

# **Exhibit B**

## **Tab 7**

# Federal Requirements for Waterpower Development Environmental Assessment Processes in Ontario

## DRAFT - PRACTITIONER'S GUIDE -

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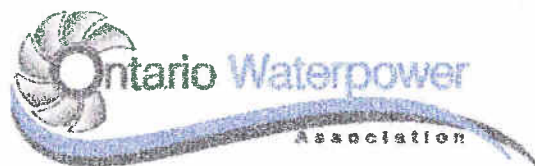


MacKay Generating Station on the Montreal River. Photo Courtesy of Brookfield Renewable Power.



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**Federal Requirements for Waterpower Development Environmental  
Assessment Processes in Ontario  
- Practitioner's Guide -**

**EXECUTIVE SUMMARY**

<b>Background and Purpose</b>
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As the demand for power in Ontario continues to increase, it is expected that there will be initiatives to expand or modify existing waterpower facilities and to build new facilities. In Ontario, waterpower projects are required to comply with the *Class Environmental Assessment for Waterpower Projects*, established by the Ontario Waterpower Association under the Ontario *Environmental Assessment Act* (EA Act). Many of these projects must also be assessed in accordance with the requirements of the *Canadian Environmental Assessment Act* (CEAA). Given the potential need for proponents to address the provisions of both the *Class Environmental Assessment for Waterpower Projects* and CEAA, an understanding of how these two processes can work together and of federal information requirements for the environmental assessment (EA) of waterpower projects is critical.

The Ontario Waterpower Association (OWA), which was formed to provide a collective voice for the waterpower industry in Ontario, represents more than 95 % of the waterpower producers and generating capacity in Ontario. In order to facilitate the efficient EA of waterpower development projects in Ontario, the OWA, in collaboration with Fisheries and Oceans Canada (DFO), has developed this Practitioner's Guide for addressing *Federal Requirements for Waterpower Development Environmental Assessment Processes in Ontario*. Advice and input to the development of this Practitioner's Guide was provided by the Canadian Environmental Assessment Agency (the Agency), Environment Canada, Transport Canada, the Ontario Ministry of Natural Resources (MNR), the Ontario Ministry of the Environment (MOE) and OWA members.

This Practitioner's Guide provides advice on federal information requirements for waterpower projects and on opportunities to coordinate CEAA and the *Class Environmental Assessment for Waterpower Projects* requirements. With a better understanding of federal information requirements, it is expected that more efficient and better coordinated projects will result, with the inherent benefits of promoting environmental sustainability.

This Practitioner's Guide is intended to provide users with a knowledge and understanding of the key components of CEAA and information requirements of key federal agencies and how these relate to waterpower projects under the *Class Environmental Assessment for Waterpower Projects* process. The Practitioner's Guide is also intended to assist proponents in the coordination of federal and provincial EA requirements for waterpower projects. Coordination of assessments will assist in avoiding duplication, result in time and cost savings and achieve more effective and environmentally sound decision-making.



The focus of this Guide is on federal EA requirements for projects subject to the provisions of the provincial *Class Environmental Assessment for Waterpower Projects*. While it is recognized that some waterpower projects may have other provincial EA requirements (e.g. *Class EA for MNR Resource Stewardship and Facility Development Projects*), these requirements are not addressed in this document.

The intent of this Practitioner's Guide is to build upon recent initiatives, such as the *Canada – Ontario Agreement on Environmental Assessment Cooperation*, to assist in coordinating the assessment of waterpower projects that have both federal and provincial EA requirements. In addition to being a valuable tool for project proponents, the Practitioner's Guide is also intended to be useful for government departments who are providing input to the review of waterpower projects. The Practitioner's Guide contains the following sections:

- Section 1.0 - Introduction and Purpose;
- Section 2.0 - Waterpower Development in Ontario;
- Section 3.0 - Relevant Policy Initiatives;
- Section 4.0 - Environmental Assessment Requirements for Waterpower Development Projects;
- Section 5.0 - A Primer on the *Canadian Environmental Assessment Act* (CEAA);
- Section 6.0 - *Fisheries Act, Navigable Waters Protection Act* and Other Approvals;
- Section 7.0 - Federal Information Requirements for Waterpower Development Projects;
- Section 8.0 - Role of Conservation Authorities and the Ontario Ministry of Natural Resources;
- Section 9.0 - Considerations for a Coordinated Process; and
- Section 10.0 - Key Contacts.

## Federal and Provincial EA Requirements for Waterpower Projects

### Ontario EA Act Requirements

Under the *Electricity Projects Regulation*, MOE has classified electricity projects based on their nature and magnitude. There are three project categories, each with different EA requirements, as follows:

**Category A** projects are those that are expected to have minimal environmental effects. These projects are not designated as being subject to the EA Act under the *Electricity Projects Regulation* and, therefore, do not require EA Act approval. There are no waterpower projects designated under the definition of Category A under the *Electricity Projects Regulation*. However, under the EA Act some waterpower projects are designated under the EA Act but made exempt for the purposes of grandparenting and transitioning. For further information consult section 3.2.1 of the *Class Environmental Assessment for Waterpower Projects*.

**Category B** projects are projects that have potential environmental effects that can likely be mitigated. These projects are subject to the EA Act, but proponents of these projects are not required to prepare an Individual EA as long as they complete *the Class Environmental Assessment for Waterpower Projects*.

**Category C** projects are major projects with known significant environmental effects. These projects require an **Individual EA**.

### Canadian Environmental Assessment Act (CEAA) Requirements

CEAA is a federal law that applies to the federal government where it is the proponent, providing financial assistance, owns or administers federal lands or is issuing a permit or approval in order to enable a project to proceed. The purpose of the legislation is to ensure that the environmental effects of projects are considered before irrevocable decisions are made by federal authorities. CEAA requires federal decision-makers or Responsible Authorities (RAs) to consider the environmental effects of proposed projects prior to their taking an action that would enable a project to proceed.

In order for CEAA to apply, there must be: (1) a federal authority; (2) a subsection 5(1) trigger<sup>1</sup> (i.e., a federal power, duty or function in respect of the project); and (3) a project that is not excluded.

The vast majority of EAs undertaken in accordance with CEAA are screenings. In these instances, screening reports are prepared. However, some projects on the *Comprehensive Study List Regulations* must be assessed as a comprehensive study, in accordance with CEAA. Comprehensive study reports are prepared for these projects. Generally, these are complex, large-scale projects that may have the potential for significant adverse environmental effects. Details on what is required for a screening and a comprehensive study are included in Section 5.5. The following waterpower projects are on the *Comprehensive Study List Regulations*:

- the proposed construction, decommissioning or abandonment of a hydroelectric generating station with a production capacity of 200 MW or more;
- the proposed expansion of a hydroelectric generating station that would result in an increase in production capacity of 50 per cent or more and 200 MW or more;
- the proposed construction of an electrical transmission line with a voltage of 345 kV or more that is 75 km or more in length on a new right of way;

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<sup>1</sup> In addition, an environmental assessment of a project is required before the Governor in Council (GIC), as per subsection 5(2) of CEAA, under a provision prescribed in the *Law List Regulations*, issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part.

- the proposed construction, decommissioning or abandonment of a dam or dyke that would result in the creation of a reservoir with a surface area that would exceed the annual mean surface area of a natural water body by 1500 hectares or more, or an expansion of a dam or dyke that would result in an increase in surface area of a reservoir of more than 35 per cent;
- the proposed construction, decommissioning or abandonment of a structure for the diversion of 10 000 000 m<sup>3</sup>/a or more of water from a natural water body into another natural water body or an expansion of such a structure that would result in an increase in diversion capacity of more than 35 per cent.

It is expected that CEAA will apply to the majority of waterpower projects due to the need for *Fisheries Act* authorizations or approvals under the *Navigable Waters Protection Act* (NWPA) (see Section 6.0). Therefore, many waterpower projects will need to be assessed in accordance with the requirements of both the *Class Environmental Assessment for Waterpower Projects* and CEAA.

One of the main differences between CEAA and the *Class Environmental Assessment for Waterpower Projects* in regards to hydroelectric power facility construction is that CEAA applies to projects subject to funding, land or regulatory permits provided by the federal government while the *Class Environmental Assessment for Waterpower Projects* applies to projects that are being planned and implemented by proponents.

Despite a few key differences between these requirements, there are opportunities to coordinate federal and provincial EA processes. Considerations for a coordinated process are included in Section 9.0 of the Practitioner's Guide.

### Determining Whether CEAA Applies

As noted above, it is expected that CEAA will apply to the majority of waterpower projects due to the need for *Fisheries Act* authorizations or approvals under the NWPA. The flow chart on the following page is intended to assist in determining whether CEAA may apply. The Responsible Authority (RA) is, however, responsible for determining if CEAA applies to a project.

### Preparing a Project Description

One of the first steps in the CEAA process is the preparation of a project description. A project description provides an overview of the project components, general information on the project setting and relevant background information on the project.

The project description allows a federal authority to determine if it will be an RA under CEAA or if it may be able to provide technical expertise and knowledge as an expert department. The project description should be submitted either to the Agency or to the federal authority that the proponent believes may have a federal interest (e.g. DFO for projects that may impact fish and fish habitat or Transport Canada for projects that may impact on navigation).

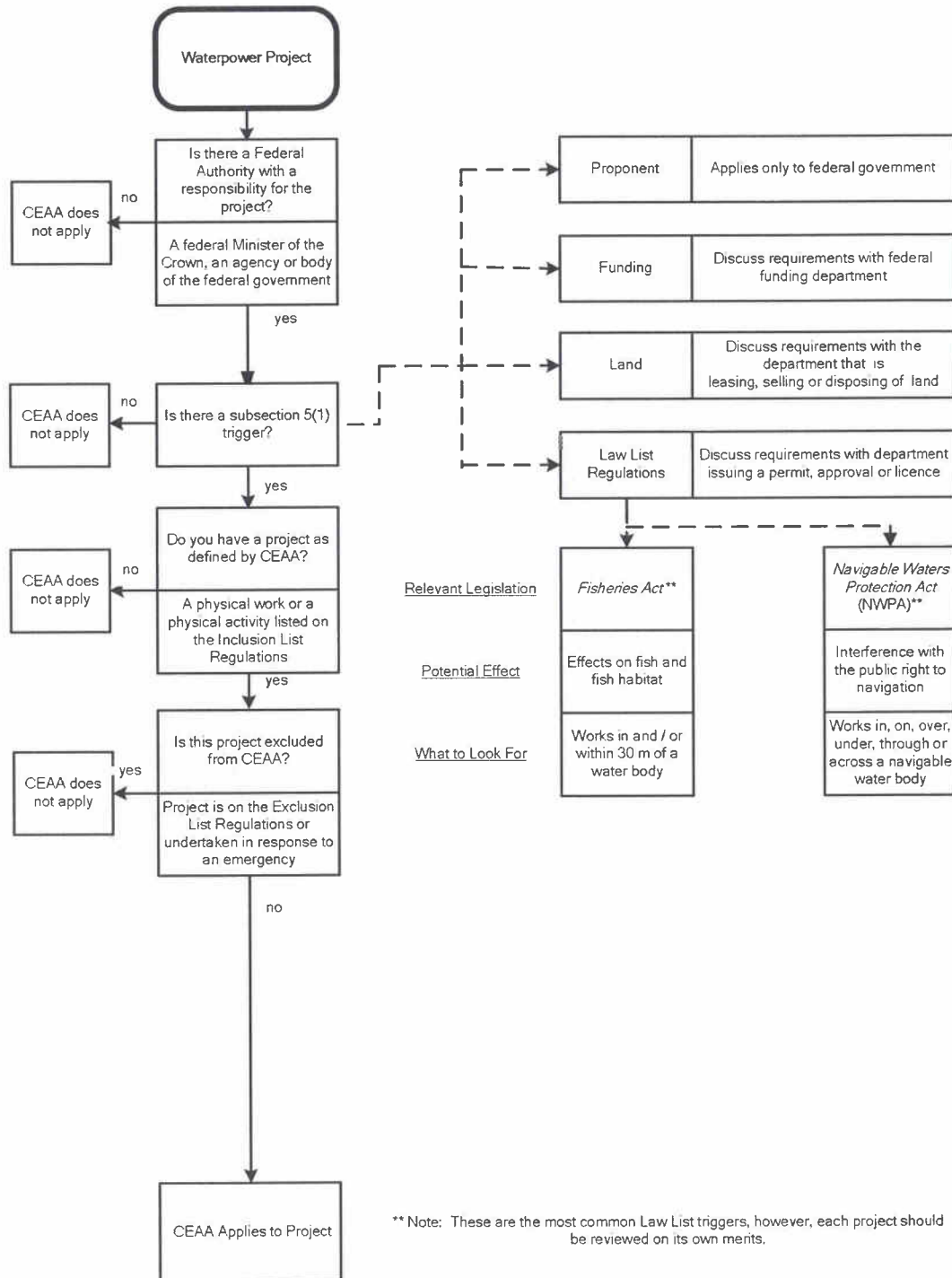
Further details on preparing a project description and its content are provided in Section 7.0 and Table D1 in Appendix D.

### **How to Determine Federal Information Requirements**

Guidance on federal information requirements is provided in Section 7.0 and Appendix D, Table D2. Table D2 outlines potential information required for a CEAA assessment as well as potential information required for a regulatory approval under the *Fisheries Act* or *Navigable Waters Protection Act*.

In addition to the information noted in Appendix D, the proponent should provide any other information that may assist with the project review. Federal departments may have additional project specific information requirements. The amount and level of detail of information required will vary depending on the environmental setting, magnitude and duration of the project. The information noted in Appendix D is intended to be a general guide.

## Does CEAA Apply?



<b>Important Things to Consider When Using this Document</b>
--

- ⇒ A waterpower project may have both federal and provincial EA requirements.
- ⇒ Ideally, assessments under CEAA and the *Class Environmental Assessment for Waterpower Projects* should be coordinated. Coordination of assessments will assist in avoiding duplication, result in time and cost savings and achieve more effective and environmentally sound decision-making.
- ⇒ Proponents should also consider the information requirements for regulatory approvals (e.g. under the *Fisheries Act* and the NWPA) in order to coordinate information gathering.
- ⇒ In most cases, Conservation Authorities are the first point of contact for projects in and within 30 m of a waterbody. Where DFO has agreements with Conservation Authorities, the Conservation Authority will undertake the initial *Fisheries Act* review on behalf of DFO.
- ⇒ In cases where there is no Conservation Authority, the local MNR office is the first point of contact for the review of projects in and around water that may affect fish and fish habitat.
- ⇒ Note that in most cases a *Fisheries Act* authorization will be required for these projects. It is recommended that you involve DFO early.
- ⇒ Provincial agencies are **not** Responsible Authorities (RAs) under CEAA. Conservation Authorities do not have the authority to carry out or make decisions related to EAs under CEAA.

# Federal Requirements for Waterpower Development Environmental Assessment (EA) Processes in Ontario

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## 1.0 Introduction and Purpose

### 1.1 Background

The demand for power in Ontario continues to increase. The Independent Electricity System Operator (IESO) has predicted that annual peak demand for power will rise from just over 24,000 MW in 2004 to almost 27,000 MW in 2013. Considering an IMO projected supply shortfall of between 5,000 and 7,000 MW by 2007, the Electricity and Conservation Supply Task Force noted that:

*"If no new capacity or demand reduction measures are taken, the Province will be critically dependent on external sources of electricity, energy costs will be higher and more volatile and reliability could be reduced"* (from: Tough Choices: Assessing Ontario's Power Needs. Final Report to the Minister. January 2004).

There have been a number of recent provincial government policy initiatives to increase installed capacity and energy production in Ontario. In addition, the province has established clear targets for the addition of new, renewable energy, including waterpower through the development and implementation of the Green Energy Act (GEA) and the resulting Feed-in Tariff program (FIT). As a result, there is explicit rationale to expand or modify existing waterpower facilities and to build new facilities.

In response to these developments, the Ontario Waterpower Association (OWA) is interested in providing guidance to proponents in order to facilitate the efficient environmental assessment of waterpower development projects in Ontario. Consequently, the OWA, in collaboration with Fisheries and Oceans Canada (DFO), has developed this Practitioner's Guide for addressing *Federal Requirements for Waterpower Development Environmental Assessment Processes*.

### 1.2 The Ontario Waterpower Association

The OWA was formed to provide a collective voice for the waterpower industry in Ontario. OWA's founding members represent more than 95 % of the waterpower producers and generating capacity in Ontario.

The mission of the OWA is to encourage the responsible growth of the waterpower industry in Ontario. OWA's strategic objectives are to:

- represent the common interests of Ontario's waterpower industry in a corporate relationship with government;
- provide an effective forum for coordinating and promoting the common interests of the waterpower industry in Ontario;
- enhance the competitiveness of the Ontario waterpower industry; and
- identify common interests and cooperate with various organizations to promote a positive image for waterpower.

In Ontario, waterpower projects are required to comply with the provisions of the *Class Environmental Assessment for Waterpower Projects*. Many of these projects must also be assessed in accordance with the requirements of the *Canadian Environmental Assessment Act* (CEAA). Given the potential need for proponents to address the provisions of both the *Class Environmental Assessment for Waterpower Projects* and CEAA, an understanding of how these two processes can work together and of federal information requirements for the environmental assessment of waterpower projects is critical.

This Practitioner's Guide provides advice on federal information requirements for waterpower projects and on opportunities to coordinate CEAA and *Class Environmental Assessment for Waterpower Projects* requirements. With a better understanding of federal information requirements, it is expected that more efficient and better coordinated projects will result, with the inherent benefit of promoting environmental sustainability.

This Practitioner's Guide has been developed by the OWA, in collaboration with Fisheries and Oceans Canada (DFO), and with the advice and input of the Canadian Environmental Assessment Agency, Environment Canada, Transport Canada, the Ontario Ministry of the Environment (MOE), the Ontario Ministry of Natural Resources (MNR) and OWA members.

### **1.3 Purpose of the Practitioner's Guide**

This Practitioner's Guide is intended to provide users with a knowledge and understanding of the key components of CEAA and information requirements of key federal agencies and how these relate to waterpower projects subject to the *Class Environmental Assessment for Waterpower Projects*. The Practitioner's Guide is also intended to assist proponents in the coordination of federal and provincial environmental assessment requirements for waterpower projects. Coordination of assessments will assist in avoiding duplication, result in time and cost savings and achieve more effective and environmentally sound decision-making.

This Practitioner's Guide provides an overview of CEAA and its requirements. Since the requirement to address CEAA for waterpower projects is frequently related to regulatory approvals under the *Fisheries Act* and *Navigable Waters Protection Act* (NWPA), the more detailed information requirements related to these Acts have also been provided.

The focus of this Guide is on federal environmental assessment (EA) requirements for projects subject to the *Class Environmental Assessment for Waterpower Projects*. While it is recognized that some waterpower projects may have other provincial EA requirements, these requirements are not addressed in this document.

The intent of this Guide is to build upon initiatives, such as the *Canada – Ontario Agreement on Environmental Assessment Cooperation*, to assist in coordinating the assessment of waterpower projects that have both federal and provincial EA requirements. In addition to being a valuable tool for project proponents, the Practitioner's Guide is also intended to be useful for government departments who are providing input to the review of waterpower projects.

Specifically, this Practitioner's Guide provides information and direction on:

- key CEAA components;
- the federal *Fisheries Act*;
- the federal *Navigable Waters Protection Act* (NWPA);
- the types and level of detail of information required by key federal departments for assessing waterpower projects;
- considerations for a coordinated process (i.e. CEAA and *Class Environmental Assessment for Waterpower Projects* requirements); and
- key federal contacts.

This Practitioner's Guide is not intended to be all encompassing but rather to provide sound and practical advice to proponents.. The information contained in this document is intended to provide guidance only. For specific legislative and regulatory wording or provisions, the user should refer to the relevant statutes and regulations.

#### **1.4 Format of the Practitioner's Guide**

The Practitioner's Guide consists of the following sections:

- Section 1.0 - Introduction and Purpose;
- Section 2.0 - Waterpower Development in Ontario;
- Section 3.0 - Relevant Policy Initiatives;
- Section 4.0 - Environmental Assessment Requirements for Waterpower Development Projects;
- Section 5.0 - A Primer on the *Canadian Environmental Assessment Act* (CEAA);
- Section 6.0 - *Fisheries Act, Navigable Waters Protection Act* and Other Approvals;
- Section 7.0 - Federal Information Requirements for Waterpower Development Projects;
- Section 8.0 - Role of Conservation Authorities and the Ontario Ministry of Natural Resources;
- Section 9.0 - Considerations for a Coordinated Process; and
- Section 10.0 - Key Contacts.

The following appendices have also been included:

Appendix A *Canada – Ontario Agreement on Environmental Assessment Cooperation*

Appendix B Identifying Expert Federal Authorities Under CEAA

Appendix C Potential CEAA Triggers for Waterpower Development Projects

Appendix D Potential Federal Information Requirements

Appendix E List of Acronyms

## 2.0 Waterpower Development in Ontario

### 2.1 Current and Potential Development <sup>2</sup>

Waterpower has been produced in Ontario for more than 150 years and until approximately fifty years ago was the only source of electricity in the province. Today, approximately 26 % of Ontario's energy is produced by falling water. Waterpower comprises over 95 % of Ontario's renewable power assets. With a total of 8,150 MW of installed capacity, waterpower represents a major component of the province's energy mix. In northern Ontario, waterpower still accounts for the majority of electricity production. Forestry, mining, manufacturing companies, and the people and economies they support, have located based on proximity to waterpower as a renewable and reliable source of energy. Importantly, waterpower's storage capability provides the flexibility to respond quickly to changes in demand for electricity. This attribute will increase in importance as the province moves to phase out coal-fired generation.

There are almost 200 operating waterpower facilities in Ontario, two-thirds of which are located south of the French and Mattawa Rivers. More than one half of these facilities were constructed prior to 1951, when the province first began to generate electricity from fossil fuel sources. Approximately two-thirds of these waterpower facilities were constructed prior to the enactment of the Ontario *Environmental Assessment Act* (EA Act).

Ontario's waterpower facilities range widely in capacity and energy production. A typical waterpower generating facility has a long life cycle of between 75 and 100 years. Waterpower resources play an important role in voltage stabilization for large industrial loads and the provincial transmission system, and most operations are also managed to balance recreational benefits such as cottaging, fishing or canoeing.

Improvements to or re-development of existing waterpower facilities are conservatively estimated to have the potential to add another 1,350 MW of waterpower in Ontario. That is equivalent to the amount of energy required to provide electricity to almost 200,000 homes. Advances in geographic information systems and hydraulic modeling will assist in better quantifying Ontario's remaining waterpower resource potential. Previous inventories have suggested that almost 3,000 MW could be realized. In addition, there is the potential for at least 700 MW of new development on sites that have been more fully evaluated. It is also noteworthy that many sites developed over the last twenty years did not appear in the existing inventories, but rather were prospected.

An inventory of waterpower potential in Ontario has identified 2,000 sites with basic hydraulic conditions (regularly flowing water and change in elevation) to produce waterpower energy – only 200 sites have been developed in the last century. Public policy (e.g. permitted land uses, interconnection) and the economics of site development will play

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<sup>2</sup> This section is based on information taken directly from the OWA web site.

important roles in determining how much of this hydraulic energy potential is developable in the future.

There have been a number of recent energy policy initiatives in Ontario. In January 2004, the Minister of Energy announced the first renewable energy “Request for Proposals” in order to help meet the target of an additional 5 % (1,350 MW) of renewable energy by 2007 and 10% by 2010. In November 2004, the Ministry of Natural Resources (MNR) finalized the Site Release and Development Policy for Waterpower Development on Crown Land. In December 2004, the province passed the *Electricity Restructuring Act* (Bill 100) to address issues of energy supply and demand in Ontario, recognizing the need to secure new energy supply to meet growing demand.

In February 2009 the Minister of Energy introduced the Ontario *Green Energy Act* (GEA) to encourage the growth of renewable energy projects, including waterpower. The GEA received Royal Assent May 14, 2009. Since then, the MNR has reviewed its Site Release and Development Policy for Waterpower Development to align with the GEA and the Ontario Power Authority has implemented the Feed-in Tariff (FIT) program for renewable energy projects. FIT encourages the development of renewable energy projects in Ontario by providing a stable pricing structure and long-term contracts to developers. With these and other initiatives, there is an imperative for expanded and new waterpower projects in Ontario to help meet growing energy needs and contribute to environmental objectives.

## **2.2 Types of Waterpower Projects Addressed in the Practitioner’s Guide**

The Practitioner’s Guide addresses new facilities (greenfield) and replacements, expansions and modifications to existing waterpower facilities and associated works (e.g. transmission lines).

Maintenance projects, operational changes (e.g. changes in flows or water levels) and emergency repairs will not be specifically addressed in this Guide.

It is expected that the majority of waterpower projects in Ontario will be < 200 MW. However, this Practitioner’s Guide also addresses projects  $\geq$  200 MW.

