



Joint submission on Impact Assessment Agency of Canada Consultation Paper, “One Project, One Review’: Co-operation Agreements for the Assessment of Major Projects”

October 20, 2025

Thank you for this opportunity to comment on the Impact Assessment Agency of Canada (the “Agency”) discussion paper, [*“One Project, One Review”: Co-operation Agreements for the Assessment of Major Projects*](#) (the “Discussion Paper”). We are deeply concerned that the approach proposed in the Discussion Paper would lead to a near-complete abdication of a federal role in impact assessment, particularly for projects deemed to involve “primarily provincially-regulated activities.”

The main measures – exercising the section 16 decision in favour of no IA and substitution have a high risk of leading to environmental disasters, litigation or protest.

Under the *Impact Assessment Act* (“IAA”), the federal government is conducting [fewer assessments](#) than at any time in the last half century. Last year, only one project – the Bruce C Nuclear Project – triggered an assessment. It is difficult to imagine a more impoverished federal role in impact assessment than we currently have.

We urge you to propose alternative approaches that would work best for Canadians, nature and climate, ones based in true collaboration and cooperation, sustainability, public participation and Indigenous rights.

Principles to guide cooperation

We are not opposed to the goal of ‘one project, one review.’ Duplicative processes do not work for Indigenous peoples or the public any better than for industry. However, pursuing ‘one project, one review’ cannot come at any cost. Instead, federal-provincial cooperation must be guided by substantive objectives related to sustainability, transparency, fairness and credibility. Specifically, cooperation agreements should be guided by the following principles:

1. Upholding Indigenous rights and jurisdictional authority, including by respecting and supporting Indigenous-led assessment, ensuring meaningful consultation and engagement, and co-designing processes that require the free, prior and informed consent of Indigenous peoples.
2. Ensuring opportunities for meaningful public participation, including participation that begins early, is ongoing throughout assessments, is properly facilitated through participation funding, has the ability to affect decisions, and is thoughtfully responded to.
3. Fostering sustainability through assessments that seek to enhance mutually-reinforcing benefits, minimize harms, avoid unwanted trade offs, and fairly distribute impacts and benefits.
4. Basing assessments and decisions in western and Indigenous science and knowledge through the integrated involvement of federal and provincial experts (along with Indigenous experts and knowledge holders) in order to ensure effective attention to the most important effects, particularly cumulative and integrated effects.
5. Harmonizing upward to the highest standards so that cooperation enhances rather than undermines assessment efficacy and fairness.

The “provincially-regulated project” fallacy

The Discussion Paper relies heavily on a false narrative respecting the division of powers over environmental matters. While a majority of the Supreme Court of Canada did distinguish between “activity jurisdiction” and “resource jurisdiction,”¹ the reality is that nearly all, if not all, major projects have the potential to affect federal matters. Federal jurisdiction to regulate those impacts is not extinguished by the fact of provincial jurisdiction over aspects of the project. Parliament still has regulatory authority over a mine’s impacts on fish, despite the fact

¹ *Reference re Impact Assessment Act*, 2023 SCC 23.

that mineral rights and permits for mining activities are regulated by a provincial legislature. The Supreme Court was clear that regardless of who has jurisdiction over a project's primary activities, the federal government's role respecting the federal effects is not diminished.

Moreover, who has primary "activity jurisdiction" is not always clear cut. For example, liquefied natural gas ("LNG") projects – a number of which² have been subject to substitution in British Columbia – involve considerable activities that are regulated by the federal government, such as marine ports and shipping and interprovincial pipelines.³ As a result of the clear federal involvement in both activities and effects of 'primarily provincially-regulated projects,' drawing a distinction based on jurisdiction over activities is a red herring and should not be a basis for cooperation decisions.

Substitution is not cooperation

Cooperation must be understood and communicated in its ordinary sense: the process of working together. The 2019 Canada-BC Cooperation Agreement does not specify how or to what extent federal officials will be involved in substituted BC Environmental Assessments, nor is there information about federal involvement in them on either the Agency registry or the BC Environmental Assessment Office ("EAO") website. It is therefore difficult for us to analyze – let alone for the public to know – whether any federal-provincial cooperation actually occurs in substituted assessments, and if so, when and how.

