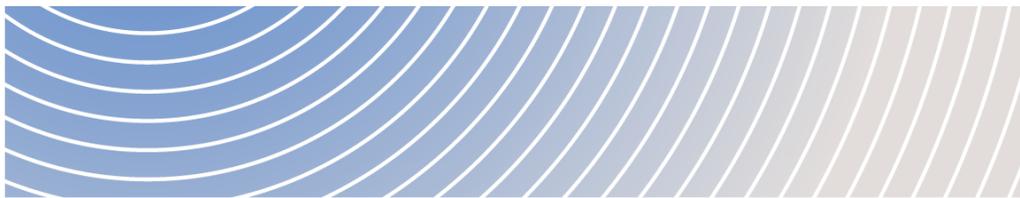


Policy context: Considering Environmental Obligations and Commitments in Respect of Climate Change under the *Impact Assessment Act*



THIS GUIDANCE IS PART OF THE PRACTITIONER'S GUIDE TO FEDERAL IMPACT ASSESSMENTS UNDER THE *IMPACT ASSESSMENT ACT*

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The [Practitioner's Guide](#) is an evergreen document. Please check back periodically, as its contents may be updated as a result of ongoing engagement and feedback received.

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1. Introduction

The [Impact Assessment Act](#) (the Act) sets out a process to enable decision-makers to:

"determine whether the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — that are indicated in the report are, in light of the factors referred to in section 63 and the extent to which those effects are significant, in the public interest"

-(Section 60(1)(a)).

The extent to which the effects of a designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change is one factor in the public interest decision.

This document provides proponents and other individuals involved in impact assessment with information on requirements and expectations for considering the extent to which the effects of a designated project would hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its climate change commitments. It also provides direction on related roles and responsibilities. Although the Act includes new obligations and commitments, many of these instruments were considered under previous environmental assessment processes. A key difference under the Act is the transparent documentation and consideration of this information in decision-making ([see figure 2](#)).

2. Policy Statement

The effects of designated projects may contribute to or hinder Canada's ability to meet its environmental obligations and its climate change commitments.

The impact assessment process will be used to determine when measures are required to mitigate adverse project effects. Improving environmental outcomes through mitigation may enable designated projects to better align with Canada's environmental obligations and climate change commitments.

The term "**environmental obligations**" refers to obligations applicable to the Government of Canada in **domestic and international law** in relation to the protection of the natural environment¹. Environmental obligations are set out domestically in federal legislation and regulations (with which compliance is a legal requirement). In international law, legally binding international instruments (e.g., conventions) to which Canada is a party can create environmental obligations.

"**Commitments in respect of climate change**" are set out in **legally binding and non-binding domestic and international instruments**. This document will use the term "instruments" to jointly refer to the various legislation, regulations, policies, targets, plans and frameworks to which Canada is a party.

2.1 Guiding Principles

1. An impact assessment should consider the key Government of Canada environmental obligations and commitments in respect of climate change that are *relevant* to the effects of the specific designated project and that could *substantively inform decision-making*. The identification of relevant obligations and commitments will occur in the [Planning Phase](#). Identification of relevant obligations and commitments will take into consideration project context including:
 - o the location of the designated project (e.g., marine or terrestrial environment, proximity to Great Lakes or international border);
 - o the potential emissions and discharges from the designated project (e.g., greenhouse gas emissions, discharges to water); and

Figure 1: Examples of environmental obligations and commitments in respect of climate change

Environmental obligations include:

- Those set by the International Joint Commission as it carries out the provisions of the Canada-US Boundary Waters Treaty which is relevant to projects that could affect Canada-US boundary waters

Climate change commitments include:

- Those set out in the International Paris Agreement and articulated domestically in the Pan-Canadian Framework on Clean Growth and Climate Change.

¹ Environment is defined in the *Impact Assessment Act* as "the components of the Earth, and includes (a) land, water and air, including all layers of the atmosphere; (b) all organic and inorganic matter and living organisms; and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b)."