### 3.0 Relevant Policy Initiatives

#### 3.1 Memorandum of Understanding Between the Canadian Electricity Association and Fisheries and Oceans Canada

The Canadian Electricity Association (CEA) and Fisheries and Oceans Canada (DFO) have signed a Memorandum of Understanding (MOU), establishing a cooperative working relationship. The MOU outlines initiatives *“to better conserve and protect fish and fish habitat resources associated with electricity generation in Canada in a manner consistent with the requirements of the Fisheries Act and related regulatory and policy documents”* (Fisheries and Oceans Canada and the Canadian Electricity Association, 2002).

Specifically, the CEA and DFO *“agree to establish a cooperative working relationship ... in order to facilitate regular national and regional consultation, collaborate in the development of standard fish and fish habitat conservation and protection requirements consistent with the objectives of the Fisheries Act, the Habitat Policy [a DFO policy], and related regulatory and policy documents, undertake joint stewardship initiatives, develop joint education and training materials, and establish joint research programs, all with the intent of better protecting the fish and fish habitat resources associated with electricity generation in Canada”* (Fisheries and Oceans Canada and the Canadian Electricity Association, 2002).

The *MOU Between the CEA and Fisheries and Oceans Canada*, which is posted on the CEA web site ([http://www.electricity.ca/resources/reports-and-documents/policy-statements-and-briefs.php?searchresult=1&sstring=memorandum#wb\\_533](http://www.electricity.ca/resources/reports-and-documents/policy-statements-and-briefs.php?searchresult=1&sstring=memorandum#wb_533)) and the DFO web site (<http://www.dfo-mpo.gc.ca/habitat/role/141/1413/partagr-entpart/cea-ace-eng.htm>), should be consulted for specific details.



## **4.0 Federal and Provincial Environmental Assessment Requirements for Waterpower Development Projects**

### **4.1 Class Environmental Assessment Requirements for Waterpower (Hydroelectric) Development Projects**

This section explains the categorization of projects subject to this Class EA. The project categories are premised on Category B projects contained in the existing provincial *Electricity Projects Regulation*; however the Class EA further differentiates waterpower projects based on the environmental context within which they occur. The categories within this Class EA:

- Build on the current regulatory framework for EA of electricity projects, which includes a proponent-led and flexible approach to address project-specific issues;
- Predetermine process, based on key differences in the environment within which projects are proposed;
- Ensure a consistent approach to evaluation, impact management and documentation;
- Provide for scaled and flexible public, agency and Aboriginal involvement and evaluation/documentation; and
- Allow for the relevant range of potential impacts and benefits to be assessed for each project.

Within this Class EA, waterpower projects have been streamed into categories as a means to match development proposals with the general scope and scale of the environmental context within which they occur. Based on very recent inventories of Ontario's remaining waterpower potential, the array of projects that are expected to come forward in the foreseeable future include:

- Projects associated with existing infrastructure;
- New projects on managed river systems; and
- New projects on unmanaged river systems.

Waterpower projects occurring in similar environmental contexts have been assigned to categories so that the scale and scope of assessment and review for a project is matched to its potential for and nature of effects to the environment and public and/or agency concern.

These streams are intended to facilitate focused assessment and effective and efficient engagement. The following sections describe the categories to which waterpower projects have been assigned under the Class EA. Table 1 provides a summary of the distinctions in process between projects.

#### **4.1.1 Projects Associated with Existing Infrastructure**

This category includes waterpower projects that result in additional nameplate capacity and that are expansions, modifications or redevelopments and are proposed at, near or around

existing facilities or water management infrastructure. As an example, this could include the retrofit of an existing dam to incorporate a waterpower facility. Although the *Electricity Projects Regulation* does not define “retrofitting” or “redevelopment”, these terms, as they are commonly applied to waterpower projects, have been defined in the Class EA (see Appendix A of Class EA for Waterpower Projects) for additional clarity in the categorization of projects. Projects associated with existing infrastructure are least likely to involve new significant effects and/or create broad public, Aboriginal community and/or agency interest. In general, this category of projects will involve relatively localized direct effects to the environment and, while project size may vary, the scope of change will often be restricted to the infrastructure itself and the zone of influence resulting from modification. However, these types of facilities may have been in existence for many years and may have built cultural heritage value or interest. These projects, therefore, have the most likelihood to affect buildings or structures of cultural heritage value or interest (“built heritage”). However, the possibility of affecting built heritage is potentially relevant to all categories.

In addition to the limitations imposed by changes to existing infrastructure, it is reasonable to expect that water management regimes are already established, either as expressed through a formal water management plan or through the identification of relevant social and environmental values and interests. Projects within the category that involve significant changes in water management regimes are likely to be more complex than those that do not.

In terms of process, the projects will include a proponent-agency coordination meeting, a mandatory public notice at the beginning of the project (Notice of Commencement) and a second public notice (Notice of Completion) to parties who have requested to be informed and engaged and/or who have participated in the consultation.

Applying the framework of the *Electricity Projects Regulation*, these projects include:

- Expansion or change to an existing generation facility that has a resultant nameplate capacity of less than 200 MW\*;
- Expansion or change to an existing generation facility by less than 25% with an initial nameplate capacity of less than 200 MW and resultant nameplate capacity of 200 MW or more;
- Expansion or change to an existing generation facility by less than 25% with an initial nameplate capacity of greater than 200 MW;
- Retrofitting of existing infrastructure with a resultant nameplate capacity of less than 200 MW.

\*Note the transition and grandparenting exemptions of the *Electricity Projects Regulation*

#### **4.1.2 New Projects on Managed Waterways**

These are new projects on waterways that are already subject to water level and/or flow management. These projects may be expected to have potential broader effects and/or public, Aboriginal community and/or agency interest. However, given that projects in this category are restricted to those that take place on river systems already subject to water management, the evaluation and assessment will be primarily focused on the development site, the immediate zone of influence and the potential incorporation of the new operation into the

existing water management regime. Some developments may involve changes to the existing regime and, hence, the involvement of a broader scope of interests and potentially a broader study area / zone of influence.

Proponents of projects in this category are required to convene a proponent-agency coordination meeting, issue a mandatory public notice at the beginning of the project (Notice of Commencement) and a second broad public notice (Notice of Completion), regardless of any concerns or interest that come forward as the result of the first notice or the level of participation through consultation.

These projects include:

- Development of a new generation facility less than 200 MW nameplate capacity on a managed waterway.

#### 4.1.3 New Projects on Unmanaged Waterway

These projects occur on unmanaged waterways and can have the most potential to cause broad effects and/or are expected to have considerable public, Aboriginal community and/or agency interest. These projects feature new developments on river systems not previously subject to water level and flow management. They will not only involve consideration of the direct effects of the new infrastructure, but are also most likely to require an assessment of the implications of an introduced water management regime.

Given the potential for greater complexity, the process defined in the Class EA provides for additional public, Aboriginal community and/or agency involvement.

These projects include:

- New development less than 200 MW nameplate capacity on an unmanaged river waterway.

Table 1 provides a summary of the distinctions in process between projects.

<b>Table 1: Distinctions Between Project Types</b>			
	<b>New Projects associated with existing infrastructure</b>	<b>New Projects on managed waterways</b>	<b>New Projects on unmanaged waterways</b>
<b>Rationale for Categorization</b>	Greatest potential for site specific effects and focused concern.	Potential for localized effects and concern.	Greatest potential to cause broad effects and medium to high concern.
<b>Mandatory Notification Requirements</b>	- Notice of Commencement - Notice of Completion (to	- Notice of Commencement - Notice of Completion	- Notice of Commencement - Notice of Inspection (to parties

	parties who have expressed an interest or participated) - Statement of Completion	- Statement of Completion	who have expressed an interest or participated) - Notice of Completion - Statement of Completion
<b>Key Environmental Themes</b>	Environmental considerations will often be site-specific and localized (i.e. immediately up and downstream; existing infrastructure could have built cultural heritage value in some instances).	Environmental considerations will often involve the relationship between the “zone of influence” for the new proposal and the existing water management regime. Greater potential for changes to the existing regime.	Key considerations will most often extend to the impacts and benefits of water level and flow management. Greatest potential for the establishment of a new water management regime.
<b>Involvement</b>	Agencies, Interested Parties, Aboriginal Communities, as appropriate.	Agencies, Interested Parties, Aboriginal Communities, as appropriate.	Agencies, Interested Parties, Aboriginal Communities, as appropriate.
<b>Documentation</b>	Environmental Report	Environmental Report	Environmental Report
<b>General Level of Detail Expected</b>	Site-specific investigations are expected to be relatively focused.	Broader local concerns/impacts and potential for expanded scope.	Broadest consideration and potential for greatest level of complexity.
<b>Target Timelines for EA Completion*</b>	12 months	12-18 months	12-24 months

\* Target timelines are specific to the Class EA process, are approximate and will vary (more or less) depending on factors such as technical study timeframes and consultation requirements, and do not include subsequent permitting and approvals.

#### 4.2 Waterpower Projects beyond the scope of the Class EA

This Class EA does not cover all waterpower projects. Some waterpower projects have no EA Act requirements and some projects require an individual EA. This section explains in further detail how these projects relate to the Class EA; however, they are not in fact subject to this Class EA.

#### 4.2.1 Category A Projects

Under the *Electricity Projects Regulation*, Category A projects are those that are either exempt from provincial EA requirements or that are not subject to the EA Act. By definition, they are expected to have minimal or no new effects to the environment. There are no waterpower projects designated under the definition of Category A under the *Electricity Projects Regulation*. The minimum threshold for a new waterpower facility is a Category B project.

However, under the *Electricity Projects Regulation*, some waterpower projects are designated under the EA Act but then made exempt for purposes of grandparenting and transitioning. This Class EA does not change the exemptions provided for these projects, which are as follows:

- changing or expanding a water power generation facility for which no approval under section 5 of the EA Act was required to construct; and which result in a less than 25% increase in nameplate capacity at such existing facility; and
- constructing, operating, changing, expanding or retiring of a water power generation facility for which no approval under section 5 of the EA Act was required to construct; and which either began construction before April 23, 2001 or obtained any approvals required to begin construction and any approvals required to operate under the Environmental Protection Act or the Ontario Water Resources Act before April 23, 2001; and was substantially completed by April 23, 2006.

Although these projects are exempt from the EA Act, if there is a related requirement for a new disposition of rights to Crown resources, this aspect of the project will be subject to the MNR Class EA – RSFD or the MNR Class EA – PPCR, as appropriate. In addition, these projects may still be subject to the requirements of the CEA Act.

#### 4.2.2 Category C Projects: Individual EA

As described in the *Electricity Projects Regulation*, Category C projects are determined to be major projects with the potential for significant net effects. These projects require an individual EA and are beyond the scope of the Class EA. The required process for a Category C project would be determined through the preparation and approval of Terms of Reference under Part II of the EA Act. Category C projects include:

- Development of a new generation facility with a nameplate capacity of 200 MW or more; and
- Significant modification of an existing generation facility with a nameplate capacity of 200 MW or more.

## 5.0 A Primer on the *Canadian Environmental Assessment Act* (CEAA)

The *Canadian Environmental Assessment Act* (CEAA) is a federal law that applies to projects where the federal government is the proponent, provides funding, owns or administers federal lands or issues certain types of permits or approvals in order to enable a project to proceed in whole or in part. The purpose of the legislation is to ensure that the environmental effects of projects are considered before irrevocable decisions are made by federal authorities. CEAA requires each federal decision-maker or Responsible Authority (RA) to consider the environmental effects of a proposed project prior to taking an action that would enable the project to proceed. If a project “triggers” CEAA, an environmental assessment (EA) of the project is required (unless it is excluded – see Section 5.2) and an RA must ensure that an EA is undertaken. An RA will circulate the project to other federal authorities to obtain specialist information and knowledge for the project assessment and to determine whether they also have responsibilities as an RA.

Under CEAA, community knowledge and aboriginal traditional knowledge may be considered in conducting an EA. The information may be obtained through the engagement and consultation efforts of the RAs when they believe they may have a duty to consult with potentially affected Aboriginal groups, as well as through the efforts of proponents to gather such information. In addition, the definition of environmental effects includes a consideration of “the current use of lands and resources for traditional purposes by aboriginal persons”. The Crown’s duty to consult Aboriginal groups stems from the RAs contemplating an action that may have an affect on potential or established Aboriginal rights.

There are a number of key regulations that pertain to CEAA, including: the *Law List Regulations*; the *Inclusion List Regulations*; the *Exclusion List Regulations*; and the *Comprehensive Study List Regulations*. The following sections provide an overview of the key components of CEAA, with reference to these regulations, as appropriate.

The web site address for the Canadian Environmental Assessment Agency (the Agency), as well as selected references, are provided at the back of this Practitioner’s Guide.

### 5.1 Purpose of CEAA

The purpose of CEAA is to:

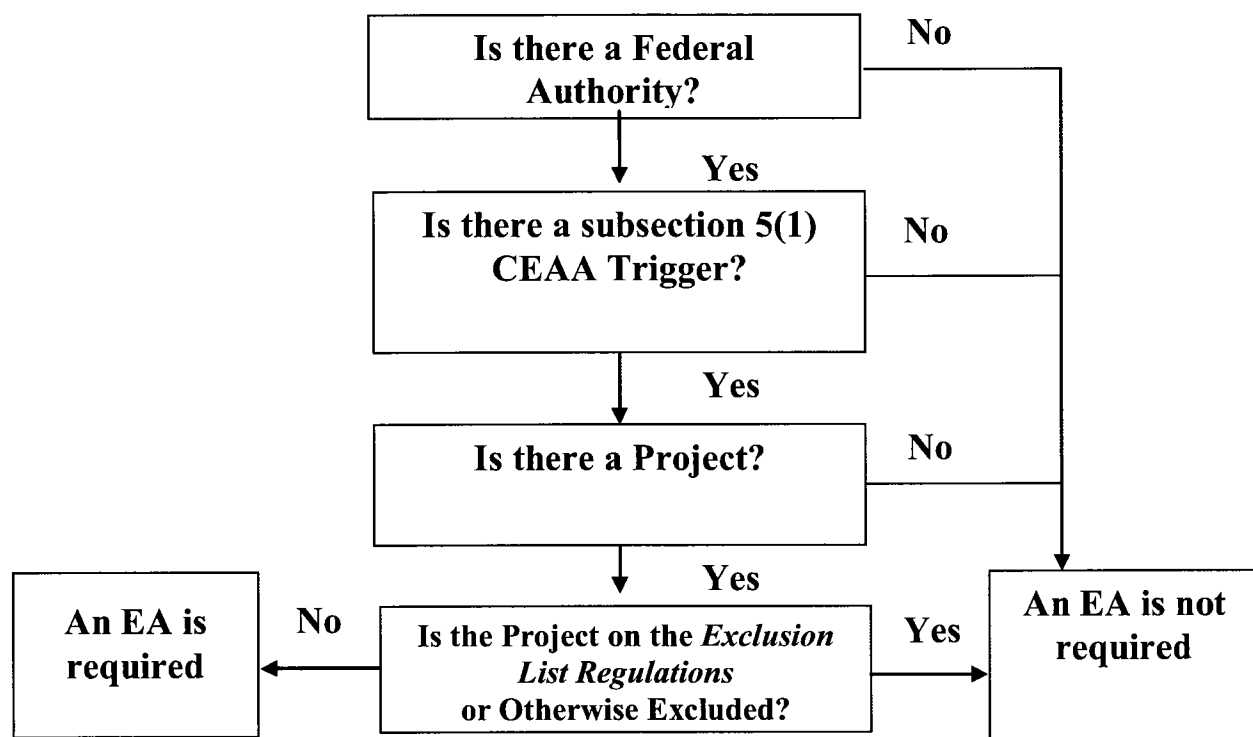
- ensure environmental effects of projects are considered;
- promote sustainable development;
- ensure environmental assessments are carried out in a coordinated manner;
- promote cooperation and coordination between federal and provincial governments with respect to environmental assessment processes;
- promote communication and cooperation with Aboriginal peoples with respect to environmental assessment;
- ensure that projects within Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out; and

- ensure timely and meaningful public participation in the environmental assessment process (CEAA Section 4).

## 5.2 When Does CEAA Apply?

CEAA is different from the requirements of the Ontario *Environmental Assessment Act* (EA Act) in that it applies to a federal authority when it has certain decisions to make in relation to a project.

In order for CEAA to apply, there must be: (1) a federal authority; (2) a subsection 5(1) CEAA trigger (i.e. a federal power, duty or function in respect of the project); and (3) a project that is not excluded. Without all three of these elements, CEAA does not apply.



**Figure 1: When Does CEAA Apply?**

Figure 1 provides a flowchart that outlines how to determine if CEAA applies. An explanation of the flowchart is provided below.

**Is there a Federal Authority (FA)?**

Under CEAA, a federal authority includes the following:

- a federal Minister of the Crown;
- an agency or body of the federal government;

- any department or departmental corporation set out in Schedule I or II to the *Financial Administration Act*, and
- any other body that is prescribed pursuant to regulations under CEAA.

Example of federal authorities frequently involved in environmental assessments include:

- |   |                               |
|---|-------------------------------|
| • Fisheries and Oceans Canada (DFO)                   | • Transport Canada (TC)       |
| • Environment Canada (EC)                             | • Parks Canada Agency (PC)    |
| • Natural Resource Canada (NRCan)                     | • National Energy Board (NEB) |
| • Indian and Northern Affairs Canada (INAC)           | • Health Canada               |
| • Public Works and Government Services Canada (PWGSC) | • Industry Canada             |

Other bodies may be subject to CEAA, such as Port Authorities, however, they are not FAs. Port Authorities conduct EAs as per the *Port Authority Environmental Assessment Regulations*.

Appendix B provides information on identifying federal authorities.

<b>Is there a subsection 5 CEAA trigger?</b>
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Subsection 5(1) of CEAA outlines the circumstances under which the federal government is required to undertake an environmental assessment of a project<sup>3</sup>. CEAA applies in instances where a federal authority performs one or more of the following functions in relation to a project:

- is the proponent of the project
- provides financial assistance (such as funding, goods or services) to a project
- leases, sells or disposes of land to enable a project to be carried out: and/or
- exercises a regulatory duty (i.e. issues a permit, authorization, approval or licence) under a piece of legislation that is included in the *Law List Regulations* in relation to a project.

These actions are generally known as “triggers”. The federal authority that “triggers” CEAA is known as the Responsible Authority (RA). There may be instances where there is more than one RA for a project (e.g., Industry Canada is funding a project which will require a *Fisheries Act* authorization).

As per subsection 11.01(1) of CEAA, for comprehensive studies where the Nuclear Safety Commission or the National Energy Board “is not one of the responsible authorities in relation to the project, the Agency shall commence a comprehensive study of the project and exercise the powers and perform the duties and functions of the responsible authority in

<sup>3</sup> In addition, an environmental assessment of a project is required before the Governor in Council (GIC), as per subsection 5(2) of CEAA, under a provision prescribed in the *Law List Regulations*, issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part.



relation to the project” until the Minister of the Environment is provided with the comprehensive study report as required in section 21.3.

The *Law List Regulations* identify federal statutory or regulatory approvals that trigger a CEAA assessment.

The timing for triggering CEAA is a decision of the RA. Ideally, CEAA would be triggered by the RA as soon as practical in the overall planning process. Past practice has been to wait until there is sufficient information available on the project to determine if a federal power will be exercised or a federal duty or function will be performed. However, the timing for triggering CEAA is generally reviewed for each project and there may be circumstances, such as the availability of information, that affect the timing of the trigger. Note that the review of a project is an iterative process

The DFO *Policy change on early triggering for major projects under CEAA* came into effect June 1, 2004. The objective of this Policy is to allow the triggering of CEAA on major projects requiring authorizations under the *Fisheries Act*, earlier for a more harmonized process when provincial EA legislation applies. Contact information for Fisheries and Oceans Canada is provided in Table 10.1.

Examples of RAs include:

- Fisheries and Oceans Canada (*Fisheries Act* authorization);
- Transport Canada (*Navigable Waters Protection Act* approval, funding, land).
- National Energy Board (permit for pipeline relocation);
- Canada Transportation Agency (permit for rail crossing or re-alignment);
- Natural Resources Canada (permit for storage of explosives);
- Industry Canada (funding);
- Indian and Northern Affairs Canada (lease on projects on reserve land);
- Environment Canada (funding);
- Public Works and Government Services Canada (funding); and
- Canadian Environmental Assessment Agency (only an RA for Comprehensive Studies)

Appendix C provides information on potential CEAA triggers for waterpower projects.

### Is there a Project?

Under CEAA, a project is defined as:

- a proposed undertaking in relation to a **physical work**, such as any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work

or

- any proposed **physical activity** not relating to a physical work that is identified on the *Inclusion List Regulations* (CEAA subsection 2(1)).

Projects listed in the *Exclusion List Regulations* or otherwise excluded (see below) do not require a federal EA.

A **physical work** is generally considered to be a structure that is fixed in place, has been constructed by humans and has an element of permanence (i.e., not temporary in nature). Examples of a physical work are a road, a bridge, a culvert, a pier or a dock.

The *Inclusion List Regulations* list those physical activities that are defined as projects under CEAA. Examples of physical activities listed in the *Inclusion List Regulations* include: the remediation of contaminated land in Canada; the destruction of fish by any means other than fishing, where the destruction requires the authorization of the Minister of Fisheries and Oceans under section 32 of the *Fisheries Act*; the dumping of any substance for which a permit is required under Part VI of the *Canadian Environmental Protection Act*; and physical activities that are carried out in Canada relating to the establishment or relocation of a temporary road for use in winter.

The following provides some examples of how to determine whether there is a project under CEAA.

Potential Projects	In relation to a physical work?	On the Inclusion List?	Project?
Construction of a Dam	Yes	NA	Yes
Remediation of Contaminated Lands	No	Yes	Yes
Dredging Lake to:			
a) Build a pier	Yes	NA	Yes
b) Enable navigation	No	Yes	Yes
Transport of Dangerous Goods	No	No	No
Construction of a Transmission Line	Yes	NA	Yes

NA = not applicable since it is a physical work

#### Is the Project Excluded from CEAA?

Once it is determined that there is a project, as defined by CEAA, before it can be confirmed that CEAA applies, it must be determined if the project is excluded from the requirement of an EA.

The *Exclusion List Regulations* list those projects which are not subject to the requirements of CEAA and, therefore, do not require an environmental assessment under the Act. Projects or classes of projects that are set out in Schedule 3 of CEAA and that are funded under funds, plans or initiatives listed out in section 7.1(2) of CEAA are also exempt from the requirement

of an environmental assessment under CEAA. In addition, projects undertaken in response to an emergency (e.g. a flood) in the interest of preventing damage to property, the environment or to public health and safety, or in response to a national emergency as per the *Emergencies Act*, are exempt from CEAA.

An example of a project in the *Exclusion List Regulations* is the proposed maintenance and repair of an existing physical work. Table 2 outlines transmission projects that are identified in the *Exclusion List Regulations*.

Further details on the *Exclusion List Regulations* can be found in the document entitled *Consolidated Regulations Under the Canadian Environmental Assessment Act* (Canadian Environmental Assessment Agency, 1999).

It is important to note that even though a project may be excluded from CEAA, a project may still require, for example, a *Fisheries Act* authorization (e.g., for maintenance of existing works that are not covered by a DFO Operational Statement<sup>4</sup> and result in the harmful alteration, disruption or destruction (HADD) of fish habitat) or the Ontario *Environmental Assessment Act*.

**Table 2: Transmission Projects on *Exclusion List Regulations* \***

Exclusion List Reference No.	Excluded Project
21	<ul style="list-style-type: none"> <li>the proposed construction or installation of an electrical transmission line, other than an international electrical transmission line, with a voltage of not more than 130 kV, where the construction or installation would not               <ul style="list-style-type: none"> <li>a) be carried out beyond an existing right of way;</li> <li>b) involve the likely release of a polluting substance into a water body; and</li> <li>c) involve the placement in or on a water body of the supporting structures for the electrical transmission line.</li> </ul> </li> </ul>
22	<ul style="list-style-type: none"> <li>the proposed expansion or modification of an existing electrical transmission line, other than an international electrical transmission line, that would not               <ul style="list-style-type: none"> <li>a) lengthen the line by more than 10 per cent;</li> <li>b) be carried out beyond an existing right of way;</li> <li>c) involve the likely release of a polluting substance into a water body; and</li> <li>d) involve the placement in or on a water body of the supporting structures for the electrical transmission line.</li> </ul> </li> </ul>
23	<ul style="list-style-type: none"> <li>the proposed construction or installation of a switching station associated with an electrical transmission line with a voltage of not more than 130 kV, other than an international transmission line, where the construction or installation would not               <ul style="list-style-type: none"> <li>a) be carried out beyond an existing right of way;</li> </ul> </li> </ul>

<sup>4</sup> Each Operational Statement provides the public and industry with guidance on how to carry out a work or undertaking in order to avoid negative effects to fish habitat and therefore, meet the requirements of the *Fisheries Act*. See Section 7.1.1 for more information.