What we can say is that based on assessments conducted under the agreement to date, it appears that assessment of federal matters lacks credible and effective integration into assessment of provincial effects. For example, the final report of the Cedar LNG environmental assessment deals with the requirements of the IAA in one 42-page chapter of the 807-page report.⁴ Despite the fact that the project will impact the habitat of the marbled murrelet, a species listed as threatened under the *Species at Risk Act*, the EAO concluded that the project would not pose a high risk to it, would foster sustainability and "would only hinder Canada's ability to meet its environmental obligations to a negligible extent."⁵ In our view, these are not credible conclusions to draw when a project will harm a threatened species, and it is unclear from the report whether Environment and Climate Change Canada would have drawn the same conclusions.

² E.g., Woodfibre LNG, Cedar LNG, Tilbury Phase 2 LNG.

³ While pipelines are often considered separate projects (a form of project splitting), we take the position that the fact they are essential to the purpose and viability of LNG facilities, they should be considered to be and assessed as single projects.

⁴ Environmental Assessment Office, *Assessment Report for Cedar LNG* (16 November 2022): <https://iaac-aeic.gc.ca/050/documents/p80208/146927E.pdf>.

⁵ *Ibid* at 161, 502-03 and 508-09.

Moreover, even though the *Impact Assessment Act* imposes standards for substituted assessments, in our view these standards are not always met. For example, while the Act only allows substitutions provided that there will be opportunities to meaningfully participate in substituted assessments, British Columbia does not have a participant funding program to support public participation in environmental assessments. This lack of funding has been criticized for hindering meaningful participation.⁶

Finally, given the wide variation in environmental assessment standards and process requirements among the provinces, substitution undermines the goal of enhancing certainty through significant inconsistency in assessments across the country. Amendments made in 2023 to allow the Minister to substitute non-assessment processes and portions of assessments only exacerbate that risk.

Achieving “One Project, One Review”

The Discussion Paper (pages 3 to 6) outlines three options which will be codified in cooperation agreements with the provinces in order to implement the proposed “one project, one review” approach:

- Early Assessment Decision
- Substitution
- Substitution to a Harmonized Process

Each of these options is reviewed below. From a public interest perspective, we submit that the third option – Substitution to a Harmonized Process – is the preferable (and less problematic) mechanism for ensuring flexibility, efficiency, and accountability when meeting federal and provincial assessment requirements which are applicable to the same project. However, the Discussion Paper lacks a number of critical details about how project-specific harmonized processes will be established under the IAA and provincial assessment regimes.

(a) Early Assessment Decision

The Discussion Paper states that:

IAAC may, after the initial assessment, issue an early final decision that a comprehensive federal assessment is not required. Assurances provided under a cooperation agreement would facilitate a decision by IAAC, at this stage, to issue an early decision to

⁶ West Coast Environmental Law, “BC lags on key commitment as Environmental Assessment Act turns five years old”: <https://www.wcel.org/media-release/bc-lags-key-commitment-environmental-assessment-act-turns-five-years-old>.

rely on and defer to provincial processes as appropriate to address the federal issues identified in the initial assessment (page 4).

First, we submit that a screening decision under section 16 of the IAA that refuses to require an impact assessment for a designated project does not constitute “cooperation” per se. Instead, this backdown is better characterized as “renunciation” (or “abdication”) of federal responsibilities for information-gathering and decision-making under the IAA.

Second, when making a screening decision, the Agency is obliged to consider various factors, including “the adverse effects within federal jurisdiction — or the direct or incidental adverse effects — that may be caused by the carrying out of the designated project” (section 16(2)(b)) and “any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*” (section 16(2)(c)). As a practical matter, however, the nature, scope, likelihood, or significance of such effects may be exceptionally difficult (if not impossible) to fully and credibly determine, with a high degree of certainty, at the upfront screening stage. Accordingly, we are concerned that the screening stage may be inappropriately used to avoid impact assessments which are specifically intended to identify, evaluate, and mitigate these impacts in a robust and participatory manner.

