

Environmental Assessment Legislation Review Discussion Guide

The Way Forward

Introduction

The Department of Municipal Affairs and Environment is reviewing legislation associated with the provincial environmental assessment process. Input from stakeholders and the public is an essential element in updating the legislation, as it will ensure it meets the needs of industry and residents of the province.

This document provides a brief overview of the environmental assessment process and the areas of the legislation that require review. Each section of the document includes specific questions and spaces for a response. There is also an opportunity for respondents to indicate any additional feedback at the end of the document.

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The collection of information is under the authority of section 61(c) of the **Access to Information and Protection of Privacy Act, 2015**, for the purpose of collecting public feedback on the current **Environmental Assessment Legislation** and ways to improve it. All feedback will be considered as officials prepare recommendations for modernizing the legislation.

Any personal information that may be received will be governed in accordance with the **Access to Information and Protection of Privacy Act, 2015** and will only be used for the purpose of informing the comprehensive review of the **Environmental Assessment Legislation**.

If you have any questions about how this information will be collected, used, and disclosed or on the review process, please contact the **Environmental Assessment Review** by email at EAReview@gov.nl.ca or call 709.729.0673.

Background

The purpose of environmental assessment is to protect the environment and the quality of life of the people of the province through sustainable development. It also facilitates the wise management of the province's natural resources through a planning process before the commencement of an undertaking (project). The legal framework for the completion of an environmental assessment is provided by the:

- **Environmental Protection Act (Part X)**; and
- **Environmental Assessment Regulations**.

For the purposes of this review, these two pieces of legislation are collectively referred to as the **Environmental Assessment Legislation**.

The **Environmental Assessment Legislation** is now over 15 years old and the legal, economic, and environmental landscape has changed. The current legislation needs to be updated to reflect developments in: best practices in access to information, engagement, and procedural steps; technological advances; and emergent environmental issues (e.g. climate change, sustainable development, cumulative effects).

This review will examine broad policy and operational issues associated with environmental assessment, with a focus on improving:

- Openness and Transparency (e.g. enhance public access to information);
- Certainty (e.g. updated project list);
- Efficiency and Effectiveness (e.g. clear process steps and timelines); and
- Flexibility (e.g. harmonization with other jurisdictions; ensuring the minister has appropriate options to address matters such as gathering more information).

As a result, the review will include an examination of components, such as: the list of undertakings currently requiring environmental assessment; monitoring and enforcement; communication methods and information sharing; timelines; and working with Indigenous groups and provincial, territorial, and federal jurisdictions.

Federal Review of Environmental Assessment

The majority of projects complete the provincial environmental assessment process, as they do not trigger federal **Canadian Environmental Assessment Act (2012)** requirements. A small number of projects are required to complete both the provincial and the federal processes because the type of project is referenced in provincial and federal legislation. When a project triggers both a provincial and federal environmental assessment, the province works with the Canadian Environmental Assessment Agency to cooperate and align the two processes, where possible.

This provincial review is different and separate from the Federal Government's proposed new impact assessment process that is expected to replace the **Canadian Environmental Assessment Act (2012)**. In 2016, the Federal Government ordered a review of its environmental assessment process, with a focus on ensuring the federal process incorporates scientific evidence, protects the

environment, supports economic growth, and respects the rights of Indigenous peoples. In 2018, the Federal Government proposed significant changes to its assessment process in Bill C-69, an Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts. This proposed federal legislation is currently undergoing review in the Senate. The outcomes of any proposed changes to the federal legislation will be considered in the provincial review.

For more information on current public participation opportunities in the federal review, please visit: impactassessmentregulations.ca/. For more information on the progress of the federal review, please visit: canada.ca/en/services/environment/conservation/assessments/environmental-reviews.html.

Environmental Assessment Process

The Environmental Assessment process begins when a project concept is considered (e.g. a referral) (Figure 1). Referrals can come from government departments and agencies, as well as directly from proponents. The **Environmental Assessment Regulations** designate projects that must be registered and those exempt from registration. Projects may be large (e.g. mineral extraction, hydroelectric development) or smaller (e.g. waste management, agricultural fields, ATV trails). The Regulations allow for some discretion in that if potentially significant environmental effects are indicated, the minister may require registration of any proposed project.