Exclusion List Reference No.	Excluded Project
	<ul style="list-style-type: none"> <li>b) be carried out in or on or within 30 m of a water body; and</li> <li>c) involve the likely release of a polluting substance into a water body.</li> </ul>
24	<ul style="list-style-type: none"> <li>• the proposed expansion or modification of an existing switching station associated with an electrical transmission line, where the expansion or modification would not               <ul style="list-style-type: none"> <li>a) be carried out beyond the existing right of way;</li> <li>b) be carried out in or on or within 30 m of a water body; and</li> <li>c) involve the likely release of a polluting substance into a water body.</li> </ul> </li> </ul>
25	<ul style="list-style-type: none"> <li>• the proposed construction, installation, expansion or modification of an international electrical transmission line with a voltage of not more than 50 kV that would not               <ul style="list-style-type: none"> <li>a) be carried out beyond an existing right of way;</li> <li>b) extend more than 4 km outside Canada;</li> <li>c) involve the likely release of a polluting substance into a water body; and</li> <li>d) involve the placement of the supporting structures for the line in or on or within 30 m of a water body.</li> </ul> </li> </ul>

\* from Part III, Electrical and Nuclear Energy, *Exclusion List Regulations*, pp. 7-8.

### 5.3 Key CEAA Definitions

The following are definitions for some key CEAA terms (from CEAA subsection 2(1)):

Environment	<p>“environment” means the components of the Earth, and includes</p> <ul style="list-style-type: none"> <li>(a) land, water and air, including all layers of the atmosphere,</li> <li>(b) all organic and inorganic matter and living organisms, and</li> <li>(c) the interacting natural systems that include components referred to in paragraphs (a) and (b).</li> </ul>
Environmental Effect	<p>“environmental effect” means, in respect of a project,</p> <ul style="list-style-type: none"> <li>(a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the <i>Species at Risk Act</i>;</li> <li>(b) any effect of any such change referred to in paragraph (a) on               <ul style="list-style-type: none"> <li>(i) health and socio-economic conditions,</li> <li>(ii) physical and cultural heritage,</li> <li>(iii) the current use of lands and resources for traditional purposes by aboriginal persons, or</li> <li>(iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or</li> </ul> </li> </ul>

	<p>(c) any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada.</p> <p>CEAA subsection 16(1)(a) notes that the environmental effects of a project include the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out.</p>
Federal Authority	<p>“federal authority” means</p> <ul style="list-style-type: none"> <li>(a) a Minister of the Crown in right of Canada,</li> <li>(b) an agency of the Government of Canada or other body established by or pursuant to an Act of Parliament that is ultimately accountable through a Minister of the Crown in the right of Canada to Parliament for the conduct of its affairs,</li> <li>(c) any department or departmental corporation set out in Schedule I or II to the <i>Financial Administration Act</i>, and</li> <li>(d) any other body that is prescribed pursuant to regulations made under 59(e).</li> </ul>
Responsible Authority	<p>“responsible authority”, in relation to a project, means a federal authority that is required pursuant to subsection 11(1) to ensure that an environmental assessment of the project is conducted.</p>
Proponent	<p>“proponent”, in respect of a project, means the person, body, federal authority or government that proposes the project.</p>
Follow-up Program	<p>“follow-up program” means a program for</p> <ul style="list-style-type: none"> <li>(e) verifying the accuracy of the environmental assessment of a project, and</li> <li>(f) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project.</li> </ul>

## 5.4 Types of Assessments

Under CEAA, an EA is carried out by the RA, or under the direction of the RA, in order to be able to determine the environmental effects before making a decision on taking action in support of a project (i.e. is a proponent, provides financial assistance, provides land, issues certain types of permits or authorizations).

There are four main types of EAs or “tracks”: **screenings**; **comprehensive studies**; **review panels**; and **mediation**. The vast majority of CEAA assessments are **screenings**. Details on what is required for a screening are provided in Section 5.5.

All projects are subject to screenings unless they are identified on the *Comprehensive Study List Regulations*. Projects on the *Comprehensive Study List Regulations* must be assessed as a

**comprehensive study**, in accordance with CEAA. Generally, these are large-scale projects that may have the potential for significant adverse environmental effects. The waterpower projects that are on the *Comprehensive Study List Regulations* are provided in Section 4.2.

For comprehensive studies, generally the Agency is responsible for the conduct of the EA, including providing opportunities for public consultation and participation and ensuring the comprehensive study report is prepared. The exception is when the Canadian Nuclear Safety Commission (CNSC) or the National Energy Board (NEB) is one of the responsible authorities. At any time during the comprehensive study, the Minister of the Environment has the discretion to refer the project to a mediator or a review panel. Details on what is required for a comprehensive study are provided in Section 5.5.

A project screening or comprehensive study may be referred by an RA to the Minister of the Environment to conduct a **review panel** if: *“it is uncertain whether the project is likely to cause significant adverse environmental effects; the project is likely to cause significant adverse environmental effects and a determination must be made whether these effects are justified in the circumstances; or public concerns about the project and its possible environmental effects warrant further investigation of the project”* (Canadian Environmental Assessment Agency, 1994b, p. 108). A project subject to a screening or comprehensive study may be referred to a review panel by an RA as per Section 25 of the CEAA, or at the request of the Minister of the Environment himself as per Section 28. The review panel is an independent body appointed by the Minister of Environment to review the project. The review panel prepares a report to the Minister of Environment that outlines conclusions and recommendations relative to the project.

A project screening or comprehensive study may also be referred to mediation by the Minister of the Environment. **Mediation** is another federal environmental assessment “track” in which a mediator that has been appointed by the Minister of the Environment works with affected parties to attempt to resolve their issues associated with a project.

## 5.5 What Needs to be Considered in a CEAA Screening and in a Comprehensive Study?

Subsection 16(1) of CEAA indicates that the following factors shall be considered for every screening or comprehensive study:

- (a) *“the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;*
- (b) *the significance of the effects referred to in paragraph (a);*
- (c) *comments from the public that are received in accordance with this Act and the regulations;*
- (d) *measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and*

- (e) *any other matter relevant to the screening, comprehensive study, mediation or assessment by a review panel, such as the need for the project and alternatives to the project, that the responsible authority or, except in the case of a screening, the Minister after consulting with the responsible authority, may require to be considered*

Subsection 16(2) of CEAA outlines the following additional factors that shall be considered for a comprehensive study:

- a) *“the purpose of the project;*
- b) *alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;*
- c) *the need for, and the requirements of, any follow-up program in respect of the project; and*
- d) *the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future”.*

A CEAA assessment must consider *“any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out”* (CEAA subsection 16(1)). Further guidance on cumulative environmental effects is provided in the *Operational Policy Statement Addressing Cumulative Environmental Effects under CEAA* and the *Cumulative Effects Assessment Practitioner’s Guide* prepared by the Agency (see Selected References that includes the web site address for the Agency).

The CEAA assessment must also consider the environmental effects of malfunctions or accidents that may occur in connection with the project. For example, this would include a consideration of accidental spills during construction or operational phases. Examples of accidents and malfunctions during the construction phase include fuel spills from equipment or slope failure caused by heavy rainfall.

## **5.6 What are the Roles and Responsibilities of the Responsible Authority (RA)?**

Once a federal authority determines that it has a power, duty or function in relation to a proposed project, it becomes an RA. An RA has a number of roles and responsibilities, including:

- determining if an EA is required and, if yes, what type;
- consulting with the appropriate federal departments in accordance with the *Federal Coordination Regulations*;
- determining if there is other jurisdictional interest (i.e. provincial);
- defining the project and scope of assessment (scope of assessment involves determining the factors and scope of factors) (see Section 5.9);
- ensuring that the EA is conducted in accordance with CEAA requirements;
- under ss.79(1) of SARA, without delay, notifying, in writing, the competent minister(s) if the project is likely to affect a listed wildlife species or its critical habitat.
- under ss.79(2) of SARA,

- identifying the adverse effects on the listed wildlife species and its critical habitat; and
- if the project is carried out:
  - ensuring that measures are taken to avoid or lessen the adverse effects on the listed wildlife species and its critical habitat and to monitor them, and
  - ensuring that such measures are taken in a way that is consistent with any applicable recovery strategy and action plans.
- determining whether public participation is appropriate;
- undertaking public consultation, as required;
- entering and updating project information on the Canadian Environmental Assessment Registry (CEAR) to facilitate convenient public access to records relating to the EA;
- determining whether a follow-up program is appropriate;
- making a determination on the likelihood of significant adverse environmental effects; and
- providing public notice on the course of action for the project.

An RA acts as the Federal Environmental Assessment Coordinator (FEAC) for screenings when the project is not subject to the EA process of another jurisdiction, unless otherwise agreed (see Section 5.8).

The *Federal Coordination Regulations* are used by federal authorities to identify and give notice to other federal authorities that may have an interest in a project as either an RA or as an expert department. These regulations are intended to ensure that only one assessment is undertaken for each project and that it is undertaken in a coordinated manner.

## 5.7 What is the Role of Expert Departments?

Federal authorities that are not RAs may still be involved as expert departments for projects that trigger CEAA. An RA will circulate the project to other federal authorities or expert departments. The role of expert departments is to provide specialist information and knowledge for the project assessment, at the request of the RA or a mediator or a review panel. Expert Federal Authorities (FAs) may be able to provide available information on environmental conditions or scientific studies, expertise on environmental effects and their significance, or advise on other regulatory requirements or policy considerations applicable to the project.

Federal authorities may also act as a review agency, providing advice (e.g. advice on the *Species at Risk Act*) to a proponent regardless of whether CEAA is triggered or in advance of CEAA being triggered.



## 5.8 What is the Role of the Canadian Environmental Assessment Agency?

The Agency was established in 1994 as an independent body that administers the federal environmental assessment process. The Agency promotes environmental assessment as a tool to protect and sustain a healthy environment, promotes high quality environmental assessments and creates an awareness of CEAA and how it applies.

The Agency provides procedural advice on CEAA. In addition, the Agency acts as the FEAC<sup>5</sup> for comprehensive studies and multi-jurisdictional assessments (e.g. CEAA assessments and assessments undertaken in accordance with the *Class Environmental Assessment for Waterpower Projects*) or by mutual agreement for federal screenings.

The Canadian Environmental Assessment Agency notes that the role of the FEAC involves:

- *“bringing together all federal authorities that may need to be involved in the assessment;*
- *consolidating information requirements for the assessment;*
- *coordinating the actions of federal authorities with those of provincial governments in the case of joint assessments ... to prevent overlap and duplication;*
- *coordinating federal authorities’ obligations for the Canadian Environmental Assessment Registry;*
- *establishing and chairing project committees that include representatives of all potential responsible authorities and interested federal authorities;*
- *establishing timelines for environmental assessments, after consulting with potential responsible authorities and federal authorities;*
- *determining, in consultation with responsible authorities, the timing of any public participation required by the Act [CEAA] or proposed by a responsible authority”* (Canadian Environmental Assessment Agency, 2003).

In addition, the FEAC is responsible for ensuring that federal authorities fulfill their obligations under CEAA in a timely manner.

For comprehensive studies, the Agency is responsible for performing the duties and functions of the responsible authority, including conducting the EA, providing opportunities for public consultation and participation, consulting and engaging with Aboriginal groups and ensuring the comprehensive study report is prepared. The exception is when the CNSC or NEB is one of the responsible authorities.

The Canadian Environmental Assessment Agency may delegate to a third party (e.g., proponent, consultant or other party) under section 17(1) the tasks of analyzing

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<sup>5</sup> An RA acts as the FEAC for federal-only screenings, unless otherwise agreed.

environmental effects, preparing the Comprehensive Study Report, ensuring public participation and designing a follow-up program.

After a decision has been reached by the Minister of the Environment on the comprehensive study, the follow-up, monitoring and aboriginal consultation responsibilities will be transferred to the most appropriate RA.

## **5.9 Scope of Environmental Assessment**

Scoping is a legal requirement under CEAA and is a key initial step in undertaking a CEAA assessment. This involves defining the scope of project and, the factors to be considered and the scope of those factors in the EA, in accordance with sections 15 and 16 of CEAA. The RA is responsible for defining the scope of the project and the scope of the EA for screenings and comprehensive studies. In cases where there is more than one RA, the RAs will work together in defining the scope of project and factors and scope of factors for the EA.

In accordance with section 15 of CEAA, the Agency will determine the scope of the project in relation to which the comprehensive study is to be conducted. The Agency will also determine the factors to be considered and the scope of those factors, in consultation with the responsible authorities and the expert federal authorities. The exception is when the CNSC or NEB is one of the responsible authorities.

The Minister of the Environment, after consulting with the responsible authority(ies) establishes the scope of the project to be assessed and the scope of the factors where a project is referred to a mediator or a review panel.

Scoping involves the determination of:

- the undertakings and activities that must be assessed as part of the project; and
- the factors and scope of factors (i.e. scope of assessment) that need to be considered in the EA.

On January 21, 2010 the Supreme Court of Canada released its decision in the *Miningwatch Canada v. Canada*. The Court concluded that the project as proposed by the proponent determines the type of environmental assessment conducted and that the scope of the project is, at a minimum, the project as proposed by the proponent. For more information, refer to CEAA's operational policy statement at:  
<http://www.ceaa.gc.ca/default.asp?lang=En&n=C3BD5DA2-1>.

### **5.9.1 Scope of Project**

The scope of project refers to every construction, operation, modification, decommissioning and/or abandonment in relation to all components of the project, as proposed by the proponent. Where appropriate, the scope of project may include specific mitigation or

compensation measures. The following are considerations used by RAs in determining the scope of project:

- what is the project that is triggering CEAA (the “principal project”)?
- are there other physical works or activities that are inevitable or linked, in a physical sense, to the principal project and which could be included in the scope of the project ?

The recent Supreme Court decision in *Miningwatch Canada v. Canada* limits the previous discretion of the RA(s) to adjust the scope depending on their level of involvement; the Court has determined that the RA(s) can only expand the scope of the project beyond that proposed by the proponent and cannot scope less than proposed.

However, the Minister of the Environment has the discretion to determine if the scope of project is limited to one or more components of the project depending on conditions established by the Minister.

### **5.9.2 Scope of Assessment**

The scope of assessment refers to the consideration of factors, including environmental effects, under section 16 of CEAA to be considered for the purposes of conducting an EA of the project.

The RA must initially consider all environmental effects, per the CEAA definition. Through scoping, the RA can then identify those that require further detailed assessment based on the potential for significant adverse environmental effects.

In defining the scope of assessment, consideration must also be given to effects on species at risk, as per the *Species at Risk Act* (SARA).

### **5.10 Decision of RA Following a Screening**

Section 20 of CEAA describes the decisions available to the RA following a screening. The RA must take one of the following courses of action after considering the results of the screening, taking into account any appropriate mitigation measures:

- (a) if the RA determines that the project is not likely to cause significant adverse environmental effects, the RA may exercise its power, or perform any duty or function that would permit the project to be carried out;
- (b) if the RA determines that the project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances, the RA will not exercise any power or perform any duty or function that would permit the project to be carried out;

- (c) if there is uncertainty about the likelihood of significant adverse environmental effects, if the project is likely to cause significant adverse environmental effects and a determination must be made whether these effects are justified in the circumstances or if public concerns warrant, the RA will refer the project to the Minister of Environment for a referral to a mediator or a review panel.

### **5.11 Decision Following a Comprehensive Study**

For comprehensive studies, the Minister of the Environment makes the decision on the project. Section 23(1) of CEAA indicates that the Minister shall issue an environmental assessment decision statement that:

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

Following a section 23 decision by the Minister of the Environment, the Minister will refer the project back to the responsible authority(ies) for a course of action decision under section 37(1).

~ CEAA Notes of Interest ~

- CEAA applies if the federal government has certain decision-making roles in relation to the undertaking of a project.
- In order for CEAA to apply, there must be a federal authority, a CEAA trigger and a project (that is not excluded).
- In accordance with CEAA, the likelihood of significant adverse environmental effects is determined after the consideration of mitigation measures.
- Approximately 99% of federal environmental assessments are screenings.
- The two most common *Law List Regulations* triggers are the requirement for an authorization under the *Fisheries Act* from DFO or an approval under the *Navigable Waters Protection Act* from Transport Canada.
- A RA cannot decide to provide the relevant land, financial assistance or approval of certain permits, licences or approvals in relation to a project until a CEAA decision has been reached.
- The scope of project and scope of assessment for a federal environmental assessment under CEAA may be different from the scope of the project subject to the *Class Environmental Assessment for Waterpower Projects*.
- Federal lands include First Nations Reserves.
- The determination of whether the environmental assessment subject to CEAA will be a screening or a comprehensive study must be made by the RA(s) but is not a choice. If a project is listed in the *Comprehensive Study List Regulations*, a comprehensive study must be completed.
- Cumulative environmental effects must be addressed in a CEAA environmental assessment.

## 6.0 *Fisheries Act, Navigable Waters Protection Act (NWP) and Other Regulatory Approvals*

Fisheries and Oceans Canada (DFO) is responsible for issuing authorizations under the *Fisheries Act*. Transport Canada (TC) is responsible for the issuance of approvals under the *Navigable Waters Protection Act* (NWP). Generally, these are the two most common *Law List Regulations* triggers. These regulatory approvals trigger the *Canadian Environmental Assessment Act* (CEAA) and, as such, DFO and TC become RAs. As RAs, DFO and TC are each responsible for considering the environmental effects of a project and for making a determination of the likelihood of significant adverse environmental effects before making a decision on whether their regulatory approvals can be given.

The following sections provide an overview of the *Fisheries Act* and the NWP, as well as other approvals that may be required for a waterpower project.

### 6.1 *Fisheries Act*

The federal *Fisheries Act* provides for the protection of fish habitat, which is defined as: "*spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes*".

Further, the *Fisheries Act* sets out some general habitat and pollution protection provisions, that are binding on all levels of government and the public, in areas such as:

- Section 35: The prohibition against the harmful alteration, disruption or destruction (HADD) of fish habitat unless authorized by DFO;
- Section 20: Passage of fish around migration barriers;
- Section 22: Provision of sufficient water flows;
- Section 30: Screening of water intakes;
- Section 32: Prohibition against the destruction of fish by means other than fishing unless authorized by DFO; and
- Section 36: Prohibition to deposit deleterious substances unless by regulation (administered by Environment Canada, with the exception of subsection 36(3) with respect to sediment).

As a result, under the *Fisheries Act*, no one may carry out any work or undertaking that results in the harmful alteration, disruption or destruction (HADD) of fish habitat, unless this HADD has been authorized by the Minister of Fisheries and Oceans Canada. Where adverse effects to fish habitat cannot be avoided through project relocation, redesign or mitigation, habitat compensation options may be required and a subsection 35(2) *Fisheries Act* authorization issued. Where the HADD is not acceptable, proponents will be asked to redesign their project and the authorization for the original project proposal will be refused.

A subsection 35(2) *Fisheries Act* authorization is a regulatory trigger for an environmental assessment (EA) under CEAA (see Table 4 for other *Fisheries Act* provisions and *Law List Regulations* triggers). CEAA requirements must be completed prior to making a decision on whether to issue a subsection 35(2) *Fisheries Act* authorization.

A proponent is not obligated to submit a project for review, however, should the project result in a HADD, the proponent would be liable under the *Fisheries Act*. An authorization under subsection 35(2) of the *Fisheries Act* protects an individual from prosecution under the *Fisheries Act*, provided the conditions of the authorization are met. Violations of section 35 can result in substantial fines, the risk of imprisonment and a requirement to cover the costs of returning the project site to its original state or other court ordered remedies.

DFO and/or its partnering agencies review projects to evaluate the impact on fish and fish habitat (see Section 9.0 for information on the role of Conservation Authorities and the Ministry of Natural Resources (MNR)) <sup>6</sup>.

The DFO *Policy for the Management of Fish Habitat* guides DFO in the implementation of the *Fisheries Act* throughout Canada. The objective of that Policy is a Net Gain of Productive capacity of fisheries resources, which is achieved through the goals of fish habitat conservation, restoration and development (enhancement). These goals are supported by eight implementation strategies, including Integrated Resource Planning and Cooperative Action. Additional information on the *Fisheries Act* and Fisheries and Oceans Canada's *Policy for the Management of Fish Habitat* is available on the internet at: <http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm>.

### **6.1.1 Risk Management Framework**

DFO has implemented a national Risk Management Framework (RMF) for the review of projects under the Habitat Protection Provisions of the *Fisheries Act*. The RMF approach allows DFO to strategically shift its focus towards projects that have a higher risk to fish and fish habitat and to streamline the review of routine, low risk projects.

The RMF is a science-based decision making framework that categorizes risks to fish and fish habitat associated with development proposals, communicates these risks to proponents, and identifies appropriate management options to reduce risks. The RMF further allows resources and efforts to be re-allocated from the review of routine, low risk, predictable projects towards the review of those projects that pose the highest risk to fish habitat. The RMF consists of three components:

- **Aquatic Effects Assessment (the Pathways of Effects)**
- **Risk Assessment (the Risk Matrix)**
- **Risk Management (making the decision).**

#### ***Aquatic Effects Assessment***

Through aquatic effects assessment, project review practitioners and proponents identify and assess the potential effects of development proposals on fish and fish habitat. It uses a series of diagrams or Pathways of Effects to show how land based and in-water based activities result in effects to fish and fish habitat. The diagrams identify where mitigation measures

should be applied to eliminate or reduce these effects. When mitigation measures cannot be applied, or only partially reduce the final effect, then this process identifies the residual negative environmental effects.

### ***Risk Assessment***

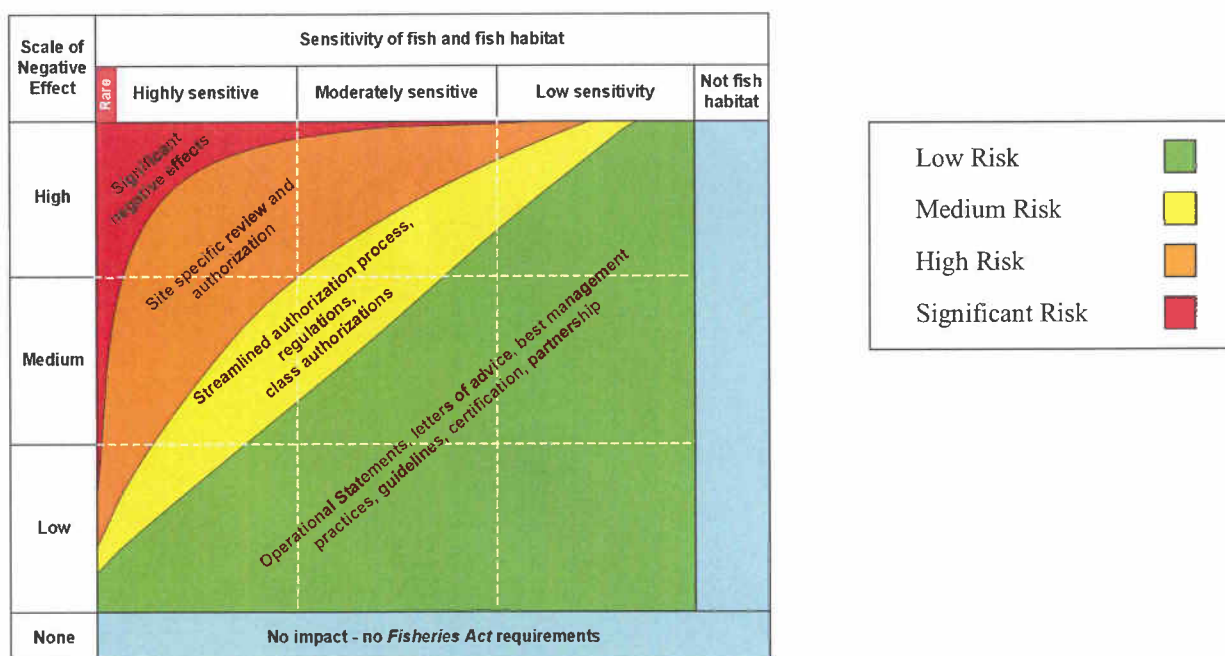
Risk assessment is a process for project review practitioners to determine the level of risk associated with the residual negative environmental effects as identified in the aquatic effects assessment. These are referred to as residual effects. Risk is categorized according to the scale of the negative effect and the sensitivity of fish and fish habitat in the location or area of impact of the proposed activity.

### ***Risk Management***

Once the risk to fish and fish habitat has been categorized, project review practitioners can use the results to support and guide their decision on how to best manage the risk. The Risk Assessment Matrix provides an effective means through which to communicate those decisions to proponents and other stakeholders. The proponent always retains the option of considering additional mitigation measures including relocation and redesign as means of lowering the risk ranking.

To manage residual negative effects to fish and fish habitat, the practitioner establishes habitat protection requirements with the proponent to reduce risk to the lowest practical and acceptable levels. These requirements may be contained in guidelines for the proponent to incorporate into their plans or may be specific measures contained in the conditions of a *Fisheries Act* authorization.

