



Environmental
Assessment Office

Substituted EAs - Guidance for Requirements of CEAA Paragraphs 5(1)(a), 5(1)(b), 5(2)(a), and 5(2)(b)

Fish & Fish Habitat; Aquatic Species; Migratory Birds; Federal &
Transboundary Lands; Federal Authorizations

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Direction for Proponents for Projects Undergoing a Substituted Environmental Assessment: Meeting Statutory Requirements under CEAA 2012: Environmental Effects in Federal Jurisdiction, on Federal Lands, Transboundary Lands, or Resulting from Federal Authorizations

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 any associated policy or guidance documents, please consult the [Canadian Environmental Assessment Agency's website](#).

Introduction

The Memorandum of Understanding (MOU) between the Canadian Environmental Assessment Agency (the Agency) and the British Columbia Environmental Assessment Office (EAO) on Substitution of Environmental Assessments (2013) establishes the framework through which the environmental assessments which normally led by the Agency are substituted by that of the British Columbia EA. The MOU requires, through the consideration of factors set out in section 19(1) of CEAA 2012, an assessment of potential environmental effects in areas of federal jurisdiction, including the effect of changes to the environment on Aboriginal peoples, potential environmental effects resulting from federal authorizations, and the effect of changes to the environment from federal authorizations on the public (described in subsections 5(1) and 5(2) of CEAA 2012).

Documentation throughout the substituted environmental assessment (EA) (i.e., Valued Components [VCs] Selection Document, Application Information Requirements [AIR], the Application and the Assessment Report) must clearly indicate how the statutory requirements of subsections 5(1) and 5(2) have been met. The AIR template has been modified to ensure dedicated sections for reporting and summarizing CEAA 2012 requirements. Proponents should have discussions with their EAO project leads on best approaches and information presentation for the above listed documents.

This document provides an overview of paragraphs 5(1)(a), 5(1)(b) and subsection 5(2) only. A detailed discussion and approach to assessing the effects of any changes to the environment on Aboriginal peoples is available in the document **Meeting Statutory Requirements under CEAA 2012 Paragraph 5(1)(c): Aboriginal Peoples**.

CEAA 2012 Paragraph 5(1)(A) – Fish & Fish Habitat, Aquatic Species & Migratory Birds

Paragraph 5(1)(a) 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

(a) a change that may be caused to the following components of the environment that are within the legislative authority of Parliament:

- (i) fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act*,
- (ii) aquatic species as defined in subsection 2(1) of the *Species at Risk Act*,
- (iii) migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and
- (iv) any other component of the environment that is set out in Schedule 2.

The following definitions apply to paragraph 5(1)(a):

i) Fish as defined under section 2 of the *Fisheries Act*:

“Fish” includes

- (a) parts of fish,
- (b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
- (c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals,

(i) Fish habitat as defined under section 34 of the *Fisheries Act*:

“Fish habitat” means 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.

(ii) Aquatic species as defined in subsection 2(1) of the *Species at Risk Act*:

“Aquatic species” means a wildlife species that is a fish, as defined in section 2 of the *Fisheries Act*, or a marine plant, as defined in section 47 of that Act.

Section 47 of the *Fisheries Act*

“Marine plant” includes all benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton.

(iii) Migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act*:

“Migratory bird” means a migratory bird referred to in the Convention, and includes the sperm, eggs, embryos, tissue cultures and parts of the bird.

Selection of VCs for the purpose of the EA should follow the guidelines set out in the EAO’s VCs Selection Document and be assessed according to the methodologies applicable to other VCs in the environmental effects pillar.

VCs may be identified at a broad level (e.g., Aquatic Resources) or at a more specific level (e.g., Pacific Herring). The consideration of the effects of the proposed project will generally involve an examination of the VC and the potential effects of the project to the VC. It should be clearly defined how the VCs selected will ensure that potential effects to all aspects of paragraph 5(1)(a) are taken into account. At a minimum, key indicators should be selected and evaluated based on the specific component of the environment (e.g., based on the location of the project, a VC for “water birds” could include an assessment of the potential impacts to Ring-Necked Duck] as a key indicator, to assess effects under 5(1)(a)(iii) – migratory birds).