Once registered, every project completes the registration phase (Figure 2). Most projects complete the registration phase and are then released, possibly with conditions. A few projects per year require further assessment through an **Environmental Preview Report** (Figure 3) or an **Environmental Impact Statement** (Figure 4). Seldom have projects required the level of assessment offered by a board and public hearings or a joint review panel. On average, 51 projects are registered for assessment each year. A project may be withdrawn from the process by the proponent at any stage of the assessment. A project may not proceed if: it is against law or a policy of the Province; it is in the public interest to stop the assessment; or there is likely to be unacceptable environmental effects.

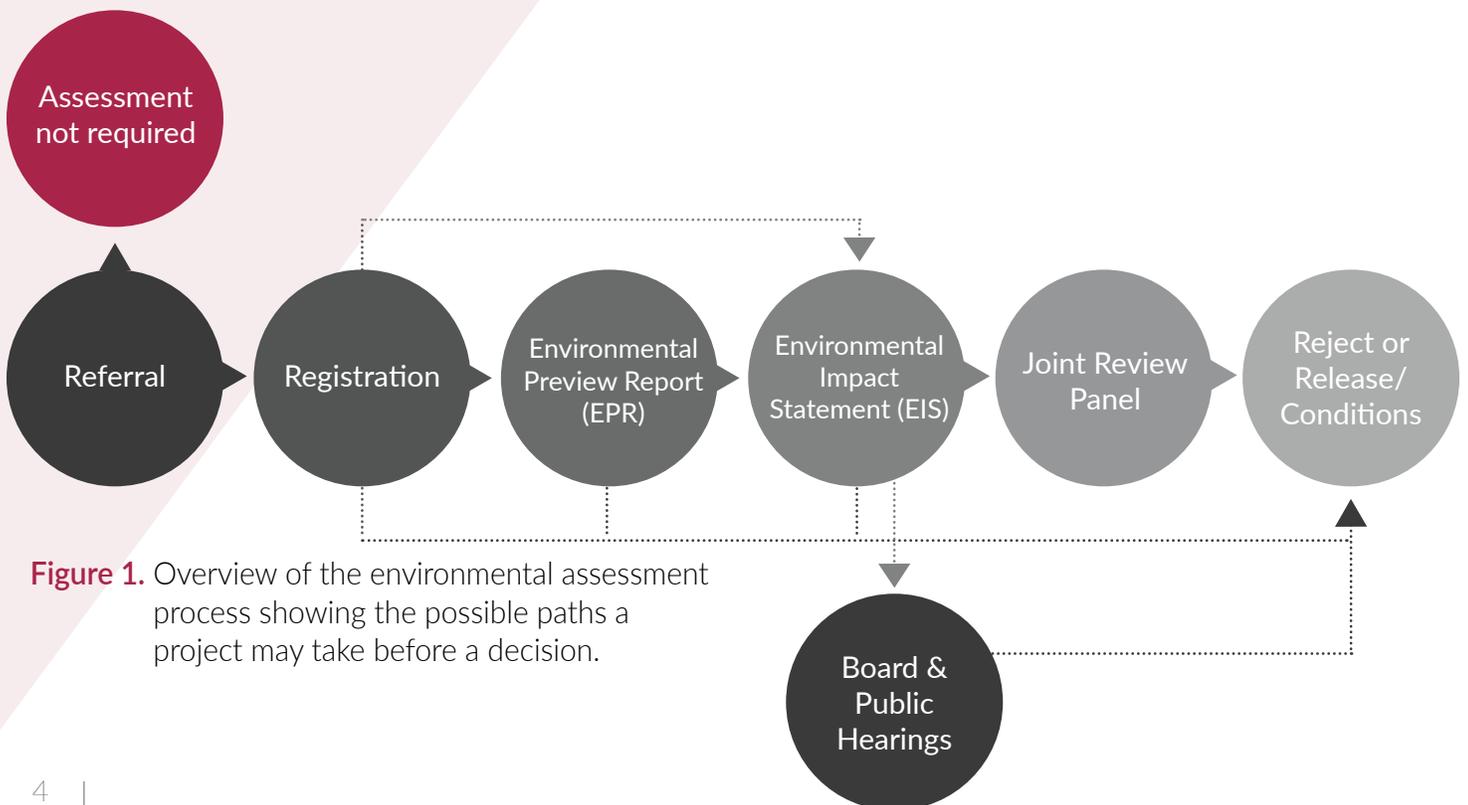


Figure 1. Overview of the environmental assessment process showing the possible paths a project may take before a decision.