Third, the screening decision must also consider “whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the designated project” (section 16(2)(f.1)). On this point, the Discussion Paper contends that “if the potential adverse federal effects are unlikely to be significant or are standard or well understood and key federal issues can be addressed through other means, such as provincial mechanisms (e.g., permitting and provincial assessment processes), IAAC would issue an early assessment decision that would conclude the federal impact assessment process” (page 4).

However, if adverse effects within federal jurisdiction may be caused by the project, then we submit that deferral to a provincial process may only be appropriate if the process is demonstrably capable of assessing, mitigating or avoiding such effects. Nevertheless, given section 91 of the *Constitution Act, 1867*, which assigns exclusive jurisdiction to Parliament under various heads of power (i.e. fisheries, migratory birds, Indigenous peoples, etc.), it has been our collective experience that few – if any – provincial permitting or assessment processes are sufficiently rigorous to satisfy this threshold test. Accordingly, the Discussion Paper’s suggestion that provincial processes will definitively address adverse effects within federal jurisdiction strikes us as unsubstantiated conjecture (or wishful thinking) at best.

(b) Substitution

Where a screening decision has not otherwise terminated the impact assessment process, then the Discussion Paper contemplates that federal and provincial governments will collaboratively construct a single process for the project:

When a comprehensive assessment is needed (e.g., for federal undertakings or more complex projects with significant and multidimensional federal effects), co-operation agreements will outline how federal and provincial governments will work together to ensure issues are assessed and addressed through a single process which could include substitution to the province's process or substitution to a harmonized process (page 4).

First, we are unclear what is meant by “comprehensive” assessment since that term does not appear in the IAA and is generally absent from most provincial environmental assessment regimes. We note that Ontario's *Environmental Assessment Act* does include this term, but the legislation only applies to a relatively limited set of designated projects, which may be exempted, in whole or in part, by specific designations under the *Special Economic Zones Act, 2025*.

Second, the Discussion Paper (page 5) refers to section 31(1)(a) of the IAA, which enables the Minister, upon request, to approve the use of another jurisdiction's process instead of the federal impact assessment process, provided that the Minister is of the opinion that “the process for assessing the effects of designated projects that is followed by the jurisdiction would be an appropriate substitute.” On this point, the Discussion Paper states that in order for the substitution request to be accepted, “the provincial process must address conditions set out in the IAA, including addressing the factors that would be addressed in a federal impact assessment, consulting with potentially affected Indigenous groups, providing an opportunity for the public to participate meaningfully in the assessment and involving federal experts throughout the assessment process” (page 5). We have no objection in principle to this condition precedent, but the adequacy of the provincial process must be proven, not assumed. In addition, we question whether – or to what extent – this requirement can be actually applied to most provincial assessment processes, which generally lack the procedural and substantive elements of the IAA (i.e. the extensive section 22 factors to be considered in an impact assessment).

Third, the Discussion Paper indicates that “when an assessment is substituted, the federal government would continue to have a decision-making role following the assessment, in setting conditions to address significant adverse federal effects identified through the assessment, including, where appropriate, potential accommodations” (page 5). In our view, this passage inexplicably misstates the actual federal decision-making that is legally required under the IAA

(i.e. sections 60, 61 and 62), which focuses on whether the project's adverse effects are likely significant despite mitigation measures and, if so, whether they are justified in the public interest. Similarly, the Discussion Paper's statement omits reference to the three public interest factors prescribed by section 63 of the IAA for the purposes of determining whether significant adverse effects are justified (i.e. impacts on Indigenous peoples, meeting Canada's environmental obligations and climate change commitments, and contribution to sustainability).

Fourth, the Discussion Paper states that "substitution is appropriate when a province is willing and has the mandate, authorities and resources to incorporate key federal issues into its own assessment process" (page 5). In our view, this vague comment fails to specify any meaningful standards, criteria, or benchmarks that the federal government will use to determine whether a provincial assessment process is "willing and has the mandate, authorities and resources to incorporate key federal issues." This concern is underscored by the draft (and surprisingly sparse) cooperation agreement with New Brunswick despite the relatively narrow focus of that provincial process as compared to the IAA. As discussed above, we also question whether provincial processes are, in fact and in law, fully capable of addressing exclusively federal issues in light of the constitutional division of powers in the *Constitution Act, 1867*.