- components of the environment that may be affected by the designated project (e.g., wetlands, polar bears).
2. For each designated project, the [Tailored Impact Statement Guidelines](#) will identify which specific obligations and commitments require consideration for the impact assessment of that project.
 3. The consideration of Canada's international obligations and commitments should be carried out through considering the domestic instruments developed in response to those obligations and commitments (e.g., legislation, regulation, policy, target, plan, framework), as applicable ([see figure 1](#)).
 4. Transparency is a key pillar of the *Impact Assessment Act*. Explicit consideration of the positive and adverse effects of a project, and an accounting of how these effects would affect obligations and commitments, builds public trust as part of a robust impact assessment process and contributes to informed decision-making about a project's benefits and costs. The Minister of Environment and Climate Change's Decision Statement will demonstrate that the extent to which the effects of a designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change were considered in the public interest decision.
 5. Over time, Canada may take on new obligations and commitments or modify existing ones in line with new information and emerging science, as well as evolving national and international priorities.

Figure 2: Is the consideration of environmental obligations and climate change commitments new?

- No, the assessment of environmental effects related to domestic and international environmental obligations and climate change commitments within project assessments is **not new**;
- Everyone is required to abide by Canadian legislation and regulations, such as those outlined in the [Species at Risk Act](#), and the [Canadian Environmental Protection Act](#) in the conduct of designated projects;
- The **key change** in the *Impact Assessment Act* is the **transparent analysis and reporting** of the extent to which the effects of a designated project may hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change; and
- This analysis must be considered by decision-makers and reported publicly in the Minister's decision statement.

2.2 Relevance of Strategic Assessments

Strategic assessments may be completed for any issue relevant to the conduct of an impact assessment. The first strategic assessment has been conducted on climate change and a draft report was released by Environment and Climate Change Canada. The [Strategic Assessment of Climate Change](#) will provide direction on the scope and level of information required on greenhouse gasses and climate change. This information will inform the consideration of Canada's climate change commitments under the *Impact Assessment Act*. Additional information on the Strategic Assessment of Climate Change can be found at <https://www.strategicassessmentclimatechange.ca/>.

2.3 Conducting the Impact Assessment

Consideration of environmental obligations and commitments in respect of climate change is required during various phases of the impact assessment process as set out in Table 1.

Table 1: Consideration of environmental obligations and commitments in respect of climate change during an impact assessment

Phase	Description
Planning phase	The Agency considers information from the proponent provided in the Initial and Detailed Project Description, advice from federal authorities, and comments from Indigenous groups and other participants. The Agency will identify in the Tailored Impact Statement Guidelines which international or domestic instruments contain environmental obligations or climate change commitments that require consideration in the impact assessment of a designated project.
Impact Statement phase	<p>The proponent prepares an Impact Statement, which describes the potential effects of the designated project and provides an analysis of these effects in the context of the environmental obligations and climate change instruments identified in the Tailored Impact Statement Guidelines.</p> <p>The Impact Statement is reviewed by the Agency, federal expert departments, Indigenous groups and other participants. The Agency determines whether the required information or studies outlined in the Tailored Impact Statement Guidelines have been provided by the proponent.</p>
Impact Assessment phase	<p>Federal expert departments with responsibilities and/or in possession of specialist or expert information and knowledge in relation to identified environmental obligations and climate change commitments provide advice and analysis on the extent to which the potential effects of the designated project would hinder or contribute to Canada's ability to meet the applicable environmental obligations and climate change commitments.</p> <p>The Agency or review panel prepares a report in which the findings on the extent to which the effects of the designated project would hinder or contribute to Canada's ability to meet its environmental obligations and its climate change commitments will be documented.</p>
Decision phase	<p>After taking into account the impact assessment report, the Minister of Environment and Climate Change or Governor in Council determines whether the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — that are indicated in the report are, in light of the decision-making factors and the extent to which those effects are significant, in the public interest. One of the decision-making factors is the extent to which the effects of the designated project would hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.</p> <p>After the public interest determination is made by the Minister or the Governor in Council, the Minister of Environment and Climate Change issues a decision statement, which includes reasons for the determination.</p>



2.4 Analysis

Analysis will be conducted by the Agency and relevant federal expert departments using a two step approach:

1. determining *whether* a project's effects could hinder or contribute to the Government of Canada's ability to meet an environmental obligation or climate change commitment; and
2. determining *the extent to which* these effects could hinder or contribute to the Government of Canada's ability to meet the applicable obligation or commitment.