Practice Note: A significance determination must still be provided for each aspect of section 5 of CEAA 2012.

The factors considered in determining significance, the definitions of those factors (e.g., magnitude) and their associated outcomes (e.g., low, moderate or high), the proposed mitigation measures, the conclusions of the effects assessment (e.g., significance and likelihood), and any cumulative effects assessment conducted for these VCs will be carried forward to Chapter 11 of the Application: Summary of Statutory Requirements under CEAA 2012.

CEAA 2012 Paragraph 5(1)(b): Federal Lands & Transboundary Lands

Paragraph 5(1)(b) 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
- (b) a change that may be caused to the environment that would occur
 - (i) on federal lands,
 - (ii) in a province other than the one in which the act or thing is done or where the physical activity, the designated project or the project is being carried out, or
 - (iii) outside Canada.

Federal Lands

Federal lands in the paragraph above are defined as:

- (a) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands under the administration and control of the Commissioner of Yukon, the Northwest Territories or Nunavut;
- (b) the following lands and areas:
 - (i) the internal waters of Canada, in any area of the sea not within a province,
 - (ii) the territorial sea of Canada, in any area of the sea not within a province,
 - (iii) the exclusive economic zone of Canada, and
 - (iv) the continental shelf of Canada; and
- (c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the *Indian Act*, and all waters on and airspace above those reserves or lands.

Paragraph 5(1)(b) uses the definition of “environment” found in CEAA 2012:

“*Environment*” means 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).

The proponent must assess any potential changes to the environment on federal lands or transboundary lands, if federal lands or lands in another province or country are affected by a proposed project. This assessment is not limited to the environmental effects defined under paragraph 5(1)(a) of CEAA 2012 (fish & fish habitat, aquatic species and migratory birds), but is rather one that considers all potential effects (including, health, social, economic and heritage).

When assessing the effects on a VC within an area that includes federal land, the proponent will provide a summary of the effect to each VC that is present on federal lands (i.e. VCs with study areas that overlap the federal lands). The proponent will describe the relative level of residual effects on the federal lands based on the VCs present on those lands. A qualitative discussion can be provided where a quantitative assessment is not feasible.

If a water or land lease is required to place project components on federal waters or lands, then the effects are considered under subsection 5(2) of CEAA 2012 (section on paragraphs 5(2)(a) and (b) below).

Transboundary Lands

Proponents should also consider any effects across provincial and international boundaries, and describe the residual effects to each applicable VC at the boundary. For example, potential cross-boundary effects could include noise (including underwater noise), air quality, and water quality or quantity effects. A qualitative discussion can be provided where a quantitative assessment is not feasible.

The factors considered in determining significance, the definitions of those factors (e.g. magnitude) and their associated outcomes (e.g. low, moderate, or high), the proposed mitigation measures, the conclusions of the effects assessment (e.g. significance and likelihood), and any cumulative effects assessment conducted for these VCs will be carried forward to Chapter 11 of the Application: Summary of Statutory Requirements under CEAA 2012.

CEAA 2012 Paragraphs 5(2)(a) and (b): Federal Authorizations

Subsection 5(2) reads as follows:

5. (2) However, if the carrying out of the physical activity, the designated project or the project requires a federal authority to exercise a power or perform a duty or function conferred on it under any Act of Parliament other than this Act, the following environmental effects are also to be taken into account:
- (a) a change, other than those referred to in paragraphs (1)(a) and (b), that may be caused to the environment and that is directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of the physical activity, the designated project or the project; and
 - (b) an effect, other than those referred to in paragraph (1)(c), of any change referred to in paragraph (a) on
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage, or
 - (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

Where a federal authority's exercise of a power or performance of a duty or function is required, and it results in an environmental disturbance beyond those effects outlined in subsection 5(1), then an assessment in accordance with subsection 5(2) is required.

Suggested Approach

In the Project Description that is submitted to the BC EAO and the Agency, the proponent must list any anticipated federal authorizations that may be required for the Project and describe the project activities and components that would be subject to the authorization. For each federal authorization, the proponent should consider the changes to the environment that would be directly linked or necessarily incidental to the federal decision. (Activities that are directly linked to federal decisions also include any offsets, mitigations, and compensation plans, etc. that are required in relation to an authorization or permit, for example.) As with paragraph 5(1)(b), the environment is defined broadly and thus the assessment should consider the potential for a wider range of environmental effects. It is not limited to fish and fish habitat, aquatic species and migratory birds.