For further information on Risk Management, please refer to: <http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm>.



**Figure 2: DFO's Risk Matrix.**





**Table 3: Determination of Impacts to Fish and Fish Habitat and the Action Taken by DFO or Partnering agency**

<b>Determination of Fish Habitat and/or HADD</b>	<b>Action by DFO/Partnering Agency</b>
<b>No Fish Habitat</b>	DFO/Partnering agency will advise that there are no fish or fish habitat concerns with respect to the <i>Fisheries Act</i> .
<b>SARA Species Present</b>	<p>For all referrals in or near waters supporting aquatic Species at Risk, the SAR Mapping Tool (see references on page 86) should be consulted to determine if SAR species (fish and mussels) are present at the site. If SAR species are not present at the site, follow the steps outlined in this table</p> <p>If SAR species are present at the site, the SAR Prohibitions apply to those species listed on Schedule 1, excluding Special Concern. If there are SAR species present at the site, DFO / Partnering agency may be able to advise on ways to avoid impacts to fish and fish habitat by relocating, redesigning or mitigating the impacts to fish and fish habitat. Partnering agencies have the option to forward these projects to DFO</p> <p>If the impacts to SAR fishes/mussels cannot be mitigated, DFO should be notified immediately.</p>
<b>Low Risk to Fish Habitat: Operational Statement Applies</b>	<p>DFO has developed Operational Statements that provide guidance on how to carry out a work or undertaking in order to avoid negative impacts to fish and fish habitat and, therefore, meet the requirements of the <i>Fisheries Act</i></p> <p>Proponents should go to the DFO web site to see if an Operational Statement has been released in Ontario for their project activity (see references on page 86). By following the conditions and measures in an Operational Statement, proponents will be in compliance with subsection 35(1) of the <i>Fisheries Act</i> and may proceed with the project without a DFO review</p> <p>Notification forms should be sent to DFO 10 working days prior to in-water work.</p>
<b>Low Risk to Fish Habitat: Letter of Advice</b>	DFO/Partnering agency issues a Letter of Advice (a letter that is sent to the proponent stating that the project is low risk, and recommending mitigation measures to be followed).
<b>Medium/High Risk to Fish Habitat: Fisheries Act Authorization</b>	<p>DFO/Partnering agency may be able to advise of ways to avoid impacts to fish and fish habitat by either changing location or design or other mitigation measures</p> <p>If the project cannot be relocated, redesigned or mitigated, DFO/Partnering agency will continue with a site specific review</p> <p>DFO/Partnering agency will complete the review and work with the proponent to develop a compensation plan for the loss of fish habitat</p> <p>DFO will complete CEAA requirements and issue <i>Fisheries Act</i> Authorization.</p>
<b>Significant Risk to Fish Habitat: Redesign</b>	<p>DFO/Partnering agency may determine that the impact to fish and fish habitat is unacceptable and needs to be redesigned</p> <p>Projects in this category should be discussed early in the referral process and DFO/Partnering agency will draft a letter to the proponent outlining the deficiencies with the proposal and the significant negative effects on fish and fish habitat.</p>

**Table 4: Fish Habitat Provisions of the Fisheries Act**

Issue Addressed	Intent	Fisheries Act Section	Description of Fisheries Act Section *
The Need for Safe Fish Passage	The Minister may require fish-ways to be constructed.	20(1)	Every obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fish-pass should exist shall be provided by the owner or occupier with a durable and efficient fish-way or canal around the obstruction, which shall be maintained in good and effective condition by the owner or occupier, in such place and of such form and capacity as will, in the opinion of the Minister, satisfactorily permit the free passage of fish through it.
		20(3)	The place, form and capacity of the fish-way or canal to be provided pursuant to subsection (1) must be approved by the Minister before construction thereof is begun and, immediately after the fish-way is completed and in operation, the owner or occupier of any obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions.
		20(4)	The owner or occupier of every fish-way or canal shall keep it open and unobstructed and shall keep it supplied with such sufficient quantity of water as the Minister considers necessary to enable the fish frequenting the waters in which the fish-way or canal is placed to pass through it during such times as are specified by any fishery officer and, where leaks in a dam cause a fish-way therein to be inefficient, the Minister may require the owner or occupier of the dam to prevent the leaks therein.
Minimum Flow Requirements	The Minister may require sufficient flows of water for the safety of fish and flooding of spawning grounds as well as free passage of fish during construction.	22(1) (CEAA Law List trigger)	At every obstruction, where the Minister determines it to be necessary, the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spill-way or crest, with connecting sluices into the river below, to permit the safe and unimpeded descent of fish.
		22(2) (CEAA Law List trigger)	The owner or occupier of any obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and descending migratory fish during the period of construction thereof.
		22(3) (CEAA Law List trigger)	The owner or occupier of any obstruction shall permit the escape into the river-bed below the obstruction of such quantity of water, at all times, as will, in the opinion of the Minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon.

**Table 4 Fish Habitat Provisions of the Fisheries Act**

Issue Addressed	Intent	Fisheries Act Section	Description of Fisheries Act Section *
Fish Guards and Screens	The Minister may require fish guards or screens to prevent the entrainment of fish at any water diversion or intake.	30(1)	Every water intake, ditch, channel or canal in Canada constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes shall, if the Minister deems it necessary in the public interest, be provided at its entrance or intake with a fish guard or a screen, covering or netting so fixed as to prevent the passage of fish from any Canadian fisheries waters into the water intake, ditch, channel or canal.
		30(2)	The fish guard, screen, covering or netting referred to in subsection (1) shall <ul style="list-style-type: none"> <li>a) have meshes or holes of such dimensions as the Minister may prescribe; and</li> <li>b) be built and maintained by the owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1), subject to the approval of the Minister or of such officer as the Minister may appoint to examine it.</li> </ul>
		30(3)	The owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1) shall maintain the fish guard, screen, covering or netting referred to in that subsection in a good and efficient state of repair and shall not permit its removal except for renewal or repair.
		30(4)	During the time in which a renewal or repair referred to in subsection (1) is being effected, the sluice or gate at the intake or entrance of the water intake, ditch, channel or canal shall be closed in order to prevent the passage of fish into the water intake, ditch, channel or canal.
Destruction of Fish	Prohibits the destruction of fish by any means other than fishing.	32 (CEAA Law List trigger)	No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act.

**Table 4 Fish Habitat Provisions of the Fisheries Act**

Issue Addressed	Intent	Fisheries Act Section	Description of Fisheries Act Section *
Destruction of Fish Habitat	Prohibits works or undertakings that may result in harmful alteration, disruption or destruction of fish habitat, unless authorized by the Minister or under regulations.	35(1)	No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.
		35(2) (CEAA Law List trigger)	No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.
Pollution of Fish Habitat (administered by Environment Canada)	Prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations.	36(3)	Subject to subsection 36(4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.
		36(4)	Note: DFO in Ontario administers subsection 36(3) with respect to sediment. No person contravenes subsection 36(3) by depositing or permitting the deposit of any water or place of a) waste or pollutant of a type, in a quantity and under conditions authorized by regulations applicable to that water or place made by the Governor in Council under any Act other than this Act; or b) a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or pursuant to regulations applicable to that water or place or to any work or undertaking or class thereof, made by the Governor in Council under subsection 36(5).

Minister = Minister of Fisheries and Oceans Canada

\* Taken directly from:

Fisheries and Oceans Canada. 2002. Canada's *Fisheries Act*. The Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*.

**~ Information Note on Mitigation and Compensation for Fish Habitat ~**

It is important to note that under DFO's Policy for the Management of Fish Habitat, mitigation and compensation have different meanings from the meanings under CEAA. Under CEAA, mitigation includes compensation (this does not refer to financial compensation). However, DFO policy distinguishes between mitigation and compensation as follows:

Mitigation is the action taken during the planning, design, construction and operation of works and undertakings to alleviate potential adverse effects on the productive capacity of fish habitats. Mitigation can include a variety of activities (e.g. relocation or redesign of a project, timing of works, methods of construction) to avoid or minimize changes to habitat.

Compensation is the replacement of natural habitat, increase in the productivity of existing habitat, or maintenance of fish production in circumstances where mitigation techniques and other measures are not adequate to maintain fish habitat.

For further information on these definitions, please refer to DFO's *Policy for the Management of Fish Habitat* (1986).

## 6.2 *Navigable Waters Protection Act*

The NWPA is a federal law designed to protect the public's right to navigation in Canada. The Act requires the pre-approval of works and method(s) of construction that may affect navigable waters, and provides a legal framework for dealing with obstacles and obstructions to navigation. Transport Canada, through the Navigable Waters Protection Program (NWPP), administers and enforces the NWPA under the authority of the Minister of Transport.

Navigable waters are defined as any body of water capable of being navigated by floating vessels of any description for the purpose of transportation, recreation or commerce, and includes a canal or any other body of water created or altered for public use as a result of the construction of any work. The authority to determine the navigability of a waterway as it relates to the administration and enforcement of the NWPA is the responsibility of the Minister of Transport or his /her designated representative(s).

"Works" are defined under the NWPA as:

- a) any man-made structure, device or thing, whether temporary or permanent, that may interfere with navigation; and
- b) any dumping of fill in any navigable water, or excavation of materials from the bed of any navigable water, that may interfere with navigation.

Pursuant to the NWPA, no work shall be built or placed in, on, over, under, through or across any navigable water without the Minister's prior approval. All works, including temporary construction method(s), having the potential to interfere with navigation must be applied for and receive approval pursuant to the NWPA prior to commencement. NWPA approvals authorize site-specific works and associated plans, as well as their effects on navigation.

The NWPA application process and type of approval required varies depending on the complexity and the nature of proposed works. Once an NWPA application has been made, NWPP officials determine the extent of interference to navigation (i.e. substantial or other than substantial) associated with the works and determine the applicable NWPA approval required.

Section 5 of the NWPA typically applies to new works affecting navigable waters. Depending on the extent of interference to navigation, works may require either a section 5(2) or 5(3) approval, as follows:

1. Works that significantly alter the way vessels pass down a navigable waterway and/or that make passage dangerous to the public are considered to "substantially interfere" with navigation. Works that have the potential to substantially interfere with navigation require an approval under subsection 5(2) of the NWPA. The 5(2) approval process typically requires advertising the proposed project to the public and undertaking an environmental assessment in accordance with the requirements of CEAA.

2. Works in navigable waters that will not alter the passage of vessels in a significant way and/or will not make passage more dangerous to the public are considered to interfere “other than substantially”. Works that have the potential to interfere other than substantially require an approval under subsection 5(3) of the NWPA. Depending on the type and complexity of works, the 5(3) approval process may also require public advertising and/or an environmental assessment under CEAA.

Section 10 of the NWPA applies to existing “lawful” works that are being rebuilt, repaired or altered, provided the changes do not increase interference to navigation. A “lawful” work is considered any work not contrary to the law in force at the place of construction of the work at the time of its construction. Section 10 of the NWPA does not trigger the requirement for an environmental assessment pursuant to CEAA.

Section 6(4) of the NWPA provides for the Minister of Transport to approve work where construction has already commenced, subject to deposit and notice, as in the case of a proposed new work. Section 6(4) approvals trigger the requirement for an environmental assessment in accordance with CEAA.

In addition to the NWPA provisions identified above, there may be other provisions of the *Navigable Waters Works Regulations* that specifically relate to the construction and/or modification of dams and power plants. Table 5 summarizes the provisions of the NWPA and the *Navigable Waters Works Regulations* that specifically relate to the construction or modification of dams and power plants.

Additional information on the NWPA can be found at <http://www.tc.gc.ca/acts-regulations/menu.htm> and <http://www.tc.gc.ca/eng/marinesafety/oep-nwpp-menu-1978.htm>.

Proponents are encouraged to contact the nearest NWPP regional office early in their planning process to discuss potential NWPA implications, including information and documentation required for preparing and submitting an application. Contact information for Transport Canada is provided in Table 10.1.



**Table 5: Provisions of the *Navigable Waters Protection Act* Specific to Dams and Power Plants**

<b>Issue Addressed</b>	<b>Intent</b>	<b><i>Navigable Waters Protection Act</i> Section</b>	<b>Description of Navigable Waters Protection Act Section</b>
Approval for the building or placing of new works	Approval of works (including dams and power plants) in a manner that protects navigation or mitigates impacts.	5(2) <i>CEAA Law List trigger</i>	If the Minister considers that the work would substantially interfere with navigation, the Minister may impose any terms and conditions on the approval that the Minister considers appropriate, including requiring that construction of the work be started within six months and finished within three years of the day on which approval is granted or within any other period that the Minister may fix.
		5(3) <i>potentially a CEAA Law List trigger</i>	If the Minister considers that the work would interfere, other than substantially, with navigation, the Minister may impose any terms and conditions on the approval that the Minister considers appropriate, including requiring that construction of the work be started and finished within the period fixed by the minister.
Approval for the rebuilding, repairing or alteration of existing lawful works	Approval of changes to existing works provided that the changes do not increase interference to navigation	10(1) <i>not a CEAA Law List trigger</i>	Any lawful work may be rebuilt or repaired if, in the opinion of the Minister, interference with navigation is not increased by the rebuilding or repairing.
		10 (2) <i>not a CEAA Law List trigger</i>	Any lawful work may be altered if: a) Plans of the proposed alteration are deposited with and approved by the Minister; and b) In the opinion of the Minister, interference with navigation is not increased by the alteration.
Approval for works already commenced	To provide approval for works already commenced to ensure protection and safety of navigation	6(4) <i>CEAA Law List trigger</i>	The Minister may, subject to deposit and notice as in the case of a proposed work, approve a work, its site and the plans for it and impose any terms and conditions on the approval that the Minister considers appropriate after the start of its construction. The approval has the same effect as if it was given before the start of construction.

Issue Addressed	Intent	<i>Navigable Waters Protection Act</i> Section	Description of Navigable Waters Protection Act Section
Permit transport of logs	The Minister may require log chutes to be constructed through or over dam or power plants in a navigable water.	<i>Navigable Waters Works Regulations</i> 7(2) a	The owner of a dam or power plant in a navigable water shall, when required by the Minister, install, maintain and operate log chutes to permit the transport of logs through or over the work.
Permit passage around a dam	The Minister may require the provision of roads or paths to allow passage between upper and lower reaches of the river.	<i>Navigable Waters Works Regulations</i> 7(2) b	The owner of a dam or power plant in a navigable water shall, when required by the Minister provide and maintain roads or foot-ways for the free passage of the public by vehicle or foot around the work between the upper and lower reaches of the river.
Flow requirements	The Minister may require the owner of the dam to maintain limits of flow and elevation of water for navigation purposes.	<i>Navigable Waters Works Regulations</i> 7(4)	The owner of a dam or power plant in a navigable water shall maintain the limits of flow and elevation of water for navigation purposes as required by the Minister.

Source: *Navigable Waters Protection Act and Navigable Waters Works Regulations*

### 6.3 *Species at Risk Act (SARA)*

SARA became law in June 2003 and was created to prevent wildlife species from becoming extinct. It requires Canada to provide for the recovery of species at risk due to human activity, and to manage species of special concern in order to prevent them from becoming endangered or threatened.

SARA contains provisions that:

- Set out prohibitions against the killing or harming of a listed species and the destruction of their residences and critical habitats as defined in a SARA compliant Recovery Strategy or Action Plan;
- Require other federal departments to consider the impact on a listed species, their residences and critical habitats before issuing authorizations for certain activities; and
- Provide for effective enforcement measures and significant penalties where needed to serve as a deterrent.

In addition, provisions for “Recovery Strategies” and “Action Plans” for listed extirpated, endangered, and threatened species and “Management Plans” for listed special concern species are addressed in SARA and are produced by federal departments. Two federal Ministers are responsible for the administration of SARA. The Minister of Fisheries and Oceans is responsible for aquatic SAR, except for those located in national parks, national historic sites or other protected heritage areas. The Minister of the Environment (through the *Parks Canada Act (PCA)*) is responsible for individuals of SAR found in national parks, national historic sites or other protected heritage areas. The Minister of the Environment is also responsible for all other SAR within federal lands and migratory birds, wherever they occur, and for the overall administration of SARA.

The review of any proposed projects will take into consideration the protection of SAR, ensuring compliance with SARA, which includes the prohibitions in Sections 32, 33 and 58. Under SARA it is illegal to harm or kill species listed as extirpated, endangered or threatened, or to damage or destroy their residences, or to destroy their critical habitats.

Section 79 is a key provision in SARA affecting the conduct of federal environmental assessment (EA) processes. It refers to projects for which an environmental assessment is being undertaken under the requirements of any federal legislation (including but not limited to the *Canadian Environmental Assessment Act*).

Section 79 requires that the person responsible for the EA, must:

- a) notify the competent minister(s) without delay if a listed species or its critical habitat is likely to be affected by a project;
- b) identify the adverse effects of the project and ensure that mitigation and monitoring measures are implemented for the species at risk that are likely to be affected by the project in question; and
- c) ensure that those measures are consistent with applicable recovery strategies or action plans.

For complete wording of the act and an up-to-date list of wildlife species on Schedule 1, refer to the SARA Public Registry at <http://www.sararegistry.gc.ca/>.

The distribution of aquatic Species at Risk and areas delineated as Critical Habitat are shown on DFO's *Fish and Mussel SAR Distribution Maps* available at:  
<http://www.conservationontario.ca/projects/DFO.html>. These maps assist in determining whether development proposals should be referred to DFO to assess the potential impacts of development proposal activities on aquatic Species at Risk and their Critical Habitat.

**Table 6: Provisions of the *Species at Risk Act***

<b>Issue Addressed</b>	<b><i>Species at Risk</i> Section</b>	<b>Description of <i>Species at Risk Act</i> Section</b>
Killing, harming, etc., listed wildlife species	32(1)	No person shall kill, harm, harass, capture or take an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species.
Damage or destruction of residence	33	No person shall damage or destroy the residence of one or more individuals of a wildlife species that is listed as an endangered species or a threatened species or that is listed as an extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada.
Destruction of critical habitat	58(1)	Subject to this section, no person shall destroy any part of the critical habitat of any listed endangered species or of any listed threatened species, or of any listed extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada – if (a) the critical habitat is on Federal land, in the exclusive economic zone of Canada or on the continental shelf of Canada; (b) the listed species is an aquatic species; or (c) the listed species is a species of migratory birds protected by the <i>Migratory Birds Convention Act, 1994</i> .
Notification of Minister	79(1)	Every person who is required by or under an Act of Parliament to ensure that an assessment of the environmental effects of a project is conducted must, without delay, notify the competent minister or ministers in writing of the project if it is likely to affect a listed wildlife species or its critical habitat.
Required Action	79(2)	The person must identify the adverse effects of the project on the listed wildlife species and its critical habitat and, if the project is carried out, must ensure that measures are taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans.

## 6.4 *Endangered Species Act, 2007*

On June 30, 2008, the *Endangered Species Act, 2007* (ESA) came into effect, replacing the *Endangered Species Act* enacted in 1971. The purposes of the ESA are to:

1. identify species at risk based on the best available scientific information, including information obtained from community knowledge and Aboriginal traditional knowledge;
2. protect species that are at risk and their habitats, and to promote the recovery of species that are at risk; and,
3. promote stewardship activities to assist in the protection and recovery of species that are at risk.

### 6.4.1 Species and Habitat Protection

The ESA helps protect species that are at risk and their habitats. Species classified on the Species at Risk in Ontario (SARO) List in Ontario Regulation 230/08 as extirpated, endangered or threatened are automatically afforded species protection under Section 9 of the ESA. The habitat of species classified as endangered or threatened on the SARO List, is also automatically afforded protection under Section 10 of the ESA prohibiting the damage or destruction of the habitat.

Habitat is defined in Section 2 of the Act to include:

- (a) with respect to a species of animal, plant or other organism for which a regulation made under clause 55 (1) (a) is in force, the area prescribed by that regulation as the habitat of the species; or
- (b) with respect to any other species of animal, plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding, and includes places in the area described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.

When a species is newly listed as endangered or threatened on the SARO List, its habitat is automatically protected through the 2(b) definition of habitat (also referred to as the general habitat definition). This protection remains in place until a species-specific habitat regulation is created. A proposal to make a habitat regulation is required within two years of a species being classified as endangered, and within three years for threatened species.

### 6.4.2 Recovery of Species

The ESA requires the preparation of recovery strategies within one year of listing for endangered species and within two years of listing for threatened species and management plans within five years of listing for species classified as special concern. These documents provide scientific advice to government on steps to take to protect and recover species at risk.

Once a recovery strategy or management plan is finalized, it triggers the requirement to develop a government response statement in relation to each recovery strategy/management plan within nine months. Government response statements provide a summary of the actions

the Government of Ontario intends to take in relation to the associated recovery strategy/management plan and its priority with respect to taking those actions.

#### **6.4.3 Agreements, Permits and other Instruments**

The ESA contains instruments that provide opportunities for the government to enter into agreements, make regulations and issue permits for a range of activities otherwise prohibited under the Act. These instruments allow the government to consider social and economic interests while achieving the protection and recovery objectives of the ESA.

Where a listed species or protected habitat is present, the review of waterpower projects will take into consideration the prohibitions outlined in Sections 9 and 10 to support compliance with the ESA. More information on the ESA and MNR's Species at Risk Program can be found at: <http://www.mnr.gov.on.ca/en/Business/Species/>

**Table 7: Provisions of the *Endangered Species Act, 2007***

Issue Addressed	<i>Endangered Species Act, 2007 Section</i>	Description of <i>Endangered Species Act, 2007</i> Section
Prohibition on killing, etc.	9(1)	No person shall: a) kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species; b) possess, transport, collect, buy, sell, lease, trade or offer to buy, sell, lease or trade a living or dead member of a listed species, any part thereof or anything derived from them; or c) sell, lease, trade or offer to sell, lease or trade anything that the person represents as a living or dead member of a listed species or any part thereof.
Prohibition on damage to habitat, etc	10(1)	No person shall damage or destroy the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species; or a species that is listed on the Species at Risk in Ontario List as an extirpated species, if the species is prescribed by the regulations for the purpose of this clause.
Recovery strategies	11(1)	The Minister shall ensure that a strategy is prepared for the recovery of each species that is listed on the Species at Risk in Ontario List as an endangered or threatened species.
Response to recovery strategy	11(8)	Within nine months after a recovery strategy is prepared under this section, the Minister shall publish a statement that summarizes the actions that the Government of Ontario intends to take in response to the recovery strategy and the Government's priorities with respect to taking those actions.
Stewardship agreements; Response to recovery strategy	16(1) and 16(2)	The Minister may enter into agreements for the purpose of assisting in the protection or recovery of a species specified in the agreement that is listed on the Species at Risk in Ontario List. Before entering into an agreement, the Minister shall consider any statement that has been published under subsection 11(8) with respect to a recovery strategy for the species specified in the agreement.
Permits	17(1)	The Minister may issue a permit to a person that, with respect to a listed species, authorizes the person to engage in an activity specified in the permit that would otherwise be prohibited by section 9 or 10.



Issue Addressed	<i>Endangered Species Act, 2007 Section</i>	Description of <i>Endangered Species Act, 2007 Section</i>
Limitations; Response to recovery strategy	17(2) and 17(3)	<p>The Minister may issue a permit only if:</p> <p>(a) the activity authorized by the permit is necessary for the protection of human health or safety;</p> <p>(b) the main purpose of the activity authorized by the permit is to assist, and that the activity will assist, in the protection or recovery of the species specified in the permit;</p> <p>(c) the main purpose of the activity is not to assist in the protection or recovery of the species specified in the permit, but:</p> <ul style="list-style-type: none"> <li>• that an overall benefit to the species will be achieved within a reasonable time through requirements imposed by conditions of the permit,</li> <li>• reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted, and</li> <li>• that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit; or</li> </ul> <p>(d) the main purpose of the activity authorized by the permit is not to assist in the protection or recovery of the species specified in the permit, but the activity will result in a significant social or economic benefit to Ontario, and</p> <ul style="list-style-type: none"> <li>• a report on the possible effects of the activity on the species has been submitted by an independent expert,</li> <li>• the activity will not jeopardize the survival or recovery of the species in Ontario,</li> <li>• reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted,</li> <li>• the Minister is of the opinion that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit, and</li> <li>• the Lieutenant Governor in Council has approved the issuance of the permit.</li> </ul> <p>Before issuing a permit under this section, the Minister shall consider any statement that has been published under subsection 11(8) with respect to a recovery strategy for the species specified in the permit.</p>

## 6.5 Examples of Potential “Environmental” Regulatory Approvals

Waterpower Development in Ontario is subject to myriad federal, provincial and local legislative, regulatory and policy requirements that have environmental objectives but may not be directly linked to Environmental Assessment. The coordination approach espoused in this document is a useful template to consider when preparing an overall strategy to permitting and approvals. Additional information on these and other requirements may be obtained from the Ontario Waterpower Association.