Fifth, the Discussion Paper stipulates that even if substitution occurs, "the federal government and the province would still retain the responsibility to ensure that the duty to consult and, where appropriate, accommodate Indigenous groups has been fulfilled" (page 5). Similarly, the Discussion Paper states that "the Government of Canada remains committed to upholding its duty to consult with Indigenous Peoples...[which] includes respecting section 35 of the *Constitution Act, 1982*, and implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act* (page 7). We note that given judicial acceptance of the Crown's use of assessments to fulfill the duty to consult, substituting provincial assessments for federal ones could lead to situations in which federal decision makers are inadequately involved – or not involved at all – in consultations respecting federal Crown actions.

In our view, given the federal commitment to implementing UNDRIP, the standard of Free Prior and Informed Consent ("FPIC"), not just the duty to consult and accommodate, should be expressly recognized and incorporated in cooperative agreements with the provinces. Further, serious consideration should be given to establishing tripartite cooperation agreements (in the vein of the Tripartite Framework Agreement on Nature Conservation between the First Nations Leadership Council, Canada and BC) to ensure UNDRIP alignment in assessment procedures and to recognize the role of Indigenous-led assessments.

(c) Substitution to a Harmonized Process

The Discussion Paper expresses interest in using a “harmonized” federal/provincial assessment for projects which are subject to both regimes:

Substitution to a harmonized process is a new flexibility for federal-provincial co-operation, introduced in 2024 amendments to the IAA. Substitution to a harmonized process—under paragraph 31(1)(b) of the IAA—allows Canada and another jurisdiction, such as a province, to jointly develop an assessment process that meets the requirements of the IAA and a province’s legislative framework (page 5)...

Under a harmonized process, the proponent, Indigenous groups and stakeholders would experience a single review; however, parts of the assessment would be completed by the province while others would be completed by the federal government. The details of the harmonized process (e.g., process, roles, responsibilities and activities) would be established in project-level arrangements enabled by the broader co-operation agreement (page 6).

We generally support more frequent use of this procedural mechanism (including joint review panels) throughout Canada as may be appropriate when designated projects are being assessed under the IAA and provincial assessment processes. Unfortunately, the Discussion Paper fails to provide particulars about when and how “project-level arrangements” will be utilized to establish a harmonized process. Similarly, it is unclear whether there will be meaningful public and Indigenous engagement in developing these arrangements. Incredibly, this section of the Discussion Paper fails to discuss or even mention the option of establishing joint review panels.

In our view, when properly framed and sufficiently inclusive of all potential environmental effects that may be caused by a project, substitution to a single harmonized process offers an important opportunity to effectively resolve the above-noted (and often conflicting) jurisdictional constraints arising from the division of powers in the *Constitution Act, 1867*. This integrated approach also facilitates consideration of cumulative effects of project components, and should result in more efficient multi-jurisdictional assessments, particularly if Indigenous jurisdictions are included in the harmonized process (rather than merely “consulted” by federal or provincial governments). While we understand that the Indigenous Impact Assessment Co-Administrative Regulations under the IAA still remain under development, the BC *Environmental Assessment Act*, for example, already provides for Indigenous-led assessment (s 19 (4)) and for cooperative assessment agreements with Indigenous Nations (s 41(1)).

Additional Contents of Cooperation Agreements

The consultation paper's final section refers to a number of issues that "could" be dealt with in cooperation agreements. We provide comments on each of these issues below.

(a) Joint Review Panels

As noted above, this is essentially a form of substitution to a harmonized process. It is a preferred course of action because of the demonstrated effectiveness of joint review panels throughout the decades of environmental assessment in Canada, for example the joint assessment of Voisey's Bay nickel mine that was both efficient and successful in prompting durable social license for the project. Cooperation agreements "should" rather than "could" commit Canada and a province to establishing joint review panels or joint integrated review panels as the default mode of assessment for projects with overlapping assessments. As the number of projects receiving an assessment under the *IAA* continues to decrease, employing joint review panels more frequently is both possible and desirable.