The proponent must also assess the effect of those changes to the environment from federal authorizations on:

- the public's health and socio-economic conditions;
- physical and cultural heritage; and
- structures, sites or things of historical, archaeological, paleontological or architectural significance.

This assessment may include a consideration of effects on non-Aboriginal hunting, recreational and commercial fishing, changes to the use of waterways, or the functioning and health of the socio-economic environment, for example.

Practice Note: The above activities and components are separate from those assessed for Aboriginal people under paragraph 5(1)(c) of CEAA 2012.

The proponent must then determine if there are VCs that are not already captured in paragraphs 5(1)(a) or 5(1)(b) that require an effects assessment. Baseline information must be collected for these VCs over an appropriate geographic and time scale, where there is a project component or activity that requires a federal authorization.

The factors considered in determining significance, the definitions of those factors (e.g. magnitude) and their associated outcomes (e.g. low, moderate, or high), the proposed mitigation measures, the conclusions of the effects assessment (e.g. significance and likelihood), and any cumulative effects assessment conducted for these VCs will be carried forward to Chapter 11 of the Application: Summary of Statutory Requirements under CEAA 2012.

Relevant Authorizations

While the list below is not exhaustive, it provides some examples which may be useful to proponents.

Federal Authority: Transport Canada

Navigation Protection Act

- E.g. *Navigation Protection Act* section 24 Governor in Council exemption for the disposal of tailings into navigable waters.

Federal Authority: Canada Port Authority

Water Lease

- E.g. waters owned by the Government of Canada and leased to a project proponent for a proposed project: All changes to the environment resulting from project components or activities on waters leased from the Government of Canada must be described and assessed.

Federal Authority: Fisheries and Oceans Canada

Fisheries Act

- E.g. *Fisheries Act* subsection 35(2) authorization: The environmental effects of both the serious harm and any associated habitat compensation or creation must be considered.

Federal Authority: Environment Canada

Canadian Environmental Protection Act, 1999 (CEPA 1999)

- E.g. CEPA 1999 Disposal at Sea Permit: This permits the handling, storing, loading, and disposal of materials at the disposal site.

Metal Mining Effluent Regulations

- E.g. Schedule 2 Amendment: This permits the deposition of waste rock or an effluent that contains any concentration of a deleterious substance and that is of any pH into fish bearing waters.

Example

Example of an Assessment of Subsection 5(2) Effects from a subsection 35(2) *Fisheries Act* authorization.

Context: The Project is a mine that requires a subsection 35(2) *Fisheries Act* authorization.

Authorized Activity: The authorization allows the proponent to divert a river, for which the proponent will create a compensation lake.

Changes to the environment from the authorization: The river is re-routed through an old-growth forest, and the compensation lake removes peatland and old-growth forest. There is potential habitat loss for wood turtle, marten, otter and migratory birds such as olive-sided flycatcher as a result of the removal of forest and peatland.

Determine VCs for 5(2): Since migratory birds are already covered in section 5(1), and marten were determined to be a species of Aboriginal importance and assessed for paragraph 5(1)(c), then only wood turtle, otter, old-growth forest or peatland should be considered as potential VCs. This particular species of turtle is a species at risk under the federal *Species at Risk Act*. Otters are common species and considered overly abundant in the area. It is widely known that peatland and old-growth forest are important habitats for many species and the public is very concerned about the loss of these habitats. The river diversion would be in an area where there is a known recreational fishing and camping area used by the local community.

Therefore, it is determined that the added VCs for assessment as a result of the 5(2) federal authorization should be:

- wood turtle,
- old-growth forest,
- peatland, and
- public recreation.

Effects assessment and significance determination: The effects assessment uses the same criteria as the assessment for 5(1)(a) effects, with magnitude, geographic extent, duration, frequency, reversibility and context based on only the project components and activities related to the federal authorization.

The proponent must determine if the effects to these VCs are significant, taking into account the proposed mitigation measures. The results of the effects assessment and any cumulative effects assessment conducted for these VCs must be documented.