

July 20th, 2016

WWF-Canada Submission

on the

Terms of Reference for the Canadian Environmental Assessment Process

Elizabeth Hendriks, Vice President Freshwater – ehendriks@wwfcanada.org

**Mary MacDonald, Senior Vice President and Chief Conservation Officer –
mmacdonald@wwfcanada.org**

Overview

WWF-Canada is encouraged by the Government of Canada's initiative to review the environmental assessment process. We are supportive of the Minister's top priority, to "immediately review Canada's environmental assessment process to regain public trust". WWF-Canada also believes that this is an opportunity to put in place an Environmental Assessment Act that not only reverses the roll-back of protections lost in 2012 but goes further to provide the robust oversight required for the sustainable management of Canada's natural capital – our natural resources.

The Panel will establish a Multi-Interest Advisory Committee and WWF-Canada would like to offer our expertise towards this committee. WWF-Canada is one of Canada's oldest and largest national science-based conservation organizations and is in a position to provide advice around science-based decision making, monitoring, and ensuring healthy habitat and biodiversity.

The Draft Terms of Reference

The five questions posed in the Scope of Review and the context provided in the paragraph that follows appear to enable the Panel to receive and consider comment on a broad range of issues with current EA processes. This will provide many opportunities to identify opportunities for improvement. It is our interpretation and understanding of the Scope of the Review that all of the matters we might choose to raise with the Panel listed immediately below would fall within the Scope of the Review. WWF-Canada believes this allows the Panel to receive and comment on a broad range of issues. **Explicit confirmation by the Minister regarding the broad boundaries of the TOR will ensure that the panel would not read their mandate narrowly.**

As a broad interpretation of the Scope of the Review, we believe the following are acceptable topics for submissions to the Panel because they fall within the Scope of the Review.

Among the issues to address are:

- Reconciling the disparate tasks of CEAA panels, which are required to:
 - review evidence-based technical environmental assessments of residual impacts, and
 - decide whether projects are advisable (which requires value judgements and context beyond the technical findings of the EA.)
- The question of whether panels of energy regulator board members (the NEB and CNSC) are able to make such value judgements in a manner that serves the public.
- Providing clarity to the public about the extent to which panels are intended to be a vehicle for public consultation on matters of values. (i.e. Can review panels deal with expressions of public concern or opposition based on preferred alternatives or are these matters regarded as extraneous to the technical review of evidence?)
- Providing clarity to the public regarding the appropriate avenue for expressions of concern, if such matters are not properly the concern of EA panels.
- Providing clarity as to the role of EA panels vs the government in enabling First Nations participation in reviews vs the constitutional requirement for consultation.
- Placing the onus on applicants to propose well-thought-out and sustainable projects.
- Providing guidance to panels on the magnitude of deficiencies they should and should not attempt to overcome with conditions.
- Providing guidance to panels to deal with inadequate evidence or evidence lacking credibility on critical matters.
- Asserting the need – established in administrative tribunal good practice – to provide reasons for findings as the absolute minimum standard required to ensure public acceptance of the fairness of the review process.
- Government initiatives to improve the assessment of cumulative effects in the context of project reviews. The panel is well suited to comment on the need to improve the federal government's role in providing regional data suitable to cumulative effects assessments (see below).
- Guidance for panels (both the CEAA and NEB reviews) concerning the assessment of the significance of project GHG emissions in the context of Canada's framework for carbon reduction.
- Guidance on how to assess the significance of adverse ecological effects in the context of preparations (adequate or not) to conserve ecological resources.
- Provide clarity regarding the responsibilities of government departments in monitoring compliance with approval conditions. Assurances that compliance with approval

conditions is monitored and enforced is an essential requirement for public trust in the system.

- clarity as to the consequences for the status of approvals of projects that are out of compliance with time-limited conditions.

Each of these topics might suggest improvements to the EA legislation.

Monitoring, Science, and Evidence-Based Decision-making

The quality of environmental assessments in Canada is limited by the lack of access to data. To improve the quality of environmental assessments and enable informed public participation, and a broader knowledge base on natural resources. Canada must do more to collect public data and make it available and accessible. WWF - Canada is conducting the first ever assessment of the health of, and threats to Canada's freshwater. To date, we have assessed 75% of the major watersheds and discovered that 10 of 19 of these watersheds do not have the required availability or accessibility of data to assess the health¹.

Monitoring, data accessibility, and availability are currently not addressed in the EA legislation. However, countless studies are done through the Environmental impact assessment process and invaluable raw data is produced. This data is held by consultants and proponents, unavailable to the public. The objective of establishing a trusted evidence-based decision making process cannot be achieved without availability and access to data collected on behalf of the Canadian Government for Canadians. Project-specific data gathered in support of proposed projects is a further source of information that could be of great value in assessments such as our watershed health assessment, other project reviews and the management of public resources. Too often, the raw data are regarded as proprietary and therefore unavailable for these uses.

The enormous uncertainties that attend some environmental assessments will not be addressed unless Canada's environmental assessment process is supported by public access to improved federal government environmental monitoring.

¹ <http://watershedreports.wwf.ca/#canada/by/health-overall/health>

The Terms of Reference should be broad enough to allow the Panel to hear evidence about the impact of data availability and accessibility on EA reviews and what the federal government can do to improve it.

Valued Components (VCs)

Historically proponents, via their consultants, have determined which VCs will be studied for any given project. These VCs are then wrapped into a Draft Application Information Requirements (dAIR) documents and sent to Government for approval. A fundamental flaw in this process is that the current capacity and experience of the Government agents reviewing the dAIR are the limitation to the rigour of the EA. For example, several pipeline projects in British Columbia were allowed to proceed without freshwater as a defined VC.

WWF-Canada would like to see included in the terms of reference a review of required valued components. What elements should be assessed and monitored by all EAs –without exception? (e.g impacts on Water, Wildlife, First Nations and Climate Change).

The TOR should ensure that a review of transparency in the public review period is assessed and options like projects should be publicized the moment any license or permit is issued to a proponent be considered.

Northern EAs; Southern EAs

Northern environmental assessment processes with their unique requirements have been scoped out of the current review and a review of EA needs in that context will be undertaken under the guidance of the Minister of Aboriginal and Northern Affairs. This limitation of the current review does not pose a problem in our view so long as the salient findings of this panel are commended to the process dealing with northern EAs. There are unique features of northern EAs, but some features of EA practice should be across the board in the country.

Technologies are But One Design Choice

The one question included in the Scope of Review that WWF-Canada finds unduly restrictive is:

- 4 How to require project advocates to choose the best technologies available to reduce environmental impacts?*

Requiring the best technologies to limit adverse environmental impacts is important. Yet, other project design decisions, notably project siting, can have consequences at least as significant and indeed may determine whether *any* technologies can mitigate the adverse impacts. A

suggestion to ensure we encompass a broader range of careful and thoughtful design would be:

- 4 How to require project advocates to **design and site their projects, and choose the best technologies available to reduce environmental impacts?***

The very best way to expedite project reviews is to begin with thoughtfully-designed projects.

Conclusion

WWF-Canada, is encouraged to see the Government of Canada making efforts to address faulty legislation. There is a critical opportunity here to ensure that nature and communities thrive and to do that we need policy that reflect Canadian values. Again, we would like to offer our expertise towards the Multi-Interest Advisory Committee and with that, we wish the panel success in its enterprise and look forward to contributing to improving the EA process in Canada.