but which cause cumulative impacts that are beyond the provinces' ability or authority to mitigate.

Projects and activities that are traditionally of a local nature may attract federal authority in the context of cumulative effects on valued ecosystem components. For example, a project that impacts on old growth forests, land use planning that impacts on wetlands, and provincial policies that impact on grasslands may all fall, traditionally, within provincial jurisdiction. In the context of the cumulative effects of projects across the country on the sustainability of old growth



forests, wetlands, grasslands and other threatened ecosystems, the federal government has a responsibility to address these matters of national concern which cannot be addressed independently by the provinces. While the co-operative approach is an undeniable first choice, the federal government must not eschew its responsibilities to address the multiple environmental crises impacting Canada at regional national levels.

The co-operation agreements recommended by the Expert Panel should work to establish IA bodies across Canada that are composed of federal, provincial and Indigenous government representatives which conduct IA in accordance with national standards. The federal government's jurisdiction is limited; however, to ensure that all Canadians benefit from the same or similar IA standards, the federal government should endeavour to enter into co-operative agreements with the provincial and Indigenous governments that establish minimum IA standards and decision making IA bodies with the authority to make decisions on behalf of all levels of government.

Inter-governmental IA agreements that establish multi-jurisdictional decision making IA authorities will achieve the "one project, one assessment" approach advocated by the Expert Panel and that would be in line with the Expert Panel's recommendation that "overarching IA co-operation arrangements" should be used as a mechanism of a co-operative approach to IA in a region or jurisdiction (Report at pg 24). Nature Canada agrees with the Expert Panel's statement that "for sustainability to be advanced, all jurisdictions need to find a way to work together" (Report at pg 23).

Co-operation should result in inter-governmental IA agreements that conform to national IA standards, promote information gathering across provincial and territorial lines and which inform policy and decision making at all levels of government.

Nature Canada supports the Expert Panel's recommendation that the focus of IA governance must include instilling co-operation and consensus as a governance philosophy; however, this recommendation should specify that co-operative IA governance should work to promote the "one project, one assessment" policy and establish national IA standards at the strategic, regional and project levels.

Comment: Co-operation in IA processes and decision making between the federal, provincial and Indigenous governments should result in IA bodies with authority to make decisions at all levels of government and which meet minimum national standards at the strategic, regional and project levels of IA.



Summary of Comments

- Comment 1: Triggering of project impact assessment should be informed by an expert advisory committee that proposes changes to the Project List and decision-based triggering mechanisms must be included as regulatory triggers for IA.
- Comment 2: A more defined and meaningful test for determining project listing and triggering is required by the legislation to ensure clarity and transparency in the determination of what projects are subject to IA.
- Comment 3: Given the serious risks posed by multiple environmental crises at local, regional, national and global levels, the Government of Canada must work to fulfill its duties to assess, monitor, mitigate and prohibit the impacts of projects that independently and/ or cumulatively contribute to these crises. The scope of federal roles in IA should be expanded in the context of modern risks, not limited.
- Comment 4: Strong standards for clarity, accessibility and navigability of project applications should be set out under the act and strictly enforced; additionally, a clear and objective definition of sustainability and criteria to meet net benefits to sustainability for project approval should be included in the act.
- Comment 5: Meaningful participation requires an opportunity for members of the general public to be heard and for the Commission to listen; however, there must also be guaranteed opportunities for individuals and organizations more directly impacted by proposed projects or which have special knowledge or expertise on the relevant matters to be heard, and the principles of fairness require that their procedural entitlements are greater than members of the general public. The Expert Panel must work to make clearer recommendation on what legislative procedural guarantees should be afforded to the various types of participants in IA processes.
- Comment 6: The contours of public participation and the relationship between the results of public participation and formal tribunal proceedings must be elaborated.
- Comment 7: Meaningful participation costs money, but these costs should be the responsibility of proponents, not the public or civil society. To that end, improvements in the quantity of intervenor funding and more appropriate and fair eligible expense categories are necessary.
- Comment 8: Federal IA functions should be led by a single, quasi-judicial body, as recommended by the Expert Panel; however, the scope of the responsibilities of this body should be scaled back and Cabinet's authority to substitute its views with those of that body should be constrained and require reasons.



- Comment 9: IA legislation should require IA processes at the strategic, regional and project levels to collect climate change related information, establish thresholds and targets, and bind federal decision-making to the confines of those targets.
- Comment 10: IA legislation must set out where regional IAs are required and a fund to incentivise provincial cooperation should be established. An Expert Advisory Committee should be constituted under IA legislation to advise the government on which projects should be on the list of projects requiring project-level IA and which regions should be on a list of regions requiring regional-level IA.
- Comment 11: The collection of regional IA information should not be restricted to “matters of federal interest” as this will result in complete information on baseline conditions, cumulative effects and valued component resilience. While the Expert Panel’s recommendation of a co-operative approach to regional IA and information gathering is a clear first choice, IA legislation should require the collection of sufficient regional IA data even in the absence of provincial co-operation.
- Comment 12: An Expert Advisory Committee, as recommended above regarding project listing and regional IA listing, should also be given the responsibility of recommending to the Minister that specific strategic IAs be conducted and to recommend a list of federal policies, programs and plans that should be subject to strategic IA. The legislation should mandate strategic IA.
- Comment 13: Co-operation in IA processes and decision making between the federal, provincial and Indigenous governments should result in IA bodies with authority to make decisions at all levels of government and which meet minimum national standards at the strategic, regional and project levels of IA.