Registration Phase

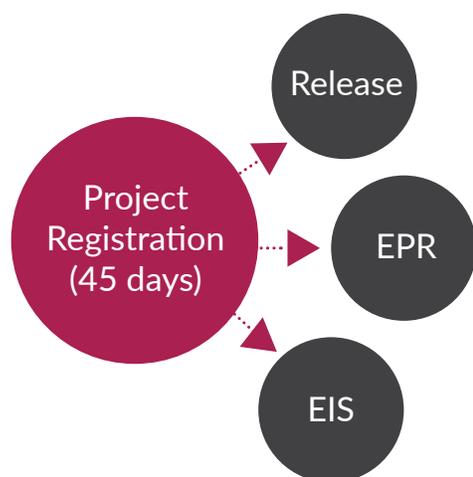


Figure 2. Steps in the registration phase of an environmental assessment.

- When a proponent formally submits a project for EA, a 45 day process begins:
 - 21 day department and agency internal screening period.
 - 35 day legislated public comment period.
 - 45 day decision is due.
- EA staff analyze information and submit recommendation to the Minister.
- Minister decides to:
 - release with terms and conditions.
 - require further EA - **Environmental Preview Report (EPR)**.
 - require further EA - **Environmental Impact Statement (EIS)** and possible public hearings.

Environmental Preview Report Phase



Figure 3. Steps in the **Environmental Preview Report** of an environmental assessment.

- EPR is required when information submitted is insufficient and additional information is readily available, the project has not been demonstrated to be environmentally acceptable, and/or there are public concerns.
- Minister appoints EA committee (EAC) of government departments to provide advice.
- Guidelines drafted by EAC and issued by the Minister within 60 days.
- EPR submitted for technical and public comment period for 35 days.
- EAC makes recommendation to Minister.
- Minister makes decision that the EPR is deficient, to release, or to require an EIS by day 45.

Environmental Impact Statement

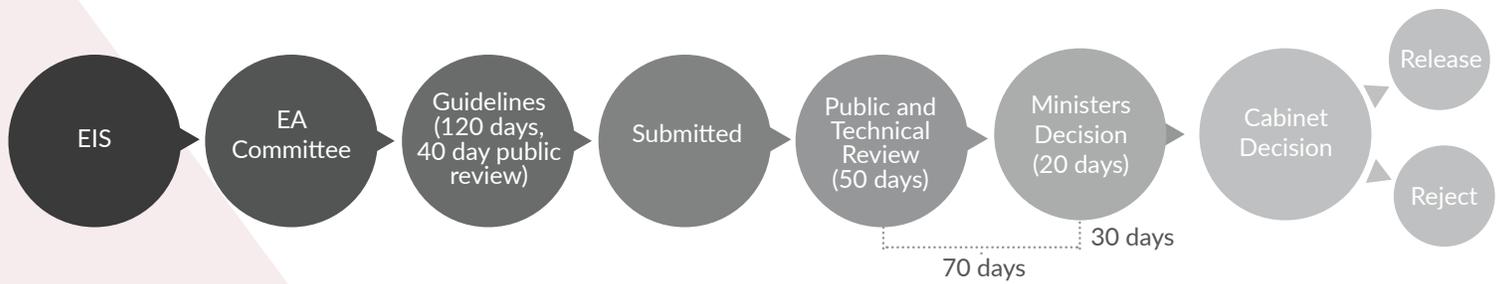


Figure 4. Steps in the **Environmental Impact Statement** of an environmental assessment.