(b) Conditions Development

Ensuring joint federal-provincial review of potential conditions for a designated project is an important goal for the cooperation agreements where federal departments are playing a limited and uncertain role in the earlier phases of review. While it would not help clarify the ambiguities noted above around the involvement of federal departments with expertise over key areas for federal effects – including fisheries, migratory birds and Indigenous peoples – over earlier parts of the assessment process, it would ensure they at least have input into the conditions to mitigate those effects. Conditions should be based on a strong [mitigation hierarchy](#) policy with a clear set of principles and practices required to be considered in the *IA* process and included in cooperation agreements. This serves to support both environmental outcomes and federal decision-making requirements under the *IAA*.

(c) Permitting

In principle, we support the intention "to align and integrate permitting processes and requirements into the assessment process". However, we are concerned that the limited federal role in environmental assessment envisaged in the consultation paper could imperil the ability to make fully informed permitting decisions. For example, deciding whether a permit can be issued under s. 73 of the *Species At Risk Act*, SC 2022, c 29 for an activity that affects a listed species or its habitat requires mandatory consideration of alternatives; mitigation measures; and assurance that the activity will not jeopardize its survival or recovery. These mandatory considerations are fact-based and pose a high threshold that would be difficult for a federal decision-maker to meet absent a robust evidentiary basis generated in the aligned assessment.

(d) Indigenous Consultations

While deferring to the submissions of Indigenous peoples on this aspect, we simply wish to note the importance of Canada doing all it can to ensure that the federal assessment process is a vehicle for not just consultation but the free, prior and informed consent of Indigenous peoples. For all the reasons noted in these comments we have concerns that an abdication of the federal role in assessment will take Canada further away from respecting these principles and achieving broader reconciliation goals.

Additionally, we note that the Discussion Paper is aimed only at cooperation between the federal and provincial governments and does not appear to contemplate tripartite agreements with Indigenous jurisdictions. Excluding Indigenous peoples from cooperation agreements significantly risks assessments failing to uphold Indigenous rights and continuing to apply in jurisdictional silos. We encourage the federal government to work with Indigenous peoples along with the provinces to identify ways to support and uphold Indigenous decision making authority in impact assessment.

(e) Information Sharing and Communications

Given that public opportunities for notice of, and participation in, provincial assessments is generally lower than under the *IAA* we believe this is an important aspect for cooperation agreements to include commitments on. This is supported by substitution being conditional on the opportunity for meaningful public participation and comment⁷ and the reliance on substitution the paper seems to anticipate. We expect that federal-provincial cooperation agreements will serve an expectations-management function with the relevant province, and therefore it makes sense to be up front about the need to provide for meaningful public participation in the process beyond what is typical in that province, including the provision of participant funding.

(f) Participant Funding

This would be a welcome aspect of any cooperation agreement given the general lack of participant funding in provincial assessment regimes. For example, as noted above the B.C. assessment regime lacks a participant funding program but is otherwise lauded in the consultation paper as an example of an agreement with many “benefits”. While the Canada-B.C. cooperation agreement does contain a provision about working together to “coordinate funding for participation in impact assessment,” we believe this does not go far enough and would prefer the more prescriptive notion set out in the consultation paper that goes beyond

⁷ *IAA*, s. 33(1)(e)

co-ordination to a federal-provincial commitment to “develop procedures outlining how federal funds will be distributed” (emphasis added).

Finally, the consultation paper notes that draft cooperation agreements with individual projects will be published as they become available. We believe the 30-day period for public review and input on the Canada-New Brunswick draft agreement is unreasonably compressed and gives the impression that public consultation on the agreement, sparse as it is, will not play an important role in shaping any final agreement.

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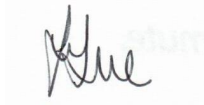
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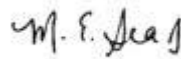
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