**Table 8: Legislative Considerations that may be Coordinated for a Waterpower Project**

AGENCY	LEGISLATION	REQUIREMENT
Ministry of the Environment	<i>Ontario Environmental Assessment Act</i>	Requirements pursuant to the <i>Electricity Projects Regulation</i> .
Ministry of Natural Resources	<i>Lakes and Rivers Improvement Act</i> , s. 14 (new works)	Approval of the location, plans and specifications for new works.
	<i>Lakes and Rivers Improvement Act</i> , s. 16 (Modification of existing works)	Approval of the plans, specifications for modifications to existing works.
	<i>Lakes and Rivers Improvement Act</i> , s. 23.1 (Existing Waterpower Facilities)	Incorporation of a facility into a Water Management Plan.
	<i>Endangered Species Act</i>	Provides for the protection of endangered and threatened species and their habitat and for mechanisms to support their recovery.
	<i>Public Lands Act</i> , s. 42	The Minister has the authority to fix the terms and conditions upon which waterpower resources and any public lands necessary for their development are disposed.
	<i>Provincial Parks and Conservation Reserves Act</i> , s. 19	Generation of electricity is not permitted on lands that are part of a Provincial Parks or Conservation Reserve, subject to the exceptions noted below:
	<i>Provincial Parks and Conservation Reserves Act</i> , s. 19(1)	Facilities that existed prior to the Act may continue to operate and be maintained and, with the approval of the Minister, may be improved, rebuilt or altered.
	<i>Provincial Parks and Conservation Reserves Act</i> , s. 19(2)	Facilities developed for use within communities that are not connected to the IESO-controlled grid.
	<i>Provincial Parks and Conservation Reserves Act</i> , s. 19(3)	Facilities identified in a Ministry land use plan before the site where the facility is to be located was regulated.
	<i>Provincial Parks and Conservation Reserves Act</i> , s. 19(4)	Facilities for use for provincial park or conservation reserve purposes.

**Table 8: Legislative Considerations that may be Coordinated for a Waterpower Project**

AGENCY	LEGISLATION	REQUIREMENT
	<i>Provincial Parks and Conservation Reserves Act, s. 54(1)(b)</i>	The Lieutenant Governor in Council may make regulations setting apart an area as a provincial park or conservation reserve or as part of one, decreasing or increasing the area of a provincial park or conservation reserve and establishing the boundary of a provincial park or conservation reserve
Ministry of Culture	<i>Ontario Heritage Act</i>	<p>Provides for conservation, protection and preservation of the heritage of Ontario. Its primary purpose is to give municipalities and the provincial government powers to protect real property of cultural heritage value or interest, including heritage buildings and structures; areas, districts or cultural heritage landscapes; and archaeological sites (land based and marine).</p> <p>A license is required to carry out archaeological fieldwork, or to alter or remove artifacts or other physical evidence of past human use or activity from a known land or marine archaeological site. As a term and condition of the license, consultant archaeologists are required to follow the <i>Standards and Guidelines for Consulting Archaeologists</i>.</p>
Ministry of Municipal Affairs and Housing	<i>Planning Act</i>	Provides the basis for the "Provincial Policy Statement" that identifies matters of provincial interest, including cultural heritage, renewable energy, natural heritage etc.
Local Conservation Authority	<i>Conservation Authorities Act</i> , Section 28 individual CA Regulations	Permission is required for activities in and adjacent to watercourses including valleylands, wetlands, shorelines of inland lakes and the Great Lakes-St. Lawrence River System, and hazardous lands.
Fisheries and Oceans Canada	<i>Fisheries Act</i> 20	Fish-ways to be made as Minister directs.

**Table 8: Legislative Considerations that may be Coordinated for a Waterpower Project**

AGENCY	LEGISLATION	REQUIREMENT
	<i>Fisheries Act, 22(2)</i>	The design of the dam and/or other barriers must allow for the safe passage of both ascending and descending migratory fish.
	<i>Fisheries Act, 22(3)</i>	Authorization of minimum flows that are sufficient for the safety of fish and for the flooding of spawning grounds sufficient for the safety of the deposited ova.
	<i>Fisheries Act, 30</i>	Fish guards where Minister deems necessary.
	<i>Fisheries Act, 32</i>	Authorization is required for the destruction of fish that is not caused by fishing.
	<i>Fisheries Act, 35(2)</i>	Authorization required for the alteration, disruption, or destruction of fish habitat.
Transport Canada	<i>Navigable Waters Protection Act</i>	Approval of the site and plans, including the flows and levels that affect navigation.
Environment Canada Fisheries and Oceans Parks Canada	<i>Species at Risk Act</i>	Provides for the recovery and protection of listed wildlife species that are extirpated, endangered, threatened or of concern and secures the necessary actions for their recovery.
Environment Canada and Fisheries and Oceans	<i>Fisheries Act, 36</i>	Prohibits deposit of deleterious substances unless authorized by federal regulation.
Environment Canada	<i>Migratory Birds Convention Act</i>	Prohibits the disturbance, destruction or taking of a nest, egg, nest shelter, eider duck shelter or duck box of a migratory bird under section 6 of the Migratory Bird Regulations, under the authority of the Act. Under section 5.1, no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds.

**Table 8: Legislative Considerations that may be Coordinated for a Waterpower Project**

AGENCY	LEGISLATION	REQUIREMENT
Federal authorities and the Canadian Environmental Assessment Agency (CEA Agency)	<i>Canadian Environmental Assessment Act</i>	Federal authorities are required to ensure that an environmental screening or comprehensive study is undertaken if the <i>CEA Act</i> is triggered.
Parks Canada	<i>Historic Canals Regulations and National Parks Act</i>	Any project or works in or directly adjacent to waters on these federal lands are to be referred to Parks Canada for their review and approval.
Indian and Northern Affairs Canada	<i>Dominion Waterpower Act</i>	Provides the legislative and regulatory framework for waterpower development on federal waterways.

## 7.0 Federal Information Requirements for Waterpower Development Projects

### 7.1 Preparing a Project Description

One of the key steps in the *Canadian Environmental Assessment Act* (CEAA) process is the development of a project description. A project description provides an overview of the project components, general information on the project setting and relevant background information on the project. The project description allows a federal authority to determine if it will be a Responsible Authority (RA) under CEAA or if it may be able to provide technical expertise and knowledge as an expert department.

In the initial stages of the environmental assessment (EA) process, the proponent may have limited project information. Further details on the project are developed as the proponent proceeds through the planning process. As a result, the initial project description may change as further project details are developed <sup>7</sup>.

Table D1 in Appendix D provides a list of potential information to be included in the project description. The level of detail of the project description will vary with the complexity of the project and the sensitivity of its location, with greater detail required for larger, complex projects. This table reflects the level of detail more often associated with larger projects.

The project description should be submitted either to the Canadian Environmental Assessment Agency (the Agency) or to the federal authority that the proponent believes may have a federal interest (e.g. DFO for projects that may impact fish and fish habitat or Transport Canada for projects that may impact navigation). Federal authorities will review the project description in accordance with the *Federal Coordination Regulations*.

Depending on the nature of the project and its environmental setting, federal authorities may request additional information in order to assist them in making determinations of their interest in the project and potential CEAA requirements.

**- For More Information on Preparing a Project Description Refer to -**

Operational Policy Statement. August 2000 – OPS – EPO/5 – 2000. Preparing Project Descriptions under the *Canadian Environmental Assessment Act*. (<http://www.ceaa-acee.gc.ca>)

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<sup>7</sup> Before finalizing design plan, the proponent should consult with DFO for preferred design options, as well as what DFO will require for their assessment.

## 7.2 Potential Project Information Requirements

In order to assist federal authorities in addressing their CEAA requirements and other approval requirements, site-specific project information is required. The amount and level of detail of information will vary with the project stage. For example, in some cases, during the CEAA assessment, the information is based on concept plans whereas at the regulatory approval stage, more detailed information is provided.

The amount and level of detail of information will also vary depending on the environmental setting, magnitude and duration of the project.

Table D2 in Appendix D outlines information that may be required for waterpower projects. The table is organized by project stage (CEAA assessment and regulatory approval) and type of information.

The types of information identified in the table include:

- Project Information;
- Terrestrial Habitat;
- Fisheries and Fish Habitat;
- Land Use;
- Navigation;
- Soils and Sediments;
- Surface Water;
- Ground Water;
- Species at Risk;
- Migratory Birds and Their Habitat;
- Wetlands;
- Biodiversity;
- Air Quality;
- Climate Change; and
- Transboundary Water Management.

Table D2 reflects the mandate and interests of DFO (Habitat Management Program) in Ontario and Transport Canada (Navigable Waters Protection Program) when they are RAs and of Environment Canada when they are providing expert advice to DFO and Transport Canada for a project that is assessed in accordance with CEAA. As noted in Section 5.7, federal authorities may function as expert departments, providing the RA with specialist advice to assist them in undertaking the project screening. Environment Canada frequently functions as an expert department and, in reviewing a project EA, may identify issues associated with projects, information gaps, assess environmental effects and may provide recommendations for mitigation and follow-up measures (e.g. monitoring). Environment Canada also has regulatory interests under several pieces of federal legislation that may be applicable to a waterpower project, including the pollution prevention provisions of the

*Fisheries Act, the Canadian Environmental Protection Act, the Migratory Birds Convention Act and the Species at Risk Act.*

In addition to the information noted in Appendix D, Table D2, the proponent should provide any other information that they believe may assist with the project review. Federal departments may have further project-specific information requirements that will be conveyed to the proponent. Information requirements should be discussed with the relevant federal department.

The information contained in Tables D1 and D2 is intended to be a guide and is not necessarily all encompassing for each project.

### **7.3 Environmental Assessment Checklist**

As noted in Section 5.5, there are specific requirements that the federal government must address in undertaking EAs in accordance with CEAA. Figure 3 presents an EA checklist. This checklist is intended as a guide for waterpower proponents to assist them in undertaking assessments that contain the information that federal authorities will be required to consider in meeting their obligations under CEAA.



**Figure 3: Environmental Assessment Checklist**

- ☐ Has sufficient information been provided so that the RA can define the scope of project (i.e. have all project components and associated activities been identified)?
- ☐ Has sufficient information been provided so that the RA can define the scope of assessment (i.e. factors and scope of factors)?
- ☐ Is there sufficient information to identify potential environmental effects of all proposed project phases (construction, operation, modification, decommissioning and abandonment or other undertaking in relation to that physical work)?
- ☐ Were all potential environmental effects, including species at risk and cumulative effects, identified and reasonably considered, and are they likely to occur?
- ☐ If computer models were used to predict environmental effects, were the models credible, accessible for review and verification, appropriate and correctly applied?
- ☐ Have effects of the environment on the project been considered?
- ☐ Have environmental effects of accidents and malfunctions been considered?
- ☐ Have existing projects and projects that are reasonably expected to occur been included in the assessment of cumulative environmental effects?
- ☐ Are proposed mitigation measures sufficient?
- ☐ If determinations of non-significant adverse environmental effects were made, are they reasonable?
- ☐ Are the conclusions compatible with the evidence?
- ☐ Is there sufficient detail of effects and mitigation?
- ☐ What criteria or thresholds were used to assist in the assessment of the significance of adverse environmental effects (e.g. guidelines such as the Canadian Water Quality Guidelines)?
- ☐ Is a follow-up program appropriate?
- ☐ Have comments received from the public been considered in the EA?

## 8.0 The Role of Conservation Authorities, the Ministry of Natural Resources and Parks Canada Agency in Addressing Fish Habitat

### 8.1 Role of Conservation Authorities

Fisheries and Oceans Canada (DFO) has signed agreements with each of the 36 Conservation Authorities in Ontario to review proposed projects under section 35 of the *Fisheries Act*. Section 35 of the *Fisheries Act* deals with the management and protection of fish habitat. There are three different levels of agreement that have been signed between these parties, as defined in Table 9.

**Table 9: Definition of Levels of Agreement with Conservation Authorities in Ontario**

Level of Agreement	Definition
Level I	The local Conservation Authority conducts the initial review of the project to identify any impacts to fish and fish habitat. If there are potential impacts to fish and fish habitat, the project is forwarded to the local DFO office for further review.
Level II	In addition to the above, the Conservation Authority determines how the proponent can mitigate any potential impacts to fish and fish habitat. If impacts to fish and fish habitat can be mitigated, then the Conservation Authority issues a letter of advice. If impacts to fish and fish habitat cannot be fully mitigated, the project is forwarded to the local DFO office for further review.
Level III	In addition to all of the above, the Conservation Authority works with the proponent and DFO to prepare a fish habitat compensation plan. The project is then forwarded to the local DFO office for authorization under the <i>Fisheries Act</i> .

These agreements were developed to streamline day-to-day referrals in Ontario for projects that may have a shared regulatory interest between DFO and the Conservation Authorities. These agreements were put in place to improve client service with a one window approach.

Where there are agreements with the Conservation Authorities in place, initial requests for the review of projects in or around water that may affect fish and fish habitat are referred to the local Conservation Authority. Therefore, Conservation Authorities are the first point of contact for the majority of projects in and around water in Ontario. Depending on the level of agreement, Conservation Authorities will undertake an initial review of the project, provide mitigation advice and/or review habitat compensation plans. Projects requiring review, *Fisheries Act* authorization and/or assessment under CEAA are forwarded to DFO.

Table 10 outlines the agreements that are currently in place with Conservation Authorities in Ontario.

**Table 10: Agreements with Conservation Authorities in Ontario**

<b>Conservation Authorities with Level 1 Agreements</b>	
Crowe Valley Conservation Authority Mattagami Region Conservation Authority	Nickel District Conservation Authority Sault Ste. Marie Region Conservation Authority
<b>Conservation Authorities with Level 2 Agreements</b>	
Ausable Bayfield Conservation Authority Cataraqui Region Conservation Authority Catfish Creek Conservation Authority Conservation Halton Grey Sauble Conservation Authority Hamilton Region Conservation Authority Kettle Creek Conservation Authority Lake Simcoe Region Conservation Authority Lakehead Region Conservation Authority Long Point Region Conservation Authority Lower Thames Valley Conservation Authority Lower Trent Region Conservation Authority	Maitland Valley Conservation Authority Mississippi Valley Conservation Authority Niagara Peninsula Conservation Authority North Bay - Mattawa Conservation Authority Nottawasaga Valley Conservation Authority Otonabee Region Conservation Authority Quinte Conservation Authority Raisin Region Conservation Authority Rideau Valley Conservation Authority Saugeen Valley Conservation Authority South Nation Conservation Authority St. Clair Region Conservation Authority Upper Thames River Conservation Authority
<b>Conservation Authorities with Level 3 Agreements</b>	
Central Lake Ontario Conservation Authority Credit Valley Conservation Essex Region Conservation Authority Ganaraska Region Conservation Authority	Grand River Conservation Authority Kawartha Region Conservation Authority Toronto Region Conservation Authority

Note: These levels of agreement are as of the time of writing of this guidance document and may be subject to change.

Further details on the reviews undertaken for each of the three levels of agreement, along with decision-making responsibilities, are found in the *Fish Habitat Referral Protocol for Ontario* (2009 – see Selected References).

## 8.2 Ministry of Natural Resources

In cases where there is no Conservation Authority, the local Ministry of Natural Resources (MNR) office is the first point of contact for the review of projects in and around water that may affect fish and fish habitat.

DFO also has an agreement with the Ontario Ministry of Natural Resources (MNR) to review certain projects relative to fish and fish habitat. MNR acts as a Level 3 reviewer for Ministry

of Transportation projects, Community Fisheries and Wildlife Involvement Projects (CFWIP) and projects that are subject to the *Crown Forest Sustainability Act*.

Some approvals issued by MNR, such as work permits and land use permits, have the potential to impact fish and fish habitat. In such cases, MNR conducts the initial review and the project is forwarded to the appropriate DFO Office/CA for further review before a decision is made by MNR on the issuance of their approval.

### **8.3 Parks Canada Agency**

DFO also has an agreement in place with the Parks Canada Agency, similar to that described in Section 9.2. Parks Canada Agency is responsible for the initial review, mitigation requirements and some compensation planning of fish habitat for projects in National Parks, National Marine Conservation Areas, National Historic Canals and National Historic Sites. Projects requiring a *Fisheries Act* authorization are referred to DFO for review and approval.

## 9.0 Considerations for a Coordinated Process

Waterpower projects will frequently be subject to the requirements of both federal and provincial environmental assessment (EA) processes. While there are differences in the requirements of the *Canadian Environmental Assessment Act* (CEAA) and the *Ontario Environmental Assessment Act* (EA Act), it is beneficial to all parties to undertake a coordinated process (also called a cooperative EA) in order to maximize the efficiency and effectiveness of assessments and to reduce delays.

The Canadian Environmental Assessment Agency (the Agency) in *Advice to Proponents at the Terms of Reference Stage for a Coordinated Federal/Provincial Environmental Assessment Process* (Canadian Environmental Assessment Agency, revised 2006) identifies the following four key coordination goals:

- *To identify how the proposal affects the interest of all relevant federal and provincial agencies and to ensure those are addressed;*
- *To identify, early in the planning process, all the tasks the proponent might be required to carry out in order to provide agencies with what they need to meet their requirements;*
- *To enable federal and provincial agencies to reach their EA conclusions within roughly the same time frame; and*
- *To aim toward information on environmental effects being contained within a single body of documentation.*

The Agency and Ministry of the Environment (MOE) have developed informal coordination procedures for projects that require approvals under both CEAA (screenings) and the EA Act (Individual EAs). These procedures outline the general process steps required in undertaking a coordinated assessment and are intended to address the information requirements of both CEAA and the EA Act. These coordination procedures are provided as Figure 3. In order to help facilitate the implementation of the *Canada-Ontario Agreement on Environmental Assessment Cooperation*, the Canadian Environmental Assessment Agency and the Ontario Ministry of Environment developed a guide for proponents and the public entitled, *"Federal/Provincial Environmental Assessment Coordination in Ontario (2007)"*.



The Agency carries out the role of Federal Environmental Assessment Coordinator (FEAC) to help facilitate co-ordination of EAs subject to both federal and provincial legislative requirements. The role of the FEAC is to facilitate the communication, cooperation and coordination amongst participants including federal departments, provincial government and other jurisdictions, the proponent and the public. The FEAC will also provide guidance to proponents undertaking a coordinated EA process. Section 5.8 provides further information on the role of the FEAC.

Within the context of these coordination procedures and initiatives, the following sections provide guidance on practical considerations for coordinating federal and provincial EA processes for waterpower projects.

## **9.1 Considerations for Coordinated Studies and Assessments**

Coordination initiatives by the proponent and participating federal departments and provincial ministries can help ensure that a single assessment is undertaken that meets the needs of both federal and provincial EA legislation. There are a number of areas within the EA process where coordination can help avoid duplicate efforts, including:

- Preparation of Project Descriptions;
- Scoping;
- Technical Studies and Assessments;
- EA Documentation; and
- Public Participation/Consultation.

Communication between federal and provincial participants on the key areas in the assessment process can also assist in promoting coordination. Guidance on communication is provided in Section 9.7. Guidance on issues associated with coordinating comprehensive studies is provided in Section 9.8.

## **9.2 Preparation of Project Descriptions**

One of the first steps under both the *Class Environmental Assessment for Waterpower Projects* and CEAA is the preparation of a project description.

For projects subject to the *Class Environmental Assessment for Waterpower Projects*, a project description is prepared in support of the Notice of Commencement. At the time of the Notice of Commencement, the project description can also be submitted to the Agency to facilitate the initiation of the Federal Coordination Process under CEAA (a process by which federal authorities determine if they will have an interest in the project as an RA or as an expert federal department). Details on information requirements for project descriptions for waterpower projects are found in Table D1, Appendix D.

For Individual EAs (i.e. Category C projects) and comprehensive studies, the preferred alternative (i.e. the project that will be undertaken) is not known early in the EA process due to the requirement to consider alternatives. Therefore, for Category C projects, there will not

be a final project description available until a preferred alternative has been identified. It is likely, however, that at the EA Terms of Reference stage (provincial requirement), the proponent will be able to provide, at a conceptual level, the nature of the project and potential locations. Due to the nature of waterpower projects (i.e. likely potential requirement for *Fisheries Act* authorization and/or *Navigable Waters Protection Act* approval), it is likely that key federal authorities will be able to make an early determination of whether they have a CEAA trigger for the proposed project, even before very specific details on the project are known. Federal authorities recognize the importance of identifying information needs to the proponent as early in the EA process as possible and, therefore, will likely agree to participate as if they are an RA (see Section 5.6), in accordance with the "automatically in" approach. To assist in coordination at this stage, it is recommended that the Agency be included in the circulation of the "pre-draft" Terms of Reference.

### 9.3 Scoping

One of the initial steps in the federal EA process is the determination of the scope of project and the scope of assessment. The responsibility for determining the scope of project (i.e. what components are to be considered to be part of the project for the purpose of the assessment) and the scope of assessment (i.e. what are the factors and scope of factors to be considered in the EA) rests with the RA(s). For projects subject to a Comprehensive Study type of EA, a scoping document may be prepared to document the scope of project and scope of assessment. Scoping documents can be prepared by either by the proponent or, in some instances by the Canadian Environmental Assessment Agency, in consultation with the RA(s) and expert federal authorities. While not a legislated federal requirement, scoping documents are an efficient way to ensure that all parties participating in the EA process have the same understanding of the scope of project and scope of assessment. It may also being used to ensure public consultation in the context of a Comprehensive study. The scoping document may also incorporate information requirements for the EA report, when delegated to the proponent. Up-front scoping ensures that the assessment focuses on the most relevant issues and results in more efficient EA processes.

The scope of project may differ between the federal and provincial processes. However, for practical reasons it would be advantageous to consider that the studies undertaken (i.e. the assessment) will be carried out on the broadest scope of project.

For projects subject to the Class Environmental Assessment for Waterpower Projects, the federal scope of assessment may be based on the results of the application of the potential effects identification matrix in Section 4 of the *Class Environmental Assessment for Waterpower Projects*. The purpose of the criteria is to identify the potential for any negative effects on the environment. However, the scope of the federal assessment may also encompass other factors not addressed by the screening criteria.

Similarly, for Category C projects, the scope of assessment will be based on the information that is developed for the Terms of Reference.

### 9.4 Technical Studies and Assessments



Successful coordination of technical studies and assessments is facilitated by early discussions with provincial ministries and federal departments to determine their information requirements. Guidance on this matter is provided in Section 7.0 and Appendix D. However, direct contact with the relevant federal authorities, potentially through the FEAC, is also encouraged.

Specifically, a proponent should hold discussions with relevant federal departments to determine the nature and extent of technical information that will be required to undertake the CEAA assessment. This would allow the proponent to augment studies or undertake studies at an appropriate level of detail. Ideally, the technical studies and investigations that are undertaken will be sufficient to meet the needs of both CEAA and the *Class Environmental Assessment for Waterpower Projects* or the EA Act.

From a coordination perspective, some of the potential information requirements identified in Appendix D may not be required until the regulatory approval stage. However, they have been identified in these tables in order to facilitate coordinated and efficient information gathering as proponents are undertaking their environmental assessments.

## 9.5 EA Documentation

Information on existing conditions, the assessment of effects and mitigation measures should be documented to address both federal and provincial EA processes. While the CEAA component of the assessment must be prepared in a manner that allows the RAs to delineate the basis for their decision, the *Canada – Ontario Agreement on Environmental Assessment Cooperation* (see Appendix A – *Framework for Projects Subject to Provincial Class EAs or Ontario Regulation 116/01*), indicates that “proponent(s) will present its findings on predicted environmental effects of the project in a single body of documentation” (Government of Canada and Province of Ontario, 2004, p. 17).

In order to achieve this, in some instances it may be practical and reasonable to prepare a single body of documentation that meets the needs of both CEAA and the EA Act or the *Class Environmental Assessment for Waterpower Projects*. For example, the documentation prepared for the *Class Environmental Assessment for Waterpower Projects* (i.e. Category B) or Individual EA, in accordance with the *Electricity Sector Regulation*, could explicitly address and document federal issues and areas of federal interest.

A single body of documentation can also be achieved by incorporating technical information pertaining to specific federal issues into the overall assessment, but documenting elements specific to CEAA (e.g. effect of the environment on the project, accidents and malfunctions) in a separate screening document that would serve as an appendix to the provincial EA documentation. Discussions should be held with federal and provincial authorities to determine their documentation needs. The most appropriate approach will be determined on a project-by-project basis. It is recommended that before the proponent proceeds with the preparation of the EA document, that a Table of Contents be prepared and reviewed with the FEAC, federal RAs, expert departments and participating provincial ministries.

In addition, it is recommended that any draft EA document(s) (e.g. Screening Report) be submitted for review prior to finalizing the document.

It is important to note that, while the *Class Environmental Assessment for Waterpower Projects* does not require any documentation for category A projects (e.g. changing or expanding a facility for which no approval under Section 5 of the EA Act was required to construct; and which result in a less than 25% increase in nameplate capacity), these projects may trigger CEAA and, in that event, will still have federal assessment requirements. Similarly, there may be instances wherein a project requires an Individual EA to meet provincial requirements, but does not create a requirement for a Comprehensive Study through the federal process. Hence the importance of appropriate scoping, as discussed in Section 10.3.