- EIS is required when significant environmental effects are likely or there is significant public concern.
- Minister appoints EAC of government departments to provide advice.
- Guidelines drafted by EAC and issued by the Minister within 120 days (40 day public review).
- EIS submitted for EAC and public comment period for 50 days.
- EAC makes recommendation to Minister and Minister determines if EIS is acceptable by day 70.
- Minister makes recommendation to Cabinet to Release or Reject within 30 days.
- Cabinet makes final decision.

Introductory Questions

The below introductory questions are meant to gather initial feedback and opinions on those interested in this legislation review and the environmental assessment process. Please select the answer(s) that apply.

1. I am answering these questions as a(n):
 - Member of the public
 - Member of an Indigenous community
 - Proponent of a past or current project requiring an environmental assessment
 - Consultant or environmental assessment practitioner
 - Academic
 - Member of an environmental organization
 - Member of a community organization
 - Member of a social, health, or cultural organization
 - Member of an industry association or business interest group
 - Government official (municipal, provincial, or federal)
 - Other _____

2. I reside in the following region of Newfoundland and Labrador or outside the province:
 - Avalon
 - Burin Peninsula
 - Clarenville – Bonavista
 - Gander – New-Wes-Valley
 - Grand Falls-Windsor – Baie Verte
 - Coast of Bays
 - Stephenville – Channel - Port-aux-Basques
 - Corner Brook – Rocky Harbour
 - St. Anthony – Port-au-Choix
 - Labrador
 - Outside the province

3. I am most interested in the assessment of projects related to (select all that apply):
 - Forestry, logging, and wood products
 - Mining and quarrying
 - Aquaculture
 - Agriculture
 - Construction
 - Oil and gas extraction, petroleum, and coal products
 - Power generation and energy transmission
 - Food and beverage manufacturing
 - Chemical, plastic, and rubber products
 - Waste management
 - Recreation (e.g. Trails, RV Parks)
 - Land development for accommodation, service, and/or sale
 - Unsure
 - Other _____

4. I think that the **Environmental Assessment Legislation** needs to be:
- Completely overhauled, revised, and/or replaced.
 - Updated, but significant process changes are not needed.
 - Kept as it currently is, no changes are necessary.
 - Unsure

Please explain your answer in the space below.

5. The benefits of the environmental assessment process outweigh the time and resources spent by industry and governments to complete the process.
- Strongly Agree
 - Agree
 - Neither agree or disagree
 - Disagree
 - Strongly disagree

Please explain your answer in the space below.

Review the List of Undertakings requiring Registration

The **Environmental Assessment Regulations** describe projects (undertakings) as an enterprise, activity, project, structure, work, or proposal and a modification, abandonment, demolition, decommissioning, rehabilitation, and an extension of them that may, in the opinion of the minister, have a significant environmental effect. The Regulations describe 25 categories of projects that require environmental assessment. These categories pertain to land and near shore based activities, and do not include projects in the offshore oil and gas sector. Environmental assessment for those projects are completed by the Canada-Newfoundland and Labrador Offshore Petroleum Board.

The Regulations include projects that are engaged in development that involves:

- Forestry
- Mining and quarries
- Energy generation (dams, diesel, hydroelectric)
- Waste management
- Production of: petroleum, natural gas, crude oil, chemical, wood, plastic, rubber, textiles, soap, metal, cement, and paint
- Hiking, skiing, and motorized vehicle trails
- Camp grounds, travel trailer parks, and recreation or vacation camps
- Airports and railways

- Cottage and subdivision development
- Aquaculture, hatcheries, and fish processing
- Roads and water/sewer pipelines
- Breakwaters, canals, and flood controls
- Service depots, scrap yards, and railway yards
- Land drainage or infill, clearing and modifications of a watercourse
- Manufacturing of: animal feed, meat, poultry, beverages, pharmaceutical products, explosives, and drilling muds
- Golf courses
- Marinas

Questions

If you have a specific type of project you would add to the list of those currently requiring assessment, please describe it in the space below and explain why it should be added.

If you have a specific type of project you would remove from the list of those currently requiring assessment, please describe it in the space below and explain why it should be removed.