The type and extent of analysis will depend on the project context. In some cases, a straightforward rationale describing why the project contributes to meeting climate change commitments may be needed. In other cases, a more detailed analysis may be needed. The level of analysis will depend on the specifics of predicted effects and the environmental obligation or commitment in respect of climate change under consideration.

Considerations that may inform the scope of the analysis include:

- the nature and extent of effects (e.g., whether the effects are positive or adverse; the ecological and social context including cumulative effects; and applicable criteria: magnitude, geographic extent, timing, frequency, duration, reversibility);
- indicators or mechanisms that can be used to measure the extent of effects (e.g., if specific targets for emissions have been set);
- interplay between the obligations and commitments impacted by the project's effects (e.g., effects may contribute to one obligation but hinder another);
- links to other decision-making factors (e.g., sustainability); and
- local and regional context (e.g., planning priorities, environmental sensitivities, status of protected habitat).

2.5 Mitigation Measures

Measures proposed to mitigate the adverse effects of a designated project may help limit the extent to which a project hinders the Government of Canada's ability to meet its environmental obligations or climate change commitments. The implementation of mitigation, offsets or complementary measures may also result in a designated project contributing to the Government of Canada's ability to meet its environmental obligations or its commitments in respect of climate change.

3. Roles and Responsibilities

Responsibilities of **the Agency** with respect to this policy include the following:

- **Planning phase** — Considering specialist or expert information or knowledge that federal expert departments possess and information from Indigenous groups and other participants received in the Planning phase in scoping the factors to consider and providing direction to the proponent, as part of Tailored Impact Statement Guidelines, in relation to the instruments that include environmental obligations or commitments in respect of climate change that will require consideration in the impact assessment of a designated project;
- **Impact Statement phase** — Reviewing information provided by the proponent in the Impact Statement, with consideration of specialist and expert advice or knowledge from federal authorities and comments from Indigenous groups and other participants, and requesting information or studies where required to complete the analysis; and
- **Impact Assessment phase (for impact assessments conducted by the Agency)** — Preparing a report, which includes the Agency's analysis on the extent to which the effects of a designated project would hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.

Responsibilities of a **review panel**, when an impact assessment is conducted by a review panel, with respect to this policy include:

- **Impact Statement phase** — Reviewing information provided by the proponent in the Impact Statement, with input from federal expert departments, Indigenous groups and other participants, and requesting information or studies where required to complete the analysis; and
- **Impact Assessment phase** — Preparing a report that includes the review panel's analysis on the extent to which the effects of a designated project would hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.

Responsibilities of the **proponent** of a designated project subject to an impact assessment with respect to this policy include:

- **Planning phase** — [Preparing an Initial and Detailed Project Description](#) with the required information, including an estimate of greenhouse gas emissions associated with the project in accordance with the Strategic Assessment of Climate Change, and a description of any waste and emissions (air, water and land); and
- **Impact Statement phase** — Preparing an Impact Statement, as per the requirements of the Tailored Impact Statement Guidelines, that predicts the potential effects of a designated project, provides an analysis of these effects in the context of the identified environmental obligations and commitments in respect of climate change, and proposes mitigation and follow-up measures in relation to potential effects. The Impact Statement may, if the proponent wishes, also present the proponent's views on the extent to which project effects would hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change, taking into consideration proposed mitigation measures.



Responsibilities of **federal expert departments** with respect to this policy include:

- Providing specialist or expert information or knowledge that federal expert departments possess to the Agency or review panel in relation to:
 - which environmental obligations or commitments with respect to climate change would merit consideration in the impact assessment of a designated project, and are relevant to decision-making, for inclusion in the Tailored Impact Statement Guidelines;
 - the Impact Statement, including whether the analysis is complete and technically sound and/or if information or studies are sufficient;
 - analysis and advice on the extent to which the effects of a designated project would hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change; and
 - analysis and advice regarding possible mitigation measures, complementary measures, and elements of follow-up programs with respect to environmental obligations or commitments related to climate change.