## **9.6 Public Participation/Consultation**

The determination of whether public participation for federal screenings is appropriate is made by the RA. However, if public participation is being undertaken for a federal screening, there may be opportunities to coordinate this with the consultation being undertaken by the proponent in meeting provincial EA requirements. There may also be other opportunities to coordinate consultation undertaken for other legislation (e.g. approvals under the *Navigable Waters Protection Act*).

If an RA(s) determines that public participation is appropriate, there may be requirements for notifications or EA documentation to be made available in both official languages. This should be discussed with the RA(s) in sufficient time to allow for translation to occur, if required.

In addition, paragraph 18(3)(b) of CEAA provides an opportunity for the consideration of public comments on a federal screening report. If public comments are to be requested in accordance with paragraph 18(3)(b), there may be an opportunity to coordinate this with the public consultation undertaken for the provincial process. If this coordination were to occur, comments from the public could be received within the same time frame and the RA and proponent could meet to discuss the resolution of the comments, as appropriate.

Since public participation is determined by the RA, an RA may choose to consider the results of the proponent's provincial consultation initiatives in undertaking the federal screening and when making their CEAA decision.

Public consultation is mandatory for projects requiring comprehensive studies under CEAA. As with the reference to screenings noted above, there may be opportunities to coordinate CEAA and provincial consultation requirements. In addition, under CEAA, the public is provided with notification and the opportunity to comment on the comprehensive study report. The Agency publishes a notice indicating:

- when the comprehensive study report will be available;
- where copies of the report may be obtained; and
- the deadline for provision of comments on the conclusions and recommendations of the report.

There may be opportunities to coordinate this process with the provincial review process. Given that those public stakeholders with an interest in the project are likely to be the same regardless of the notification and consultation requirements, it is incumbent on the proponent to engage and educate those individuals and groups about the coordination of processes and the avenues through which their interests can be expressed.

## **9.7 Consideration of Aboriginal Interests**

Where a project that is subject to a coordinated process for a provincial class EA or individual EA and a federal screening has the potential to have environmental effects on Aboriginal communities, proponents must consult with those Aboriginal communities. Proponents are encouraged to address Aboriginal issues relevant to the class EA project, individual EA or federal screening to the extent that it is practicable to do so. In addition, proponents should consider relevant government notification and consultation policies or procedures.

The goal of a coordinated approach to Aboriginal engagement is threefold, as follows:

- to facilitate early communication with potentially affected Aboriginal communities;
- to provide opportunities for the participation of Aboriginal communities in coordinated federal/provincial EA processes; and,
- to facilitate the incorporation of Aboriginal interests into coordinated EAs.

In certain situations, the provincial and/or federal governments may have further responsibilities to consult with Aboriginal communities regarding asserted or existing Aboriginal or treaty rights. Procedural aspects of these consultation obligations may be delegated to proponents.

It should be noted that whether or not the Crown has a legal duty to consult with an Aboriginal community, the community may be an interested person for the purposes of public consultation.

Excerpted from: MOE and CEAA. Federal/Provincial Environmental Assessment Process in Ontario. A Guide for Proponents and the Public. 2009.

## **9.8 Communication**

As noted above, coordination is facilitated by effective communication. Where there are projects subject to both CEAA and the EA Act, the FEAC will typically arrange for a start-up meeting. The purpose of this meeting would be to discuss matters such as:

- project overview;
- environmental assessment schedule;
- project issues;
- roles and responsibilities of the proponent, consultant, FEAC, RAs, expert departments and provincial ministries;
- scope of project, factors and scope of factors to be assessed;

- expectations for future communication (e.g. when, who);
- proposed public participation/consultation activities; and
- other coordination matters.

Ongoing dialogue with the FEAC, RA(s) and MOE is encouraged in order to help facilitate the completion of good quality EAs that meet federal and provincial legislative requirements.

## **9.9 Additional Considerations for Coordinating Comprehensive Studies**

While the vast majority of CEAA assessments are screenings, some waterpower projects are on the *Comprehensive Study List Regulations* and, therefore, require a comprehensive study. Comprehensive studies are subject to a different decision-making process than screenings and the timing and nature of coordination for comprehensive studies is different than that for screenings.

Waterpower and transmission projects that are subject to a comprehensive study under CEAA may also be subject to an Individual EA under the EA Act. The Agency and MOE will develop coordination processes for comprehensive studies and Individual EAs as the need arises.

If a proponent is undertaking a project that requires a comprehensive study, it is recommended that they contact the Agency to discuss appropriate coordination procedures (or MOE if a project requires an Individual EA).

## 10.0 Key Federal Contacts

It is important to contact the relevant departments early in the process. Key federal contacts include:

Area of Interest	Federal Contact
Fish and Fish Habitat	Where there is an agreement with a Conservation Authority, the Conservation Authority is the first point of contact in southern Ontario. In Northern Ontario, the MNR Regional Office is the first point of contact.  For more complex and controversial EAs, it may also be advisable to contact Fisheries and Oceans Canada (DFO) (in addition to the Conservation Authority or MNR) early in the planning process to advise them of the project.
Navigable Waters Protection	Transport Canada
Federal Funding	Relevant funding department
Federal Lands	Federal department responsible for the affected lands
First Nation Reserve Lands	Indian and Northern Affairs Canada
Species Protected Under the <i>Species at Risk Act</i>	Fisheries and Oceans Canada and / or Environment Canada and / or Parks Canada Agency
Migratory Birds	Environment Canada
Effects on Flows and Levels of International Boundary Waters	Department of Foreign Affairs
EA Coordination	Canadian Environmental Assessment Agency

In addition to these general contacts, Table 10.1 provides specific federal department contact information, along with the web site address for each department. Table 10.2 provides contact information for the DFO Districts. Figure 5 outlines the general boundaries for these offices.

**Table 10.1: Key Federal Contacts**

<b>Federal Department</b>	<b>Regional Office</b>	<b>Web Site Address</b>
Canadian Environmental Assessment Agency	55 St. Clair Avenue East 9 <sup>th</sup> Floor, Room 907 Toronto, Ontario M4T 1M2  Phone: 416-952-1576	<a href="http://www.ceaa-acee.gc.ca">http://www.ceaa-acee.gc.ca</a>
Fisheries and Oceans Canada	Contact the nearest DFO Office - see Table 10.2 for DFO Districts	<a href="http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm">http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm</a>
Environment Canada	867 Lakeshore Road P.O. Box 5050 Burlington, Ontario L7R 4A6  Phone: 905-336-4953 E-mail: <a href="mailto:ea-ee@ec.gc.ca">ea-ee@ec.gc.ca</a>	<a href="http://www.ec.gc.ca">http://www.ec.gc.ca</a>
Industry Canada	151 Yonge Street 4 <sup>th</sup> Floor Toronto, Ontario M5C 2W7  Phone: 416-973-5000	<a href="http://www.ic.gc.ca">http://www.ic.gc.ca</a>
Canadian Transportation Agency	15 Eddy Street Hull, Quebec K1A 0N9  Phone: 1-888-222-2592	<a href="http://www.cta-otc.gc.ca">http://www.cta-otc.gc.ca</a>
Public Works and Government Services Canada	4900 Yonge Street Toronto, Ontario M2N 6A6  Phone: 416-512-5500	<a href="http://www.pwgsc.gc.ca">http://www.pwgsc.gc.ca</a>
Indian and Northern Affairs Canada	25 St. Clair Avenue East 8 <sup>th</sup> Floor Toronto, Ontario M4T 1M2  Phone: 416-973-6234	<a href="http://www.ainc-inac.gc.ca">http://www.ainc-inac.gc.ca</a>

**Table 10.1: Key Federal Contacts**

<b>Federal Department</b>	<b>Regional Office</b>	<b>Web Site Address</b>
Transport Canada	4900 Yonge Street Suite 300 Toronto, Ontario M2N 6A5  Phone: 416-952-0485	<a href="http://www.tc.gc.ca">http://www.tc.gc.ca</a>
Natural Resources Canada	580 Booth Street Ottawa, Ontario K1A 0E4  Phone: 613-995-0947	<a href="http://www.nrcan-rncan.gc.ca">http://www.nrcan-rncan.gc.ca</a>
National Defence	101 Colonel By Drive Ottawa, Ontario K1A 0K2  Phone: 613-995-2391	<a href="http://www.forces.gc.ca">http://www.forces.gc.ca</a>
Canadian Heritage / Parks Canada Agency	111 Water Street East Cornwall, Ontario K6H 6S3  Phone: 613-938-5937	<a href="http://www.parkscanada.gc.ca">http://www.parkscanada.gc.ca</a>
National Energy Board	(Based in Calgary, Alberta)  444 Seventh Avenue SW Calgary, Alberta T2P 0X8  Phone: 403-292-4800	<a href="http://www.neb-one.gc.ca">http://www.neb-one.gc.ca</a>
Department of Foreign Affairs	125 Sussex Drive Ottawa, Ontario K1A 0G2  Phone: 613-944-6912	<a href="http://www.dfait-maeci.gc.ca">http://www.dfait-maeci.gc.ca</a>

**Table 10.2: DFO Districts**

Office	Contact Information
<p><b>Southern Ontario District</b></p> <p>Burlington Office</p> <p>Sarnia Office</p>	<p>304-3027 Harvester Road P.O. Box 85060 Burlington, Ontario L7R 4K3 Phone: 905-639-0188 Fax: 905-639-3549 E-mail: <a href="mailto:referralsburlington@dfo-mpo.gc.ca">referralsburlington@dfo-mpo.gc.ca</a></p> <p>703-201 Front Street North Sarnia, Ontario N7T 8B1 Phone: 519-383-1821 Fax: 519-383-0699 E-mail: <a href="mailto:referralsarnia@dfo-mpo.gc.ca">referralsarnia@dfo-mpo.gc.ca</a></p>
<p><b>Eastern Ontario District</b></p> <p>Peterborough Office</p> <p>Prescott Office</p>	<p>501 Towerhill Road Unit 102 Peterborough, Ontario K9H 7S3 Phone: 705-750-0269 Fax: 705-750-4016 E-mail: <a href="mailto:referralspeterborough@dfo-mpo.gc.ca">referralspeterborough@dfo-mpo.gc.ca</a></p> <p>401 King Street West Prescott, Ontario K0E 1T0 Phone: 613-925-2865 x 120 Fax: 613-925-2245 E-mail: <a href="mailto:referralsprescott@dfo-mpo.gc.ca">referralsprescott@dfo-mpo.gc.ca</a></p>
<p><b>Northern Ontario District</b></p> <p>Parry Sound Office</p> <p>Sault Ste. Marie Office</p>	<p>28 Waubeek Street Parry Sound, Ontario P2A 1B9 Phone: 705-746-2196 x 246 Fax: 705-746-4820 E-mail: <a href="mailto:referralsparrysound@dfo-mpo.gc.ca">referralsparrysound@dfo-mpo.gc.ca</a></p> <p>1219 Queen Street East Sault Ste. Marie, Ontario P6A 2E5 Phone: 705-941-2039</p>



Office	Contact Information
Sudbury Office	Fax: 705-941-2013 E-mail: <a href="mailto:referralssaultstemarie@dfo-mpo.gc.ca">referralssaultstemarie@dfo-mpo.gc.ca</a>  1500 Paris Street Unit 11 Sudbury, Ontario P3E 3B8 Phone: 705-522-2816 Fax 705-522-6421 E-mail: <a href="mailto:referralssudbury@dfo-mpo.gc.ca">referralssudbury@dfo-mpo.gc.ca</a>
Thunder Bay and Kenora Office	425-100 Main Street Thunder Bay, Ontario P7B 6R9 Phone: 807-346-8118 Fax: 807-346-8545 E-mail: <a href="mailto:referralsthunderbay@dfo-mpo.gc.ca">referralsthunderbay@dfo-mpo.gc.ca</a>

**Figure 5: DFO Offices – General Boundaries**



**Table 10.3 – Ontario Ministry of the Environment Contacts**

Office	Contact Information
Environmental Assessment and Approvals Branch	<p>Floor 12A 2 St. Clair Avenue West Toronto, Ontario M4V 1L5</p> <p>Phone: 416-314-8001 Fax: 416-314-8452</p>
Central Region	<p>8<sup>th</sup> Floor, 5775 Yonge St North York, Ontario M2M 4J1</p> <p>Phone: 905-326-6700 Fax: 905-325-6345</p>
Eastern Region	<p>1259 Gardiners Road P.O. Box 22032 Kingston, Ontario K7M 8S5</p> <p>Phone: 613-549-4000 Fax: 613-548-6908</p>
Northern Region	<p>3<sup>rd</sup> Floor, Suite 331 435 James St. S. Thunder Bay, ON P7E 6S7</p> <p>Phone: 807-475-1205 Fax: 807-475-1754</p>
Southwestern Region	<p>733 Exeter Road London, Ontario N6E 1L3</p> <p>Phone: 519-873-5000 Fax: 519-873-5020</p>
West Central Region	<p>12<sup>th</sup> Floor 119 King St W. Hamilton, Ontario L8P 4Y7</p> <p>Phone: 905-521-7640 Fax: 905-521-7820</p>

## Selected References<sup>8</sup>

### Canadian Environmental Assessment Act

Web Site Address for the Canadian Environmental Assessment Agency: <a href="http://www.ceaa-acee.gc.ca">http://www.ceaa-acee.gc.ca</a>
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<sup>8</sup> Note that some earlier documents referenced here will not reflect the amendments to CEAA in 2003.

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Canadian Environmental Assessment Agency. 2007. Operational Policy Statement. Addressing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act*. November 2007.

Canadian Environmental Assessment Agency. 2007. Operational Policy Statement. Addressing "Need for", "Purpose of", "Alternatives to" and "Alternative Means" under the *Canadian Environmental Assessment Act*. November 2007.

### Fisheries and Oceans Canada

Web Site Address for the Fisheries and Oceans Canada:

<http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm>

SARA Web Site:

[http://www.dfo-mpo.gc.ca/species-especes/home\\_e.asp](http://www.dfo-mpo.gc.ca/species-especes/home_e.asp) (English site)

[http://www.dfo-mpo.gc.ca/species-especes/home\\_f.asp](http://www.dfo-mpo.gc.ca/species-especes/home_f.asp) (French site)

SARA Registry:

[http://www.sararegistry.gc.ca/default\\_e.cfm](http://www.sararegistry.gc.ca/default_e.cfm)

Aquatic Species at Risk Mapping :

<http://www.conservationontario.ca/projects/DFO.html>

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What you Should Know about Fish Habitat

Fish Habitat and Docks, Boathouses and Boat Launches (C1)

Fish Habitat and Building a Beach (C2)

Fish Habitat and Building Materials (C3)

Fish Habitat and Shoreline Stabilization (C4)

Fish Habitat and Constructing Ponds (C5)

Fish Habitat and Dredging (I1)

Fish Habitat and Sunken Log Retrieval (I3)

Fish Habitat and Stream Clean-up (I4)

Fish Habitat and Obtaining a Section 35 *Fisheries Act* Authorization (L1)

Fish Habitat and The Effects of Silt and Sediment (T1)

Fish Habitat and Fluctuating Water Levels on the Great Lakes (T2)

Fisheries and Oceans Canada. 1998. Guideline for the Use of Explosives In or Near Canadian Fisheries Waters.

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Web Site Address for the Ontario Waterpower Association: <a href="http://www.owa.ca">http://www.owa.ca</a>
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#### **Environmental Quality Guidelines for Ecosystem Components**

Canadian Environmental Quality Guidelines –  
<http://www.ec.gc.ca/ceqg-rcqe/English/ceqg/>

Canadian Council of Ministers of the Environment (CCME) Guidelines (water and soil primarily) – <http://www.ccme.ca/publications/> (publication catalogue and ordering)

CCME Canada-Wide Standards (Benzene, Dioxins and Furans, Mercury, Particulate Matter and Ground-level Ozone, Petroleum Hydrocarbons) –  
<http://www.ccme.ca/>

Ontario Ministry of the Environment Guidelines –  
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## APPENDICES

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## Appendix A – Canada – Ontario Agreement on Environmental Assessment Cooperation

### PREAMBLE

**WHEREAS** Canada and Ontario respect each other's constitutional responsibilities; **WHEREAS** certain projects in Ontario require an environmental assessment by Canada pursuant to the *Canadian Environmental Assessment Act* and by Ontario pursuant to the *Ontario Environmental Assessment Act*;

**WHEREAS** the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act* allow for inter-jurisdictional cooperation and coordination in environmental assessment;

**WHEREAS** Canada and Ontario have subscribed to those principles of cooperation embodied in the *Sub-agreement on environmental assessment* (Sub-agreement) established under the *Canada-wide Accord on Environmental Harmonization* (Accord);

**WHEREAS** Canada and Ontario agree that a cooperative environmental assessment will be conducted for each project covered by this agreement according to the requirements of their respective authorizing statutes and regulations while avoiding unnecessary duplication, delays and uncertainty that could arise from separate environmental assessments; and

**THEREFORE** Canada and Ontario agree to implement the provisions in the Sub-agreement through this Agreement on environmental assessment cooperation.

### DEFINITIONS

In this Agreement:

**“Class environmental assessment document”** means a class environmental assessment document prepared under section 14 of the *Ontario Environmental Assessment Act*.

**“Class screening report”** means a class screening report as declared under section 19 of the *Canadian Environmental Assessment Act*.

**“Cooperative environmental assessment”** means the environmental assessment of a proposed project where Canada and Ontario have an environmental assessment responsibility, and they cooperate to meet the legal environmental assessment requirements of both Parties through a single environmental assessment process.

**“Environmental assessment document”** means:

- (a) for Canada, the documentation provided by the proponent in response to the scope of the project, the factors to be considered under section 16 of the *Canadian Environmental Assessment Act*, and the scope of those factors; and
- (b) for Ontario, the document that is submitted by a proponent seeking approval for an undertaking to the Ontario Minister of the Environment for review under the Ontario *Environmental Assessment Act*. The environmental assessment document is the result of the proponent's entire planning process, including pre-submission consultation.

**“Environmental assessment”** means the assessment of the environmental effects of a proposed project conducted in accordance with the *Canadian Environmental Assessment Act* or in accordance with the Ontario *Environmental Assessment Act* and their regulations.

**“Environmental assessment responsibility”** means:

- (a) for Canada, a power, duty or function that is exercised by any person or body under the *Canadian Environmental Assessment Act* that requires a screening, comprehensive study, mediation or review panel under the *Canadian Environmental Assessment Act*; and
- (b) for Ontario, a ministerial decision pursuant to the Ontario *Environmental Assessment Act* that is approved by the Ontario Cabinet.

**“Interest”** means the environmental management responsibilities of a Party, the exercise of which does not require an environmental assessment responsibility by that Party.

**“Joint panel/tribunal”** means a public hearing body established by Canada pursuant to the *Canadian Environmental Assessment Act*, and by Ontario under the Ontario *Environmental Assessment Act* and the *Consolidated Hearings Act*, the members of which are appointed by Canada and Ontario.

**“Lead Party”** means the Party as determined under clause 9 of this Agreement.

**“Party”** means either Canada or Ontario.

**“Project”** means a project as defined in subsections 2(1) and 2(3) of the *Canadian Environmental Assessment Act* or an undertaking as defined in subsection 1(1) of the Ontario *Environmental Assessment Act*.

**“Responsible authority”** has the same meaning as set out in section 2(1) of the *Canadian Environmental Assessment Act*.

**“Terms of reference”** means:

- (a) for Canada, the scope of the project, the factors to be considered and the scope of the factors as determined under sections 15 and 16 of the *Canadian Environmental Assessment Act* by a responsible authority in the case of a screening or a comprehensive study and by the Minister of the Environment (and in appropriate circumstances by a review panel) in the case of a panel review; and
- (b) for Ontario, the formal document submitted for the Minister's approval early in the environmental assessment process which sets out the workplan to be followed during the production of the environmental assessment document.  
Once approved, the terms of reference form the framework for the preparation and review of the environmental assessment document. Under subsection 6.1(1) of the Ontario *Environmental Assessment Act*, the environmental assessment must be prepared in accordance with the approved terms of reference.

## INTERPRETATION

### 1. (1) This Agreement:

- (a) creates an administrative framework within which the Parties can cooperatively exercise their respective powers and duties established by the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*;
  - (b) is a public document that is to be read and interpreted in a manner consistent with the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*, and all other federal and provincial legal requirements, including, but not limited, to legislative requirements; and
  - (c) does not create any new legal powers or duties nor does it alter the powers and duties established by the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act* and is not legally binding on the Parties.
- (2) This Agreement recognizes the right of either Party to carry out its legal obligations and confirms the commitment of the Parties to work together in conducting cooperative environmental assessments.
- (3) Neither Canada nor Ontario gives up any jurisdiction, right, power, privilege, prerogative or immunity by virtue of this Agreement or any subsidiary agreements resulting therefrom.

## **SCOPE**

2. For Canada, this Agreement applies to any person or body that is required to ensure an environmental assessment is conducted under the *Canadian Environmental Assessment Act* and for Ontario this Agreement applies to any person or body having authority under the Ontario *Environmental Assessment Act*.

## **OBJECTIVES**

3. The objectives of this Agreement are to:

- (a) achieve greater efficiency and the most effective use of public and private resources where environmental assessment processes involving both Parties are or may be required by law;
- (b) foster cooperation between the Parties concerning the environmental assessment of proposed projects; and
- (c) describe the roles and responsibilities for the Parties in implementing a cooperative environmental assessment.

## **COORDINATION OF RESPONSIBILITIES OF DESIGNATED OFFICES**

### **Designated Offices**

4. (1) Each Party will maintain an office that will serve as the main source of general information on that Party's environmental assessment process, procedures and policies.

(2) Canada's designated office will be the Canadian Environmental Assessment Agency's office (Agency office) located in Toronto.

(3) Ontario's designated office will be the Environmental Assessment and Approvals Branch of the Ministry of the Environment located in Toronto (Ontario office).

(4) Each Party's designated office will be responsible for:

- (a) coordinating, as needed, administrative matters pertaining to this Agreement and any potential cooperative environmental assessment;
- (b) facilitating consultation and cooperation between the Parties in relation to projects proceeding under a cooperative environmental assessment, where appropriate;
- (c) providing information about their respective environmental assessment processes, policies and procedures;

- (d) coordinating and facilitating federal and provincial contact and communication on environmental assessment matters with potential proponents, other government departments, ministries, agencies, Aboriginal communities, and the public;
  - (e) reviewing periodically the implementation of this Agreement and the effectiveness of the cooperative environmental assessments undertaken;
  - (f) developing operational procedures, as needed, for matters pertaining to this Agreement; and
  - (g) keeping a directory of the names of those who have been assigned by each Party to assist in the administration or review of each cooperative environmental assessment and making this information available to each other on request.
- (5) The designated offices will meet as required to monitor the efficiency and effectiveness of the Agreement and to review comments from the public on the operation of the Agreement that may be received.

#### **COOPERATIVE ENVIRONMENTAL ASSESSMENT COORDINATION RESPONSIBILITIES**

**(Clauses 5 through 23 of this Agreement do not apply to the development or review of federal class screening reports or provincial class environmental assessment documents, or Ontario Regulation 116/01 (Electricity Projects); nor do they apply to projects being assessed under these instruments. See clauses 24 and 25 for coordination procedures of class environmental assessments.)**

5. (1) Normally, for projects subject to a cooperative environmental assessment, the following will apply:

- (a) the Agency office will act as the federal environmental assessment coordinator, as described under the *Canadian Environmental Assessment Act*, throughout all stages of the cooperative environmental assessment unless confirmed otherwise by the Agency office to the Ontario office; and
- (b) the Ontario office will coordinate the input and involvement of provincial ministries and agencies from the early stages of pre-notification through all stages of the cooperative environmental assessment.

(2) For projects or parts of projects referred to a joint panel/tribunal, the following will apply:

- (a) the joint panel/tribunal secretariat will become the point of contact for Canada and Ontario once a project has been referred by both Ministers of the Environment to the joint panel/tribunal for hearing; and
- (b) the Agency office will resume its role as point of contact for Canada and the Ontario office will resume its role as point of contact for Ontario, following the submission of the joint panel/tribunal report and recommendations/decisions to the Ministers of the Environment.

## **PRE-NOTIFICATION AND EARLY COORDINATION**

6. (1) The Parties will advise each other as early as possible, through their designated offices, of projects potentially subject to both the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*.

(2) The designated offices will provide timely disclosure and access to relevant information about the proposed projects.

(3) The Parties will consult and work with each other and proponents, as early as possible, to ensure that the information needed to identify the Parties' environmental assessment responsibilities is included in any project description under the *Canadian Environmental Assessment Act* or an application under the Ontario *Environmental Assessment Act*. Guidance will be provided to the proponent in a consolidated fashion where appropriate.