Key Environmental Assessment Factors

The purpose of the environmental assessment process stated in Section 46 of the Environmental Protection Act is to “protect the environment and quality of life of the people of the province; and facilitate the wise management of the natural resources of the province”. The purpose is broad in its scope and therefore the environmental assessment process reviews social, health, and cultural considerations, in addition to environmental and economic considerations.

There are limited details in the **Environmental Assessment Legislation** describing the content of what should be included in a registration document. The Guide to the Process provides some guidance to proponents, including a basic template.

The legislation predates consideration of emerging environmental issues, such as cumulative effects (meaning the combined effect of past, present, and potential developments), climate change, and invasive species. The Regulations have mechanisms to address aspects of cumulative effects for individual projects or, similar projects adjacent to one another. While this may be effective in having smaller, adjacent, or expanding projects evaluated by the process, there is an opportunity to identify these emerging issues in the legislation to improve assessments and environmental protection.

The most common tools used by environmental assessment practitioners for addressing emerging issues are regional and strategic environmental assessments. Both types of assessments involve consideration of the larger ecological setting, rather than project-specific issues. Neither of these tools are defined in the current **Environmental Assessment Legislation**. Consideration of regional or strategic factors are options in other jurisdictions, such as by the Federal Government, British Columbia, Saskatchewan, Alberta, and in the offshore.

Regional environmental assessments - used to assess cumulative effects and other key environmental considerations at a regional scale to inform individual project assessments (e.g. air quality in a region under differing levels of development).

Strategic environmental assessments - provide the opportunity to examine the potential effects of decision-making at the policy/plan/program level prior to examining individual projects (e.g. incorporating climate change policy).

Questions

What do you consider to be the benefits of the environmental assessment process?

When assessing the construction and operation of a project, the environmental assessment process considers factors such as:

- Air quality
- Alternatives to the project
- Archeological, cultural, or historic resources
- Climate change
- Cumulative effects of development within the area
- Economic feasibility of the project
- Effluent
- Gender equity
- Greenhouse gas emissions
- Job creation
- Impacts on health
- Impacts on rare or endangered species
- Impacts on wetlands
- Indigenous traditional ecological knowledge
- Migratory birds
- Noise
- Occupational health and safety
- Settled and asserted Indigenous rights in the project area
- Viewscapes and/or aesthetics
- Waste management
- Water use and quality
- Wildlife

If you have comments on what is considered or how it is considered, please provide it in the space below.

Is there enough guidance provided to proponents to ensure they submit high quality and complete documentation? If no, how can the guidance material be improved?

Should the legislation be expanded to allow for the completion and application of regional and/or strategic environmental assessments? Why or why not?

Transparency and Communication

The **Environmental Assessment Legislation** provides opportunities for Indigenous, stakeholder, and public engagement on a project. The legislation also requires the minister to provide public notice at very specific stages of the process and under specific timeframes. For example, during the registration phase, there has to be a public announcement of the registration within seven days of the registration date, followed by a 35 day public and internal government review period (Figure 2). Within 10 days of making a decision on a project, the minister must make an announcement of the decision.

Section 19 of the Regulations requires the minister to “make an announcement required under these regulations by issuing a press release; and mailing a notice to interested persons.” For some, these may be considered dated methods of communicating with the public, and not reflective of more modern approaches including websites, email lists, and/or the potential use of social media.

Currently, announcements are made through an Environmental Assessment Bulletin that is circulated as a news release through the government distribution list and on the government’s website, an environmental assessment email list, letters to the proponent and relevant municipalities, and posting on the department’s website. A webpage on the department’s main page for the Environmental Assessment Division is generated for each registered project. A short project description is posted, along with required timelines, relevant documentation, and ministerial decisions.

The environmental assessment process receives and generates categories of information, some of which are required to have an announcement or be publically and proactively shared. For example, copies of environmental assessment documents provided by the proponent and ministerial decisions are publically shared, while comments from the public, Indigenous governments/ organizations, and/or government and technical experts and documents generated from conditions of release and monitoring are not commonly shared.

Questions

How can we best make you aware we are conducting an environmental assessment? (Some ideas include - subscription to an email bulletin, government news releases, Twitter, and Facebook.)

Do you support comments submitted on an environmental assessment being publically released?
Please explain.

