



Environmental
Assessment Office

Substituted EAs – Guidance for Requirements under CEAA 2012 Paragraph 5(1)(c)

*Effects of Changes in the Environment on Aboriginal
Peoples*

November 2015



TABLE OF CONTENTS

Table of Contents.....	2
1.0 Direction: Addressing CEAA 2012 Paragraph 5(1)(c).....	4
2.0 Additional Details.....	6
3.0 Determination of Significance Required for Paragraph 5(1)(c).....	7

Direction for Proponents of Projects Undergoing a Substituted Environmental Assessment on Addressing CEAA 2012

Paragraph 5(1)(c): Effects of Changes in the Environment on Aboriginal Peoples

Disclaimer: This document is for information purposes only. It is not a substitute for the Canadian Environmental Assessment Act, 2012 (CEAA 2012), its regulations, or any associated policy or guidance documents. In the event of an inconsistency between this document and CEAA 2012, its regulations, or any associated policy or guidance document, CEAA 2012, its regulations, or the associated policy or guidance document would prevail. For the most up-to-date versions of CEAA 2012 and regulations, please consult the federal [Department of Justice website](#). For the most up-to-date version of associated policy or guidance documents, please consult the [Canadian Environmental Assessment Agency's website](#).

This document has been prepared by the Environmental Assessment Office (EAO) to provide direction to assist proponents whose projects are undergoing a substituted environmental assessment (EA) on addressing paragraph 5(1)(c) of CEAA 2012.

As a general principle, proponents should ensure that documentation throughout the EA (i.e., Valued Components [VCs], Application Information Requirements [AIR], the Application and Aboriginal Consultation Plans and Aboriginal Consultation Reports) clearly indicates how the factors under subsection 19(1) of CEAA 2012 for environmental effects as defined in paragraph 5(1)(c) of CEAA 2012 have been addressed in the EA.

1.0 DIRECTION: ADDRESSING CEAA 2012 PARAGRAPH 5(1)(C)

Paragraph 5(1)(c) reads as follows:

5. (1) For the purposes of this Act, the environmental effects that are to be taken into account in relation to an act or thing, a physical activity, a designated project or a project are

(c) with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on

- (i) health and socio-economic conditions,
- (ii) physical and cultural heritage,
- (iii) the current use of lands and resources for traditional purposes, or
- (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

EAO requires that all CEAA 2012 requirements under subsection 19(1) for assessing environmental effects (e.g., the environmental effects of accidents and malfunctions, cumulative environmental effects, significance of effects, mitigation measures), including paragraph 5(1)(c) effects, be addressed in a dedicated chapter (titled “Summary of Statutory Requirements under CEAA 2012”) in Part B of the AIR and the Application.

The potential effects assessment for the purposes of paragraph 5(1)(c) environmental effects, including current use of land and resources, is separate from the assessment of the potential effects on aboriginal rights and interests, which is summarized in Part C of the Application.

VCs, indicators, and any relevant analysis presented in the assessment of impacts to Aboriginal people related to paragraph 5(1)(c) (e.g., fishing, hunting, trapping, cultural practices, socio-economic conditions, or health conditions), must be considered on an individual basis for each Aboriginal Group identified in any Schedule of the s.11 order, regardless of depth of consultation.

However, where the effect is the same for multiple Aboriginal Groups (e.g., for the assessment of environmental effects to health and socio-economic conditions), then the discussion can be aggregated, provided the rationale is well documented.

The Summary of Statutory Requirements under CEAA 2012 chapter must also include:

- A description and rationale supporting the selection of the spatial and temporal boundaries, as well as the significance factors that are applied for the assessment of the paragraph 5(1)(c) environmental effects.
- An identification of the paragraph 5(1)(c) environmental effects that may occur as a result of changes to the environment caused by the project.
- Any mitigation measures, including those that reduce biophysical effects and any additional mitigation measures specific to paragraph 5(1)(c) environmental effects.
- An assessment of the significance of any paragraph 5(1)(c) environmental effects after taking into account the implementation of mitigation measures.
- An assessment of any cumulative environmental effects for paragraph 5(1)(c) environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out.
- Any follow-up programs proposed to address paragraph 5(1)(c) environmental effects.
- A statement articulating the proponent's views on whether potential paragraph 5(1)(c) environmental effects have been adequately mitigated.
- A report on the views of Aboriginal Groups with respect to paragraph 5(1)(c) environmental effects and the effectiveness of the mitigation measures at reducing those effects as provided to the proponent.

See the draft [Example Chart for Assessing Paragraph 5\(1\)\(c\) Effects](#) for further details regarding key steps in the assessment process for environmental effects described in paragraph 5(1)(c) of CEAA 2012.

In general, the analysis of paragraph 5(1)(c) environmental effects can be captured as part of EAO's standard five-pillar assessment. For example:

- Health and socio-economic conditions of Aboriginal people could be discussed as sub-components of the appropriate economic, social, and health VCs in Part B.
- Current use of lands and resources for traditional purposes should be addressed either as a separate VC or within other VCs (e.g. land and resource use) in Part B. If current use is a sub-component of another VC, all relevant 19(1) factors must be assessed for the sub-component (separately for each Aboriginal Group and activity). The assessment will likely be closely tied to the assessment of biophysical VCs upon which many of these land and resource use activities rely (i.e., changes to the biophysical VCs will be the change to the environment that impact current use or health). The biophysical VC information therefore supports the assessment of the current use of resources.
- This analysis of the current use for traditional purposes should be included in the relevant VC and under a "current use of lands and resources for traditional purposes" subheading in the Summary of Statutory Requirements under CEAA 2012 chapter in the AIR and Application.