(4) The designated offices will advise proponents at the earliest opportunity when they are aware of the potential for a cooperative environmental assessment of a proposed project.

## **NOTIFICATION AND DETERMINATION OF ENVIRONMENTAL ASSESSMENT RESPONSIBILITIES**

7. (1) Following submission of a project description, the designated offices will confirm, in writing, to each other as soon as practicable so that each Party's legislated timelines can be met, when an environmental assessment responsibility or an interest exists in relation to the proposed project.

(2) If either Party believes that it may have an environmental assessment responsibility but the project proposal or description documentation is insufficient to make such a final determination, that Party will:

- (a) document its responsibilities that may require an environmental assessment and request the proponent to provide the additional information required; and



- (b) provide the documentation referred to in (a) above to the other Party including the proponent's response to the other Party.

(3) Where one Party has an environmental assessment responsibility and the other Party believes that it may have an environmental assessment responsibility but has not yet made such a determination, the Party that has yet to make a determination will participate in the environmental assessment until it has made a determination. Such participation will be mindful of the need to make a timely determination of environmental assessment responsibilities. The information required to make a determination may be obtained as provided for in clause 7(2).

## **COOPERATIVE ENVIRONMENTAL ASSESSMENTS**

8. (1) Where each Party has determined that it has an environmental assessment responsibility for a proposed project, a cooperative environmental assessment will be undertaken.

(2) The cooperative environmental assessment will be administered by a Lead Party in a manner that enables both Parties to meet their legal requirements and ensures that the cooperative environmental assessment:

- (a) generates the type and quality of information required to satisfy both the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*; and
- (b) provides findings on the environmental effects of the proposed project required for decision making by the respective Parties.

(3) A Party's participation in a cooperative environmental assessment will be consistent with and mindful of legislated timelines.

## **DETERMINING LEAD PARTY**

9. (1) The Lead Party for the purposes of administering the cooperative environmental assessment will, in accordance with section 5.6.0 of the Sub-agreement to the Accord, generally be determined as follows:

- (a) Canada will be the Lead Party for proposed projects on federal lands where federal approval(s) apply.
- (b) Ontario will be the Lead Party for proposed projects on lands within its provincial boundary not covered under clause (a) above where *Environmental Assessment Act* approval(s) may apply.

(c) If a project is located on lands under both federal and provincial jurisdiction, the Lead Party will be determined by mutual agreement of the Parties.

(2) If a Party believes that it would be in the best interest of a cooperative environmental assessment to vary the Lead Party under clause 9(1)(a) or 9(1)(b) above, that Party will notify the other Party's designated office within 25 working days of receiving an adequate project description and provide a rationale for the variance. While the issue of varying the Lead Party is being discussed, the Party assuming the lead based on clauses 9(1)(a) and 9(1)(b) of this Agreement will continue to act as the Lead Party for the purposes of the cooperative environmental assessment.

(3) The Party requesting a variance shall provide its rationale for suggesting a variance based on an evaluation of the following criteria:

- (a) scale, scope and nature of the environmental assessment;
- (b) capacity to administer the assessment including available resources;
- (c) physical proximity of government's infrastructure;
- (d) effectiveness and efficiency;
- (e) access to scientific and technical expertise;
- (f) ability to address proponent or local needs;
- (g) inter-provincial, inter-territorial or international considerations; or
- (h) existing regulatory regime including the legal requirements of quasi-judicial tribunals.

(4) If the Parties agree to vary the Lead Party, the proponent will be notified by the new Lead Party, through its designated office, as soon as possible.

## **SINGLE CONTACTS**

**10.** (1) For each cooperative environmental assessment, the Parties, through their designated offices, will identify a single contact and provide the name and contact information promptly to the other Party in writing.

(2) Canada's contact will be the assigned Agency officer who acts as the federal environmental assessment coordinator unless confirmed otherwise by the Agency office to the Ontario office.

(3) Ontario's contact will be the project officer to whom the project is assigned.

(4) Each Party's contact will:

- (a) coordinate its Party's participation in the cooperative environmental assessment;
- (b) confirm the environmental assessment responsibility(ies) or the interest that applies to the proposed project;
- (c) contact relevant departments, ministries and agencies in their respective governments to confirm the Lead Party as determined by clause 9;
- (d) work with the other Party's contact to resolve process and content issues that may arise during the cooperative environmental assessment;
- (e) coordinate the Party's consultation with the other Party and the proponent on matters pertaining to the cooperative environmental assessment; and
- (f) work to ensure that the timelines established for the cooperative environmental assessment are met.

#### **JOINT ASSESSMENT COMMITTEE**

**11.** (1) For each cooperative environmental assessment other than a joint panel/tribunal, there will be a Joint Assessment Committee made up of one representative from the Agency and one from each of the federal responsible authorities for the environmental assessment, and a representative from the Ontario office and any additional representative(s) the Ontario office considers appropriate.

(2) The Joint Assessment Committee members are responsible for:

- (a) establishing a mutually agreeable workplan for completion of each stage of assessment consistent with legislated timelines;
- (b) identifying the information requirements needed by the Parties to satisfy their legal environmental assessment requirements through the review of the terms of reference; determining the completeness and adequacy of the environmental assessment information and report;
- (c) analyzing and reporting on the findings of the environmental assessment document;
- (d) coordinating, to the extent possible, the timing of environmental assessment decisions and the announcement of such decisions; and

(e) other related functions as determined by the Joint Assessment Committee.

(3) Members of the Joint Assessment Committee may seek input from federal expert authorities, provincial ministries and other advisors as required to meet their responsibilities. These experts and advisors may be invited to participate on the Joint Assessment Committee.

## **ESTABLISHMENT OF A WORKPLAN FOR THE ASSESSMENT**

**12.** (1) Where a cooperative environmental assessment is undertaken, the Joint Assessment Committee will establish a project-specific workplan for the completion of each stage of the assessment consistent with legislated timelines.

(2) The Lead Party, through its designated office, will communicate the workplan to the project proponent.

(3) The Parties will fulfill their cooperative environmental assessment responsibilities within the workplan that they have agreed upon provided that the necessary information is in their possession. A workplan may be updated and amended throughout the cooperative environmental assessment with the mutual agreement of both Parties.

## **PUBLIC PARTICIPATION**

**13.** (1) The Parties agree to cooperate in meeting their respective public consultation requirements under the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*. Public records, containing a complete set of materials, will be maintained by both Parties in accordance with the requirements of their respective legislation.

(2) To facilitate public participation, the Parties will ensure that the public is able to:

(a) have access to information concerning the environmental assessment of a project pursuant to applicable legislative provisions; and

(b) participate in the environmental assessment of the project, to the extent provided for by the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*, and any regulations or policies made pursuant to those Acts or any operational procedures developed under this Agreement.

(3) Project-specific workplans are to reflect any public participation requirements to the extent provided for by the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*, and any regulations or policies made pursuant to those Acts or any operational procedures developed under this Agreement.

## **FINALIZATION OF THE TERMS OF REFERENCE**

14. (1) The Joint Assessment Committee will work together to consolidate the information requirements of both Parties at the terms of reference stage to guide the proponent in preparing an environmental assessment document for the cooperative environmental assessment.

(2) For the purposes of developing the terms of reference, the definitions of "environment" and "environmental effects" in the *Canadian Environmental Assessment Act*, and "environment" in the Ontario *Environmental Assessment Act* will be adopted to incorporate the legal requirements of both Parties.

(3) The Joint Assessment Committee with their advisors, as referred to in clause 11, will review the terms of reference document submitted by the proponent to determine its completeness and adequacy.

(4) If deficiencies in the information provided are identified, or additional information is needed, the Lead Party's designated office will inform the proponent of these deficiencies or the additional information required. The Lead Party's designated office will issue to the proponent a consolidated list of deficiencies and/or additional information sought by each Party to meet each Party's specific requirements.

(5) The Parties will confirm to each other and the proponent when the terms of reference document meets their respective requirements. The Lead Party's designated office will notify the proponent when the terms of reference is approved.

(6) The Parties will provide guidance to the proponent, upon request, during the preparation of the environmental assessment document to ensure the document meets their legislative and policy requirements.

## **DETERMINATION OF COMPLETENESS OF THE ENVIRONMENTAL ASSESSMENT DOCUMENT**

15. (1) The Joint Assessment Committee and its advisors will review the environmental assessment document submitted by the proponent to determine the completeness and adequacy of the information.

(2) If deficiencies in the information provided are identified, or additional information is needed, a consolidated deficiency document will be prepared by the Joint Assessment Committee. The Lead Party's designated office will issue the agreed upon deficiency document to the proponent.

(3) The designated offices will confirm, in writing, to each other and the proponent when their Party's requirements for information, including those requirements outlined in the deficiency document referred to in clause 15(2), have been met in accordance with the terms of reference.

(4) Where a Party determines that the information it requires to fulfill its legal obligations will not be provided by the cooperative environmental assessment, that Party, while continuing to participate in the cooperative environmental assessment, will document its information needs in relation to its legal responsibilities, provide this to the Lead Party's designated office, and identify its intention to request information from the proponent so that implications for the workplan determined in clause 12(1) can be considered.

(5) If the Party conducting additional steps or seeking additional information completes its task prior to the conclusion of the cooperative environmental assessment, the additional information will be integrated into the cooperative environmental assessment in accordance with the workplan for the cooperative environmental assessment. Otherwise, the additional information will be used solely for the decision making required of the Party that conducted the additional steps or sought the additional information.

## **COORDINATION OF DECISIONS AND ANNOUNCEMENTS**

**16.** (1) Each Party, having an environmental assessment responsibility, will use the information generated by the cooperative environmental assessment for the purposes of its respective decision making provided that each Party is of the opinion that the information generated in the process meets the requirements of its environmental assessment legislation.

(2) The Parties agree to coordinate the timing of decisions, to the extent possible, throughout the conduct of the cooperative environmental assessment.

(3) Upon completion of a cooperative environmental assessment, each Party will notify the other of project decisions, the proposed timing of public announcements concerning these decisions, and provide an opportunity to coordinate the announcement of such decisions.

(4) To the extent possible, neither Party will communicate its decision directly to the proponent or the public without prior notification of the other Party.

(5) The designated offices of both Parties will provide assistance in achieving coordination.

## MITIGATION AND FOLLOW-UP

17. Where a cooperative environmental assessment leads to the approval of a proposed project by Ontario and where Canada exercises a power, or performs a function, or a duty in relation to the proposed project, subject to identified mitigation measures, monitoring and follow-up requirements or any other terms and conditions, the Parties will communicate and may coordinate their respective requirements if any, where it is possible and mutually advantageous to do so. A project-specific agreement may be developed between the Parties to confirm the cooperative arrangements in this regard.

## JOINT PANEL/TRIBUNAL

18. (1) Where either Party intends to refer an environmental assessment matter to a review panel under the *Canadian Environmental Assessment Act* or the Environmental Review Tribunal for a hearing under the Ontario *Environmental Assessment Act*, and if applicable the *Consolidated Hearings Act*, the Party's designated office will provide immediate notice to the other Party's designated office and consult on the possibility of establishing a joint panel/tribunal for the project.

(2) If the Parties agree that a joint panel/tribunal can be established in a manner that satisfies the requirements of both the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act* or the *Consolidated Hearings Act*, they will enter into a project-specific agreement respecting the establishment of a joint panel/tribunal, its membership, and the manner in which the cooperative environmental assessment is to be conducted including the scope of the assessment.

(3) The joint panel/tribunal shall have the powers and duties of a panel provided for in the *Canadian Environmental Assessment Act* and of the Environmental Review Tribunal under the Ontario *Environmental Assessment Act* or the *Consolidated Hearings Act*.

(4) The agreement referred to in 18(2) is to contain the provisions necessary to satisfy the requirements of the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act* or the *Consolidated Hearings Act*, and may contain additional provisions respecting the operation of the joint panel/tribunal, the establishment of a panel secretariat to provide administrative and procedural support to the joint panel/tribunal, cost sharing, assistance provided to participants in the hearing process in accordance with the Parties' legislation and policies, the expected time frame for completion of the work by the joint panel/tribunal and any other matter that the Parties agree is necessary for the proper conduct of the work by the joint panel/tribunal.

(5) All documents produced by the joint panel/tribunal including its final report, will take account of and reflect the views of each member of the joint panel/tribunal.

(6) The joint panel/tribunal's final report shall be put forth as recommendations to Canada and as decisions to Ontario subject to Ministerial review. Prior to making a decision on the proposed project, the Parties shall discuss the joint panel/tribunal findings and seek to issue their decisions within a time frame agreed to by the Parties.

## ACCOMMODATING INTERESTS

19. (1) Where one Party has an environmental assessment responsibility respecting a proposed project and the other Party has an interest, the Party with the environmental assessment responsibility will invite early in the environmental assessment the Party with an interest to review the environmental assessment information and provide comments related to its mandated responsibilities.

(2) Nothing in this Agreement is intended to limit the opportunities of either Party to access information or provide input to an environmental assessment of a proposed project afforded by the participatory nature of the processes administered under both the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*.

#### **MEDIATION UNDER THE ONTARIO ENVIRONMENTAL ASSESSMENT ACT**

20. (1) To help resolve disputes that may arise during the course of an environmental assessment in Ontario, the Ontario Minister of the Environment may under subsections 6(5), 8(1), and 16(6) of the *Ontario Environmental Assessment Act* refer a matter to mediation.

(2) Where a project is subject to a cooperative environmental assessment and Ontario is considering the referral of the project to mediation as described in clause 20(1), the Ontario office will notify the Agency office to determine whether Canada wishes to participate in the mediation.

#### **MEDIATION UNDER THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT**

21. Where Canada is considering the referral of a project to a mediator pursuant to subsection 29(1) of the *Canadian Environmental Assessment Act*, the Agency office will notify the Ontario office to determine whether Ontario wishes to participate in the mediation.

#### **TRANSBOUNDARY CONSIDERATIONS**

22. (1) Where a proposed project in Ontario is subject to a cooperative environmental assessment, and has the potential to cause adverse environmental effects in another province or territory in Canada, the Lead Party's designated office will advise the proponent to inform the potentially



affected province or territory and consult the potentially affected province or territory during the conduct of the cooperative environmental assessment.

(2) The Parties may invite any potentially affected province/territory to input into the cooperative environmental assessment.

(3) For a project outside Ontario subject to the *Canadian Environmental Assessment Act* and which has the potential to cause adverse environmental effects in Ontario, Ontario will be invited by Canada to input into the assessment of that project.

(4) The requirement in clause 22(3) does not apply where Ontario has been notified by another province or territory pursuant to an agreement and has been given an opportunity to participate.

(5) Where Canada has obligations pursuant to an international agreement with respect to the environmental assessment of certain proposed projects that are subject to a cooperative environmental assessment, Canada will notify and discuss its obligations with Ontario to ensure compliance of the cooperative environmental assessment with the international commitments.

(6) Where Canada becomes aware of potential transboundary concerns relating to a project within the meaning of sections 46, 47 or 48 of the *Canadian Environmental Assessment Act*, whether the project is situated in Ontario or in another jurisdiction with potential transboundary effects in Ontario:

- (a) the Agency office will promptly notify the Ontario office of the potential transboundary concerns;
- (b) upon notification, as referred to in clause 22(6)(a), the Parties agree to exchange information relating to the project, the transboundary concerns, and any assessment of the environmental effects of the project; and
- (c) for projects in Ontario, Canada will consider any available information generated by an assessment of the environmental effects of the project conducted under the Ontario *Environmental Assessment Act* required by Ontario before taking final action under sections 46, 47 or 48 of the *Canadian Environmental Assessment Act*.

## **CONSIDERATION OF ABORIGINAL INTERESTS**

**23.** (1) Where a project subject to a cooperative environmental assessment has the potential to have environmental effects on an Aboriginal community, the Parties will ensure that the potentially affected Aboriginal community is notified so that it may participate in the cooperative environmental assessment. Notification and participation of a potentially affected Aboriginal community will be

conducted in accordance with any requirements that may be set out in the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*, and any regulations or policies made pursuant to those Acts or any operational procedures developed under this Agreement.

(2) This Agreement does not apply to environmental assessment processes pursuant to a land claim or Aboriginal self-government agreement.

(3) This Agreement may be revised to reflect land claim agreements or Aboriginal self-government agreements that are given effect by legislation.

(4) The Parties agree to share the principles of the Accord, the Sub-agreement, and the provisions of this Agreement with Aboriginal communities when negotiating environmental assessment regimes pursuant to land claim or self-government agreements.

(5) Nothing in this Agreement affects or alters constitutionally-protected Aboriginal rights or Treaty rights.

## **CLASS ENVIRONMENTAL ASSESSMENT, CLASS SCREENINGS AND ELECTRICITY PROJECTS**

### **Development or Review of a Federal Class Screening Report, a Provincial Class Environmental Assessment Document or Ontario Regulation 116/01**

**24.** (1) For the development or review of a federal class screening report or a provincial class environmental assessment document or Ontario Regulation 116/01, the following will apply:

- (a) the Parties will notify and invite each other through their designated office as early as possible to participate;
- (b) the Agency office will coordinate the input and involvement of federal departments and agencies in the development or review of provincial class environmental assessment documents and Ontario Regulation 116/01;
- (c) the Ontario office will coordinate the input and involvement of provincial ministries and agencies into the development or review of federal class screening reports;
- (d) the extent of this participation will be determined as early as possible on a case-by-case basis; and
- (e) where Parties agree to participate, they will do so in a manner consistent with legislated timelines.

(2) At the time of development or review, the Parties agree to include provisions in federal class screening reports, provincial class environmental assessment documents, and Ontario Regulation 116/01, to facilitate cooperation for project environmental assessments prepared under these instruments.

**Coordination Framework for Projects Subject to Provincial Class Environmental Assessments or Ontario Regulation 116/01 (Environmental Screening Process)**

**25.** (1) For a proponent(s) seeking to concurrently satisfy the requirements of a provincial class environmental assessment document, or Ontario Regulation 116/01 (Environmental Screening Process), and the requirements under the *Canadian Environmental Assessment Act* for a project, the following coordination procedures apply:

- (a) the proponent(s) is to notify and consult the Agency's office early in the planning process when the details of the project are known, and provide a project description in a timely manner;
- (b) where it is determined based on the project description that an environmental assessment responsibility of the project is required, or is likely to be required, under the *Canadian Environmental Assessment Act*, the Agency office or the federal authority will convene a discussion with the proponent(s) and potential or actual responsible authorities to discuss the coordinated process, including its workplan;
- (c) the Agency office or a federal authority will notify the proponent(s) of federal requirements and the commencement of the federal assessment; and
- (d) the proponent(s) and the Agency office or the federal authority will work together to address federal concerns and information requirements.

(2) The proponent(s) of the project will follow the class environmental assessment process or Ontario Regulation 116/01 approved under the Ontario *Environmental Assessment Act*, and incorporate additional information necessary to satisfy the requirements of the *Canadian Environmental Assessment Act*.

(3) The proponent(s) will present its findings on the predicted environmental effects of the project in a single body of documentation.

(4) All Parties' participation will be consistent with and mindful of timelines set out in the class environmental assessment document or Ontario Regulation 116/01 and legislation.

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## ISSUES MANAGEMENT BETWEEN THE PARTIES

26. (1) The Parties will make every reasonable effort to agree on the interpretation and application of this Agreement, including but not limited to, the scope of the project and the scope of the assessment, the completeness and adequacy of the information submitted by the proponent, the significance of environmental effects, process related questions, or any issue that is related to a cooperative environmental assessment.

(2) Should a dispute on any of these issues arise, the Parties will, to the extent possible, seek to resolve the dispute at the operational level.

(3) Where all reasonable efforts to resolve a dispute at the operational level have been exhausted and where either Party believes a dispute requires resolution at a more senior level, the Party seeking to resolve the dispute will notify in writing the other Party through its designated office and provide a justification for raising the dispute at a more senior level.

(4) Where both designated offices agree to the consideration of the dispute at a more senior level, the following procedures will apply:

- (a) The designated offices, in consultation, will convene a meeting of the Parties at a senior operational level within ten working days of the dispute being brought to the attention of the two offices to seek a resolution of the dispute or to agree on a process for resolving the dispute.
- (b) The Agency office will facilitate the participation in the process of relevant senior regional officials, including the office of the senior regional officer of the department or agency or the representative of that office. The Ontario office will facilitate the participation of relevant senior provincial officials.
- (c) If after a period of time agreed to by the senior officials at the onset of the dispute resolution procedures outlined in clause 26(4)(a), the dispute has not been resolved, and where the designated offices agree, the matter will be referred to the President of the Canadian Environmental Assessment Agency and the Deputy Minister for the Ontario Ministry of the Environment, to facilitate resolution of the issues by the Parties, including federal responsible authorities and specialist federal authorities, within a specified time frame.

(5) The Parties recognize that this dispute resolution process does not fetter the authority of a federal responsible authority under the *Canadian Environmental Assessment Act* or the authority of the Minister of the Environment under the Ontario *Environmental Assessment Act*.

## OPERATIONAL PROCEDURES

27. The Parties, through their designated offices, agree to develop and maintain operational procedures that will facilitate the implementation of this Agreement. The operational procedures will be developed within one year of the execution of this Agreement and will be reviewed by the Parties on mutual consent to determine whether revisions are necessary.

## **REVISION AND DURATION OF AGREEMENT**

**28.** This Agreement comes into force upon its execution by both Parties.

**29.** (1) This Agreement may be revised at any time by mutual consent by the Parties.

(2) This Agreement shall be reviewed by the Parties through their designated offices three years following its coming into force. Through this review, the Parties will determine the timing of the next review of the Agreement.

**30.** (1) Where the environmental assessment of a project has been completed by a Party prior to the coming into force of this Agreement and upon coming into force of this Agreement the other Party has yet to complete its environmental assessment for the same project, the other Party will take into consideration the information generated by the completed environmental assessment.

(2) If an environmental assessment was initiated by one or both Parties prior to the coming into force of this Agreement and it is still under way upon the coming into force of this Agreement, the Parties may agree to apply this Agreement, or any portion thereof, to the environmental assessment.

**31.** Following consultations between the Parties, this Agreement may be terminated by either Party, forty-five days after written notice is provided to the other Party. In the event of termination, the Parties will provide transitional arrangements for proposed projects already involved in a cooperative environmental assessment.

## **SIGNATURES**

In witness thereof the Honourable Stéphane Dion has hereunto set his hand and seal on behalf of Canada, and the Honourable Leona Dombrowsky has hereunto set her hand and seal on behalf of Ontario, to this Agreement, this \_\_\_\_\_ day of \_\_\_\_\_, 2004. (Original signed on November 1<sup>st</sup>, 2004)

Signed on behalf of Canada by  
the Honourable Stéphane Dion,  
Minister of the Environment.

Original signed by:

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The Honourable Stéphane Dion  
Minister of the Environment

Signed on behalf of Ontario by  
the Honourable Leona Dombrowsky,  
Minister of the Environment.