If comments submitted on an environmental assessment were made publically available, how should they be shared (e.g. public website, available upon request only)? Should the names of persons and/or organizations submitting comments be shared?

If comments submitted on an environmental assessment were made publically available, would it change your likeliness to submit a comment? If yes, please explain.

What tools would assist your participation in the environmental assessment process and help you access the information in a user-friendly way?

Legislated Timelines

The Environmental Assessment Division faces challenges with respect to meeting some of the existing legislated timelines, which compromises the proponents' ability to adequately plan the project. While the timelines for the public posting of information and decisions are met, the timelines for making decisions are sometimes a challenge to meet. The reasons are varied, but they fall into one of the following categories:

- Essential government screening committee comments require extended review;
- Proponent is asked for more information to answer a question;
- Public or Indigenous government/organization has asked for an extension to review;
- The Environmental Assessment Division requires more time to conduct analysis and make a recommendation due to the complexity of a proposal; and
- Deliberation of the decision.

Timelines for decisions are highly variable across the country, ranging from 45 days to 300 days. For example, Newfoundland and Labrador currently has the shortest legislative timeframe in the country for making a decision on the registration phase of an environmental assessment. The minister is required to decide whether a registered project can be released or whether it requires further review within 45 calendar days of registration. This includes a 35-day public review period.

Questions

If you have completed an environmental assessment, were parts of the process beneficial to your project planning? Was there a part of the process you would change?

How can we make the environmental assessment process more efficient?

Is there enough time provided for the public to consider and analyze environmental assessment documentation? If no, how much time is needed?

Project Decisions and Appeals

The following is a summary of the number of projects that entered each phase of the environmental assessment process in a given year:

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------------------------|------|------|------|------|------|
| Registrations | 39 | 54 | 46 | 66 | 54 |
| Environmental Preview Report | 3 | 5 | 2 | 4 | 4 |
| Environmental Impact Statement | 0 | 0 | 4 | 1 | 3 |
| Withdrawn by Proponent | 4 | 6 | 1 | 2 | 6 |

Once a project is in the environmental assessment process, the majority of decisions, such as to require an environmental preview report and to release a project after the registration phase, are made at the ministerial level. The decisions on whether to release an **Environmental Impact Statement** (Figure 4) or whether a project is halted and not permitted to proceed is made by the Lieutenant-Governor in Council (Cabinet).

There are two mechanisms for reviewing environmental assessment decisions: judicial review and statutory appeals (Sections 107 and 108 of **the Act**). A judicial review of an environmental assessment decision is conducted in accordance with the common law. A statutory appeal for a decision or an order, as set out in Section 107 of **the Act** provides aggrieved persons with the right to appeal decisions of the minister. The minister may dismiss the appeal, allow the appeal, or make another decision or order that may be made under this Act. Some jurisdictions, such as New Brunswick, Manitoba, and the Federal Government also have provisions to appeal environmental assessment decisions, while others, such as Nova Scotia and Saskatchewan, do not.

Questions

Does the current process ensure that projects go through the appropriate phase of environmental assessment? Please explain.

Currently a project cannot proceed if: it is against law or a policy of the province; it is in the public interest to stop the assessment; or there is likely to be unacceptable environmental effects. Should other factors be considered? Why or why not?

What do you see as being the benefits or challenges of the current appeal process?

Monitoring and Enforcement

Various aspects of the **Environmental Assessment Legislation** are enforced by the Environmental Assessment Division, including the conditions of release of a project from assessment and decision expiry dates. The Environmental Assessment Division also relies on reports from other government departments, the public, Indigenous governments and organizations, and other stakeholders to address situations when commitments made in environmental assessment documents are not adhered to, when work starts prior to a decision being made, and when work starts without registering as required. When notified of concerns, the Division attempts to resolve the problem through discussion with the proponent, although offenses can result in charges laid under sections 114 and 115 of **the Act**. A person convicted of an offence under **the Act** is liable on summary conviction resulting in a fine or imprisonment.

Questions

Are you confident in the current level of monitoring and enforcement during and following an environmental assessment? Please explain.