The AIR and Application will need to **clearly state** how the subsection 19(1) requirements will be/have been met, including the specific indicators that have been identified for the assessment of each of the relevant sub-paragraphs of 5(1)(c) and, in the case of the Application, the proposed mitigation measures to reduce any section 5 effects and any proposed follow-up programs. The AIR will require that a table, listing the section 5 effects and proposed mitigation measures, be submitted with the Application.

Proponents should draw a clear line of sight from the relevant VC assessments to the Summary of Statutory Requirements under CEAA 2012 chapter in the Application. When the discussions in that chapter rely on references to VC analysis in other sections of the Application, it is important that the source information be organized in a manner that allows for clear linkages between the analysis and the CEAA 2012 summary.

Proponents may also include an Appendix in their Application in table form which summarizes how all subsection 19(1) factors have been considered in the Application. A sample summary table is contained in the AIR template to assist proponents in creating this summary.

Alternatively, the proponent may summarize the other subsection 19(1) factors (for example, alternative means) in the Summary of Statutory Requirements under CEAA 2012 chapter, referencing other sections in the Application as necessary.

2.0 ADDITIONAL DETAILS

If any paragraph 5(1)(c) environmental effects are identified, it is important that the Summary of Statutory Requirements under CEAA 2012 chapter explicitly identify the underlying change to the environment described in the biophysical assessment that results in the effect to Aboriginal peoples as part of paragraph 5(1)(c). For example, if there is a current use impact related to Aboriginal fishing, impacts to trout might be the environmental effect from which the current use effect is derived. Sufficient background information on Aboriginal activities and use, and an appropriate analysis of the effects to the **use** of those biophysical resources, must also be presented. Where there is limited or absent information, adequate documentation of the efforts undertaken to understand Aboriginal use of biophysical resources must be provided in the Application.

3.0 DETERMINATION OF SIGNIFICANCE REQUIRED FOR PARAGRAPH 5(1)(C)

The proponent must make a significance determination on environmental effects related to paragraph 5(1)(c). The assessment should be consistent with EAO's [Valued Components Guidelines](#). EAO recognizes that the methodology may not be appropriate in all circumstances. As such, the proponent can present proposals for alternate approaches and justification for those approaches to the Project Lead. A rationale must be provided for undertaking a qualitative rather than quantitative assessment of effects. See above for requirements if insufficient information is available to undertake a quantitative assessment.

This assessment is different from assessing the severity of potential impact on Aboriginal rights. It is recognized that there is potential for overlap in impact of environmental change on Aboriginal Groups (i.e. their current use of a resource) and the impact of the project on the asserted or proven right to use that resource in a specific territory, but it is important to keep the discussions separate with references to that overlap as appropriate.

The proponents must also provide a conclusion in the Application on the adequacy of mitigation measures related to the paragraph 5(1)(c) effects.

Note: EAO will use the proponents' determination of significance and conclusion on the adequacy of mitigation measures to make its own determination on the significance of any paragraph 5(1)(c) effects in its Assessment Report.

EAO does not require proponents to make a significance determination regarding impacts related to Aboriginal rights.

EXAMPLE TABLE: The table below provides an example of how sub-paragraph 5(1)(c)(iii) (Current Use) effects can be characterized for **each Aboriginal Group**.

Project Effect	Phase of Project	Criteria for Determining Significance						Analysis	Likelihood	
		Magnitude	Extent	Duration	Frequency	Reversibility	Context	Significance	Probability	Confidence
Harvesting of mountain goat: restricted access, noise disturbance and functional habitat loss in Mine Site Area.	C,O	L	LO	L	C	RLT	H	NSMI	M	M
Subsistence: restricted access to subsistence areas in the Processing and Tailings Management Area.	C,O,CL,PC	L	LA	M	C	RLT	N	NSMI	H	M
Trapping: restricted access to trap lines 617T015 and 617T011 in the Processing and Tailings Management Area.	C,O,CL,PC	H	LO	FF	C	IR	N	NSMO	H	H
Fishing practices: fish resources diminished downstream of Processing and Tailings Management Area from reduction in water quality.	C,O,CL,PC	L	LA	L	C	RLT	H	NSMI	M	M
Harvesting of moose: increased traffic along Highway 37/37A.	C,O,CL	M	R	FF	S	RLT	H	NSMO	M	L

Magnitude

Refers to the severity of the adverse impact.

- N** Negligible: There is no detectable change from baseline conditions.
- L** Low: The magnitude of the effect differs from the average value for baseline conditions, but the activity could be practiced in the same or similar manner as before.
- M** Medium: The magnitude of the effect differs from the average value for baseline conditions and preferred options for practicing the activity may be lost or modified.
- H** High: the magnitude of the effect differs from baseline conditions and the activity may be impacted over a broad area or no longer practiced.

Geographic Extent

Refers to the area that the adverse impact may cover.

- LO** Local: Effect is limited to the immediate Project footprint.
- LA** Landscape: Effect extends beyond the footprint to a broader watershed area.
- R** Regional: Effect extends across the Regional Study Area.
- BR** Beyond Regional: Effect extends possibly across or beyond the province.

Duration

Refers to the length of time an adverse impact may occur.

- S** Short-term: Effect lasts approximately 1 year or less.
- M** Medium-term: Effect lasts between 1-11 years.
- L** Long-term: Effect lasts between 12-70 years.
- FF** Far Future: Effect lasts more than 70 years.