Original signed by:

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The Honourable Leona Dombrowsky  
Minister of the Environment

## Appendix B – Identifying Expert Federal Authorities Under CEAA

ENVIRONMENTAL ISSUES	EXPERT FEDERAL AUTHORITY
Environmental Effects	
(from definition of “environment” in the Canadian Environmental Assessment Act)	
Changes in the environment:	
• general	Environment Canada
• air	Environment Canada
• land	Environment Canada Natural Resources Canada
• fish and fish habitat	Fisheries and Oceans Canada
• soil	Agriculture Canada
• forest resources	Natural Resources Canada
• humans	Health Canada
• water	Environment Canada Fisheries and Oceans Canada Natural Resources Canada
• Species at Risk	Environment Canada Fisheries and Oceans Canada
• migratory birds	Environment Canada
• wetlands	Environment Canada
• wildlife / biodiversity	Environment Canada
Changes in:	
• navigation	Transport Canada
Related changes in:	
• sustainable use	Environment Canada
• human health conditions	Health Canada
• socio-economic conditions	Agriculture Canada Health Canada Indian and Northern Affairs Canada Industry, Science and Technology Canada

ENVIRONMENTAL ISSUES	EXPERT FEDERAL AUTHORITY
	Natural Resources Canada
<ul style="list-style-type: none"> <li>• cultural resources</li> </ul>	Canadian Heritage Indian and Northern Affairs Canada
<ul style="list-style-type: none"> <li>• Aboriginal resource use</li> </ul>	Indian and Northern Affairs Canada
<ul style="list-style-type: none"> <li>• Aboriginal land use</li> </ul>	Health Canada
<ul style="list-style-type: none"> <li>• historical, archaeological, paleontological and architectural resources</li> </ul>	Canadian Heritage Natural Resources Canada Public Works Canada
<ul style="list-style-type: none"> <li>• management of protected areas – national parks, national historic sites, historic rivers and heritage canals</li> </ul>	Canadian Heritage Parks Canada Agency
CEAA Process and Procedures	Canadian Environmental Assessment Agency
International Environmental Issues	Foreign Affairs Canada and International Trade Canada Canadian International Development Agency



## Appendix C – Potential CEAA Triggers for Waterpower Development Projects

Potential Project Trigger	Provisions of Legislation	Responsible Authority	Comments
A CEAA Screening is triggered if the Project:			
<ul style="list-style-type: none"> <li>is being funded with federal money</li> </ul>	CEAA s.s. 5(1)b	The funding department	<ul style="list-style-type: none"> <li>Act is triggered where federal money is being provided (e.g. Infrastructure Program projects)</li> </ul>
<ul style="list-style-type: none"> <li>involves the sale, lease or transfer of federal land</li> </ul>	CEAA s.s.5(1)c	Federal department responsible for the implicated lands	<ul style="list-style-type: none"> <li>this would affect projects on federal lands such as national parks (Heritage Canada), First Nations reserves (Indian and Northern Affairs Canada) or national defence bases (Department of National Defence)</li> </ul>
<ul style="list-style-type: none"> <li>is likely to affect a pipeline or property, regulated by the NEB, that is used for the transmission of oil or gas</li> </ul>	National Energy Board Act	National Energy Board	<ul style="list-style-type: none"> <li>may apply to projects requiring the re-location of a pipeline that is regulated by the NEB</li> </ul>
<ul style="list-style-type: none"> <li>is likely to affect the operation of a railway company or property</li> </ul>	Canadian Transportation Act, Heritage Railway Station Protection Act	Transport Canada, Canadian Transportation Agency, Canadian Heritage	<ul style="list-style-type: none"> <li>generally will apply to projects where a rail line crossing is contemplated</li> </ul>
<ul style="list-style-type: none"> <li>involves the temporary storage of explosives on-site</li> </ul>	Explosives Act, par. 7(1)a	Natural Resources Canada	<ul style="list-style-type: none"> <li>projects that involve blasting and on-site storage of explosives require a permit under the Explosives Act</li> </ul>
<ul style="list-style-type: none"> <li>is likely to harmfully affect fish or fish habitat</li> </ul>	Fisheries Act, s.s. 22(1), 22(2), 22(3), 32, 35(2) and 37(2)	Fisheries and Oceans Canada	<ul style="list-style-type: none"> <li>applies to works in or near water</li> <li>provision of sufficient water flow</li> <li>passage of fish around barriers</li> <li>screening of water intakes</li> <li>destruction of fish by means other than fishing (e.g. blasting)</li> <li>authorization is required to harmfully alter, disrupt or destroy fish habitat</li> </ul>

Potential Project	Provisions of	Responsible	Comments
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Trigger	Legislation	Authority	
<ul style="list-style-type: none"> <li>works in, on, over, under, through or across any navigable water</li> </ul>	<i>Navigable Waters Protection Act</i> , s.s. 5(2), 5(3)*, 6(4), 16 and 20.	Transport Canada	<ul style="list-style-type: none"> <li>all works that have the potential to interfere with navigation, including temporary construction works, must be applied for and receive approval.</li> <li>the type of approval required will vary depending on the complexity and nature of works.</li> <li><i>all</i> subsection 5(2) and 6(4) approvals trigger CEAA.</li> </ul> <p>*Note: Only <i>some</i> subsection 5(3) approvals trigger CEAA (e.g. those relating to a bridge, boom, dam or causeway).</p>
<ul style="list-style-type: none"> <li>is likely to take place in, involve dredge and fill operations, draw water from or discharge to a historic canal operated by Parks Canada Agency</li> </ul>	Indian and Northern Affairs Canada Canal Land Regulations Public Lands Licensing Order, Heritage Canal Regulations	Canadian Heritage	<ul style="list-style-type: none"> <li>potentially triggered by projects crossing the Trent Severn Waterway and Rideau Canal. The Canal Land Regulations and Public Lands Licensing Order address drainage into a canal (e.g. stormwater drains) and the Heritage Canal Regulations address dredge and fill activities (e.g. construction of bridge piers)</li> </ul>
<ul style="list-style-type: none"> <li>is likely to affect First Nations reserve lands</li> </ul>	Indian Act, s.s. 28(2), 35(1), 35(2) and 39	Department of Indian Affairs and Northern Development	<ul style="list-style-type: none"> <li>would only apply to projects that are located on, or require access through, First Nations reserves</li> </ul>

## Appendix D – Potential Federal Information Requirements

**Table D1: Federal Project Description Information Requirements**

Type of Information	Description of Information Requirement
<b>General Information</b>	
General	<ul style="list-style-type: none"> <li>• Name of the project.</li> <li>• Location of the project, including a legal description of the property and geographical coordinates (latitude/longitude or UTM).</li> <li>• Chart or topographic map.</li> <li>• Description of the project.</li> <li>• Overview of any project alternatives (if any).</li> </ul>
Contact Information	<ul style="list-style-type: none"> <li>• Proponent's name and contact information (mailing and e-mail addressees, telephone and facsimile numbers).</li> <li>• Consultant's name and contact information (mailing and e-mail addresses, telephone and facsimile numbers).</li> </ul>
Other Contacts/ Involvement	<ul style="list-style-type: none"> <li>• Federal government departments or agencies that will, or may be, providing financial support to the project.</li> <li>• Ownership of the land to be used or required by the project, and in particular, whether any federal land is involved.</li> <li>• Information relating to federal permits and authorizations that the proponent believes must be obtained for the project to proceed.</li> <li>• Identification of other EA regimes to which the project has been or may be subject to.</li> <li>• Information on applicable provincial and municipal permits.</li> <li>• First Nations contacted to date.</li> </ul>
<b>Project Information</b>	
Project Components	<ul style="list-style-type: none"> <li>• Description of project components and associated activities (i.e. what are all the things that will need to be undertaken in order to allow the project to be constructed and operated?) including both permanent and temporary structures.</li> <li>• Identification of project components or activities that will require working in, on, over, under, through or across water bodies.</li> <li>• Construction access including any temporary water crossings or other staging works in and around water.</li> <li>• Identification of the types of equipment to be used.</li> <li>• Identification of the need for explosives (potential CEAA trigger).</li> <li>• Engineering design details/conceptual plans with preliminary drawings for any works in or within 30 m of a waterbody.</li> <li>• Production capacity of the waterpower facility and the size of the main components of the project.</li> <li>• Identification of requirements for off-site land use.</li> <li>• Resource/material requirements.</li> <li>• Excavation and/or filling requirements.</li> <li>• Identification of any toxic/hazardous materials to be used or by-products of the project.</li> <li>• Waste disposal plans including disposal procedures for any toxic/hazardous materials to be used or by-products of the project.</li> </ul>

Type of Information	Description of Information Requirement
Timing	<ul style="list-style-type: none"> <li>• Timing and scheduling of the construction, operation and decommissioning phases.</li> <li>• Schedule for construction of project components and implementation of associated activities (time of year, frequency, duration, magnitude and extent).</li> </ul>
<b>Project Site Information</b>	
Project Setting	<ul style="list-style-type: none"> <li>• Extent of natural area to be cleared, including both temporary and permanent clearing.</li> <li>• Qualitative and quantitative information on fish and fish habitat, including species at risk and their critical habitat, that includes information on fish presence, species, habitat use throughout all four seasons, upstream and downstream migration routes, and fishery management plans, goals and objectives for fish habitat that could be impacted by the project.</li> <li>• Information on whether the project may affect fish and fish habitat (e.g. upstream and downstream fish passage, habitat infill, habitat changes, fish mortality, instream flow changes) and any unique or special resources not already identified.</li> <li>• Characteristics of the existing waterway (e.g. length, width, depth, bathymetry, bottom substrate, seasonal flow and fluctuations) and proposed changes to the waterway.</li> <li>• Description of any existing shoreline protection works or in-water structures (e.g. rip rap, cribs, piers, groynes, docks).</li> <li>• Details, description, plans, operating schedules of any mitigation measures proposed for the project.</li> <li>• Current and past land uses at the project site and on adjacent lands.</li> <li>• Potential contamination of site (including contaminated sediment).</li> <li>• Proximity of the project to First Nations reserves and lands that are currently used or have been traditionally used by aboriginal people.</li> <li>• Proximity to important or designated environmental or cultural sites such as national parks and/or waterways, heritage sites, historic canals or other protected areas.</li> <li>• Proximity to residential and other urban areas.</li> <li>• Photos/video of site.</li> <li>• Existing use of the waterway (e.g. kind, size and frequency of vessels, description of existing obstructions in the waterway).</li> <li>• Information on whether project components are likely to interfere with navigation.</li> <li>• Information on commercial, recreational or Aboriginal subsistence fisheries in the area.</li> <li>• Summary of characteristics of other physical and biological components in the area likely to be affected by the project (e.g. terrain, wetlands, wildlife, including migratory birds).</li> </ul>

Table D2 reflects the mandates and interests of DFO and Transport Canada (Navigable Waters Protection Program) when they are RAs and of Environment Canada when they are providing expert advice to DFO and/or Transport Canada for a project that is being assessed in accordance with CEAA. The information requirements identified in Table D1 for the project description will also be used in completing the CEAA assessment. Generally, a blank cell indicates that no additional information is required. However, this will depend on the specific project under consideration.

Repair or maintenance of existing physical works is excluded from CEAA, in accordance with the *Exclusion List Regulations*. However, a *Fisheries Act* authorization may still be required for these activities that are not covered by a DFO Operational Statement and result in the HADD of fish habitat.

In addition to the information noted in this table, the proponent should provide any other information that may assist with the project review. Federal departments may have additional project-specific information requirements. The amount and level of detail of information will vary depending on the environmental setting, magnitude and duration of the project. The information noted in this table is intended to be a general guide. Information requirements should be discussed with the relevant federal department.

Table D2: Potential Federal Information Requirements

Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the <i>Fisheries Act</i> or <i>Navigable Waters Protection Act</i>
Project Information	<ul style="list-style-type: none"> <li>• Conceptual plans.</li> <li>• Complete description of the project (all proposed works, construction, operational and decommissioning procedures, timing and location).</li> <li>• Description of access roads and whether they are temporary or permanent.</li> <li>• If there will be access roads or transmission line crossings, identify type of crossing: (1) dry crossing – dam and flume, dam and pump, directional drill, coffer dam; (2) wet crossing/open trench; (3) aerial crossings.</li> <li>• Proposed dam dimensions and area to be filled.</li> <li>• Dam operating plan (e.g. expected flow rates, ramping rates, peak and base flow, maximum operating level, provision to bypass extreme flood flows).</li> <li>• Plan indicating the water level, high water mark and extent of backwater and downstream effects.</li> <li>• Plan showing the proposed operating regime of the reservoir including daily,</li> </ul>	<ul style="list-style-type: none"> <li>• Dimensional construction drawings including front, side, and plan views with cross-sectional elevations, where appropriate.</li> <li>• Final dimensions (length, width, depth, longitudinal and cross sectional profiles of the channel before and after realignment), including gradient and in-stream structure(s).</li> <li>• Final sediment and erosion control plan.</li> <li>• Detailed site stabilization plan including revegetation.</li> </ul>



Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
	<ul style="list-style-type: none"> <li>• weekly and seasonal fluctuations.</li> <li>• Description of coffer damming, dewatering and/or temporary watercourse diversions.</li> <li>• Changes to existing streamflow and water level regimes, including reservoir creation.</li> <li>• Proposed dimensions (length, width, depth, longitudinal and cross sectional profiles) of the channel before and after realignment, including gradient and in-stream structure(s).</li> <li>• Size and retention time of headpond.</li> <li>• Changes in flow including minimum flow and flow curves.</li> <li>• Peaking plant, intermediate peaking, run of the river or pump storage facility.</li> <li>• Preliminary sediment and erosion control plan, with particular attention to areas where contaminated soils or sediments are identified.</li> <li>• Demolition plans for any existing structures.</li> <li>• If modifying an existing dam or weir, quantity and characteristics of any sediment accumulation behind the structure.</li> <li>• Contingency plans (e.g. alternative method of installation or mitigation in case of flooding, wave damage or collapse) including appropriate measures, to minimize impacts of accidental spills during construction, operation and maintenance.</li> <li>• Conceptual site stabilization plan including revegetation.</li> <li>• Channel restoration plan and/or final plan for abandoned channels.</li> <li>• Environmental monitoring plan that will be in place for the project.</li> <li>• Photographs taken of the site from the same reference point before construction, during construction and after construction. Photographs should be indexed to a map of the project.</li> <li>• Preliminary fish habitat compensation plan (note that a net gain in the productivity of fish habitat should be achieved).</li> <li>• Identification of the need for explosives</li> </ul>	<ul style="list-style-type: none"> <li>• Fish habitat compensation plan.</li> <li>• Indications of timing restrictions for in-water work</li> <li>• Detailed project description with construction schedule.</li> <li>• Detail of any temporary works and method of construction activities.</li> <li>• Property ownership status (if you are not the owner, attach a letter of permission from the owner).</li> <li>• Map or chart to show location of project (6 copies).</li> <li>• Drawing of project, including side and top view and showing dimensions of the project (6 copies).</li> <li>• Survey plan with dimensions indicating the location of existing buildings, shoreline structures, property lines, high and low water marks and adjacent properties.</li> <li>• Current photographs of the proposed work site (photos of open water period where possible).</li> <li>• A list of any equipment that may be used for the project.</li> <li>• Detailed engineering plans for water crossings.</li> <li>• Plan indicating any changes to water level, high water mark and extent of backwater effects.</li> </ul>

Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
Terrestrial Habitat	<ul style="list-style-type: none"> <li>• Type and area of terrestrial habitat that will be affected by the proposed project including dimensions and inventory of existing species on lands to be flooded by headpond creation.</li> <li>• Description of existing substrate and aquatic vegetation in area proposed to be infilled and/or impacted by backwater effects (flooded).</li> <li>• Identify any sensitive or ecologically significant areas and areas designated as Environmentally Significant Areas, Provincially Significant Wetlands, Areas of Natural and Scientific Interest Carolinian Canada Sites, Important Bird Areas.</li> <li>• Impacts on breeding, staging or wintering habitat, impacts on forested areas and their ecological functions (e.g. interior bird habitat or other specialized habitat, wildlife corridors).</li> </ul>	<ul style="list-style-type: none"> <li>• Site map with photos (including air photos if available) of work site and adjacent area.</li> </ul>

Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
Fisheries and Fish Habitat	<ul style="list-style-type: none"> <li>• Characteristics of fish habitat within and adjacent to the project area.</li> <li>• Quantitative and qualitative information on fish community (species/common name) at and near the site.</li> <li>• Impacts to fish community as a result of flows (e.g. minimum flows, peak flows, ramping rate)</li> <li>• Type and area of aquatic habitats that will be affected by the proposed project.</li> <li>• Effects of fish community changes.</li> <li>• Impingement/entrainment of fish in intakes.</li> <li>• Use of fish screens and bypass structures at intakes to mitigate fish mortality.</li> <li>• Use of fishways/ladders/bypasses or other mitigation measures for safe upstream and downstream fish passage.</li> <li>• Method of fish exclusion and/or transfer around the construction site.</li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring to show seasonal use of fish habitat.</li> <li>• Depth profile of waterbody at project site.</li> <li>• Identify use of impacted area as fish spawning, nursery, rearing, food supply or passage route.</li> <li>• Description of shoreline (e.g. soil type, riparian vegetation, slope) - Note: enclose photographs of proposed project site and adjacent shoreline.</li> <li>• Description of substrate (i.e. clay, silt, mud, sand, gravel, cobble, boulder, bedrock).</li> <li>• Description of aquatic vegetation (i.e. respective aerial extent of submergent plants, emergent plants and woody cover).</li> <li>• Fish habitat mitigation and compensation plan (e.g. detailed drawings, operating schedules, adaptive management plans, monitoring plans)</li> <li>• Monitoring plan for oxygen levels, turbidity and temperature.</li> </ul>
Land Use	<ul style="list-style-type: none"> <li>• Describe current land use.</li> <li>• Describe historical land use activities (if project carried out on previously developed site – in particular, industrial site or landfill).</li> </ul>	



Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
Navigation	<ul style="list-style-type: none"> <li>• Navigational implications of changes in flow including minimum flow.</li> <li>• Extent of impact of project on navigation.</li> <li>• Alternative navigation options for users of waterbody.</li> </ul>	<ul style="list-style-type: none"> <li>• Summary of potential impacts to navigation and how these will be avoided and/or mitigated.</li> </ul>
Soils and Sediments	<ul style="list-style-type: none"> <li>• Presence and characterization of contaminated soils to be exposed or disturbed.</li> <li>• Include any Phase 2 site assessment or risk assessment conducted.</li> <li>• Identification of any risk of contaminants entering the watercourse.</li> <li>• Proposed plans for monitoring environmental effects of suspension of contaminated sediments or soils on aquatic organisms, if any, and related monitoring actions.</li> <li>• Type and proposed management of any contaminated soils and sediments.</li> <li>• Monitoring plans to determine the presence, concentration and mobility of any residual contaminants.</li> </ul>	

Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
Surface Water	<ul style="list-style-type: none"> <li>• Presence of sulphide bearing rock if project involves blasting, cutting or excavating rock.</li> <li>• Pollution prevention, including spills contingency measures, to adequately control the discharge of debris, sediment and toxic pollutants into a waterbody.</li> <li>• Mitigation measures for vegetation clearing to avoid methylmercury contamination.</li> <li>• Nature of any substances to be discharged into a waterbody.</li> <li>• Anticipated project induced seasonal alterations to flows, velocities, depths and thermal regimes (may require hydrological and hydraulic modeling and baseline data).</li> <li>• Quantities of flow relative to total flow to be used for mitigation (e.g. upstream fish passage, downstream fish passage, instream flow needs).</li> <li>• Effect on flows and levels of international boundary waters.</li> <li>• Identification of any risk of contaminants entering the watercourse.</li> <li>• Evaluation of potential water quality effects due to suspended sediment, contaminated soils and materials, stormwater runoff, snow clearing, application of de-icing chemicals and anti-fouling chemicals (to control build up of zebra mussels, algae, etc. on water conduits, intakes and outfalls) and accidental spills during construction and operation of project. Develop appropriate mitigation and monitoring measures.</li> <li>• Operational management of trash rack / screen debris and miscellaneous wastes, including liquid effluents.</li> <li>• Assessment of expected fish mortality due to the project (e.g. turbine, impingement, entrainment, drop, etc.) and mitigation considered to prevent fish mortality.</li> <li>• Backwater impacts on upstream watercourses and wetlands.</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed plans of changes in flow management, operating schedules in relation to upstream and downstream impacts.</li> <li>• Detailed assessment of potential impacts to fish and fish habitat due to proposed changes in surface water flow.</li> <li>• Detailed plans of proposed mitigation measures associated with changes to the flow regime (e.g. temporal and spatial changes to flow quantity, depth and velocity).</li> <li>• Detailed engineering drawings and hydraulic analysis of all spillways, intakes and screens where fish mortality due to entrainment or impingement may occur or where upstream or downstream fish passage may be impeded.</li> <li>• Detailed engineering drawings and operation plan and hydraulic analysis of fishways, bypass channels or other mitigation for upstream and downstream fish passage.</li> <li>• Detailed instream flow needs assessment.</li> </ul>

Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
Ground Water	<ul style="list-style-type: none"> <li>• Potential for groundwater contamination.</li> <li>• Expected seasonal changes to aquatic thermal regime.</li> <li>• If the project involves excavation, depth of water table and description of any necessary dewatering procedures.</li> <li>• Anticipated alteration of normal groundwater regime such as changes in ground water levels, hydraulic head and direction of groundwater flow which may include preliminary site hydrogeological investigation..</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed plans of mitigation of impacts due to groundwater flow alterations (e.g. quantity, spatial and temporal impacts).</li> <li>• Detailed hydrogeological analysis and plans showing seasonal transient and permanent changes to spatial groundwater quantity and level changes.</li> <li>• Post construction monitoring plan for groundwater level and quantity.</li> </ul>
Species at Risk	<ul style="list-style-type: none"> <li>• Likely occurrence of all SARA listed species (aquatic or terrestrial, flora or fauna), including their residences and critical habitat, in or adjacent to project area.</li> <li>• Measures to avoid or otherwise protect species at risk, their residences and critical habitat.</li> <li>• Existing background information collected to determine whether any species of concern are known or expected to use the study area or adjacent lands (including habitats identified as sensitive or ecologically significant).</li> <li>• A thorough inventory conducted by a qualified biologist of all areas of natural habitat that may be affected by the project and are expected to support Species at Risk or have been identified as significant / important.</li> <li>• Species lists should be compared against the Committee on the Status of Endangered Species in Canada (COSEWIC) and provincial lists of species at risk as well as regional lists of species of conservation concern.</li> </ul>	<ul style="list-style-type: none"> <li>• To be determined on a site specific basis,; <ul style="list-style-type: none"> <li>• Monitoring plan for preconstruction, during construction and post construction of SAR habitat.</li> <li>• Detailed monitoring of SAR habitat use and characteristics.</li> <li>• Detailed plans of mitigation for SAR.</li> </ul> </li> </ul>

Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
Migratory Birds and Their Habitat	<ul style="list-style-type: none"> <li>• Information on use of the project study area by all bird species, including for breeding, feeding, migration, staging and wintering. If project has the potential to affect migratory birds or their habitats, specific surveys may be required.</li> <li>• Description of habitat to be fragmented or otherwise affected by the project. Identify proximity of any sites known to be ecologically important (e.g. Environmentally Sensitive Areas, Important Bird Areas, Areas of Natural and Scientific Interest, Migratory Bird Sanctuaries).</li> <li>• Measures to protect migratory birds and their nests.</li> <li>• Project construction activities, operation or maintenance activities such as vegetation clearing, site grubbing, construction of structures, reservoir creation and flooding, and removal / modification of any existing structures.</li> <li>• Information on habitats to be altered / removed and birds using the project site.</li> <li>• Specific surveys for breeding birds should be conducted as part of the EA in order to identify species and breeding sites.</li> </ul>	
Wetlands	<ul style="list-style-type: none"> <li>• Area and type of wetland affected, if project involves work within or adjacent to, or withdrawals from or discharges to a wetland. Identify any Provincially Significant Wetlands and any other wetlands known for ecological importance (e.g. Ramsar Convention on Wetlands sites, Ducks Unlimited sites).</li> <li>• Consideration of effects on wetland functions, including measures to avoid or reduce such effects.</li> <li>• Identify functions of all wetlands that may be affected by the project through site access, staging, construction, decommissioning and maintenance and provide mitigation or compensation measures to ensure no net loss of function.</li> </ul>	
Biodiversity	<ul style="list-style-type: none"> <li>• Ecological restoration efforts in areas adversely impacted by the project construction (including access routes, temporary storage areas, staging areas) with particular attention to important habitat areas.</li> </ul>	
Air Quality	<ul style="list-style-type: none"> <li>• Potential air quality impacts of the project during construction due to fugitive dust and other air emissions.</li> </ul>	

Type of Information	Potential Information Required for a CEAA Assessment	Potential Information Required for a Regulatory Approval under the Fisheries Act or Navigable Waters Protection Act
Climate Change	<ul style="list-style-type: none"> <li>Assessment of hydrologic potential should consider the potential impacts of climate change upon water supply and streamflow, especially for projects anticipated to have moderate to long operational life spans.</li> <li>Demonstrate that the heavy precipitation and flood design criteria, used for the design of dams, spillways and reservoir volume are robust enough to withstand the potential flood increase anticipated due to climate change over the lifetime of the project.</li> </ul>	
Transboundary Water Management	<ul style="list-style-type: none"> <li>Impacts on water levels and flows in rivers that flow along international boundaries or from Canada across the U.S. border.</li> </ul>	

## APPENDIX “E”

### List of Acronyms

CEAA	Canadian Environmental Assessment Act	kV	kilovolts
CEAR	Canadian Environmental Assessment Registry	MNR	Ministry of Natural Resources (Ontario)
CNSC	Canadian Nuclear Safety Commission	MOE	Ministry of the Environment (Ontario)
DFO	Fisheries and Oceans Canada	MOU	Memorandum of Understanding
EA Act	Ontario Environmental Assessment Act	MTO	Ministry of Transportation (Ontario)
EA	Environmental Assessment	MW	megawatts
EC	Environment Canada	NEB	National Energy Board
ESA	Endangered Species Act	NRCan	Natural Resources Canada
FA	Federal Authority	NWPA	Navigable Waters Protection Act
FEAC	Federal Environmental Assessment Coordinator	OWA	Ontario Waterpower Association
FIT	Feed-in Tariff	PC	Parks Canada Agency
GEA	Green Energy Act	PWGSC	Public Works and Government Services
HADD	harmful alteration, disruption or destruction	RA	Responsible Authority
HC	Health Canada	SARA	Species at Risk Act
IC	Industry Canada	TC	Transport Canada
IESO	Independent Electricity System Operator	The Agency	Canadian Environmental Assessment Agency
INAC	Indian and Northern Affairs Canada	TOR	Terms of Reference
IBWTA	International Boundary Waters Treaty Act	WMPs	Water Management Plans