What would increase your confidence in monitoring and enforcement of environmental regulations?

Are the repercussions for offenses adequate or should more be done to address violations of **the Act and Regulations**? Please explain.

Do you understand the level of permitting requirements subsequent to a project being released from environmental assessment? Please explain.

Should proponents be required to produce annual performance reports to provide an update on the current status of the project construction/operation and compliance with permitting requirements and/or conditions of release from environmental assessment? Why or why not?

Harmonization in Accordance with Land Claims, Self-Government Agreements, and other Provinces or Territories

The majority of projects that are registered complete the provincial environmental assessment process and do not require an environmental assessment under the Labrador Inuit Land Claims Agreement, the Nunatsiavut Environmental Protection Act, or the legislation of another provincial or territorial jurisdiction. However, when projects are required to complete environmental assessment processes for multiple parties, there is benefit in cooperating and aligning the two processes to avoid unnecessary overlap and duplication while ensuring the respective decision-making criteria and processes.

Currently section 72 of **the Act** allows the minister to enter into an agreement with the government of another province, territory, or Canada, or with a combination of them, with respect to an environmental assessment. This legislation could be revised to be inclusive of agreements made with an Indigenous government, which has exercised law-making authority in respect of the environmental assessment of projects or undertakings.

Questions

Where a project requires both provincial environmental assessment and environmental assessment under a land claim or self-government agreement, should the province agree to enter into an agreement that allows for a single, coordinated environmental assessment? Why or why not?

Should the province have the ability to modify the process (i.e. timelines, process steps) in order to coordinate a single environmental assessment when an environmental assessment is required by another province, territory, land claim, or self-government agreement?

Harmonization with the Federal Environmental Assessment Process

The majority of projects that are registered complete only the provincial environmental assessment process, as they do not trigger federal **Canadian Environmental Assessment Act (2012)** requirements. A small number of projects, most often associated with mining, are required to complete both the provincial and the federal processes because the type of project is referenced in provincial and federal legislation.

When a project triggers both a provincial and federal environmental assessment, the province works with the Canadian Environmental Assessment Agency to align the two processes, where possible. This includes coordinating the timing of a registration, timing public review periods, releasing the same or similar guidelines when an **Environmental Preview Report** or **Environmental Impact Statement** is required, and accepting the same documents to meet the needs of both processes. In exceptional cases, such as for the Lower Churchill Generation Project, the Provincial and Federal Governments can enter into an agreement to conduct the assessment through a joint review panel (Figure 1).

This provincial review is different and separate from the ongoing federal review of the **Canadian Environmental Assessment Act (2012)**. In 2016, the Federal Government ordered a review of the environmental assessment process, with a focus on ensuring it incorporates scientific evidence, protects the environment, supports economic growth, and respects the rights of Indigenous peoples. In 2018, the Federal Government proposed significant changes to the assessment process through the proposal of the Impact Assessment Act (Bill C-69). This proposed legislation is currently undergoing review in the federal legislative process. The outcomes of any proposed changes to the federal legislation will be considered in the provincial review and in particular how we coordinate assessments.

Questions

Should the province have the ability to modify the process (i.e. timelines, process steps) in order to coordinate a single environmental assessment when an environmental assessment is required by both the Federal and Provincial Governments? Why or why not?

For projects that require both a federal and provincial environmental assessment, what is the best approach to harmonizing the two processes?

Additional Input

Is there any additional information or comments you feel the Department of Municipal Affairs and Environment should consider in updating the **Environmental Assessment Legislation**?

Links

Environmental Protection Act (Part X): assembly.nl.ca/legislation/sr/statutes/e14-2.htm

Environmental Assessment Regulations: assembly.nl.ca/Legislation/sr/Regulations/rc030054.htm

Canadian Environmental Assessment Act (2012): laws-lois.justice.gc.ca/PDF/C-15.21.pdf

Environmental Assessment, A Guide to the Process:

mae.gov.nl.ca/env_assessment/A_GUIDE_TO_THE_PROCESS_2017.pdf

Provincial Government new releases: releases.gov.nl.ca

Municipal Affairs and Environment Assessment: mae.gov.nl.ca/env_assessment/