



ALBERTA WILDERNESS ASSOCIATION

*"Defending Wild Alberta through Awareness and Action"*

December 16, 2016

The Honourable Catherine McKenna  
Minister of Environment and Climate Change  
[ec.ministre-minister.ec@canada.ca](mailto:ec.ministre-minister.ec@canada.ca)

### Canadian Environmental Assessment Act Review

Dear Minister McKenna,

Alberta Wilderness Association (AWA) appreciates the opportunity to contribute to the review of changes to the *Canadian Environmental Assessment Act*.

AWA works throughout Alberta towards more representative and connected protection of the unique and vital landscapes that are the source of our clean water, clean air, and wildlife habitat. We have been working in Alberta for more than fifty years to raise the profile of Alberta's spectacular wilderness. With over 7,000 members and supporters in Alberta and across Canada, AWA remains committed to ensuring protection of wildlife and wild places in Alberta for all Canadians.

As you are aware, in 2012 Bill C-38 made several substantive changes to the *Canadian Environmental Assessment Act*. This, coupled with substantive budget cuts to the Canadian Environmental Assessment Agency, has resulted in thousands fewer Environmental Assessments per year. AWA is supportive of your mandate to review Canada's environmental assessment processes in a manner that ensures decisions are based on science, facts, and evidence, and serve the public's interest.

### Recommendations

1. **Purpose:** The purpose of environmental assessments should be not only to determine whether projects will have significant adverse environmental effects, but also to ensure they are sustainable and provide net social and environmental benefits. AWA supports Sustainability Assessments as proposed by Gibson, Meinhard and Sinclair.<sup>1</sup> This would improve environmental assessments from being primarily an information gathering process, to helping drive decisions in a manner that focuses on sustainability as a core objective.<sup>2</sup>

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<sup>1</sup> Gibson, R.B., Meinhard, D., and A.J. Sinclair. 2015. Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment. *Journal of Environmental Law & Practice*, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=2670009>

<sup>2</sup> West Coast Environmental Law. 2016. Twelve Pillars of a Next-Generation Environmental Assessment Regime: Federal Environmental Assessment Reform Summit.

2. **Multi-Jurisdictional:** A new Act must reflect the broad constitutional jurisdiction of the Federal Government. Provincial substitution of environmental assessments is *not* appropriate because of important distinct federal responsibilities, and harmonization should be used instead. When used properly, harmonization of environmental assessments results in inter-jurisdictional co-operation leading to one comprehensive EA process, providing the basis for responsible decision making at all levels of government.
3. **Scope:** The scope of what is considered in environmental assessments must be expanded in order to incorporate sustainability as a core objective. This will require proper consideration of cumulative effects.<sup>3</sup> The current definition of “environmental effects” is far too narrow; this definition must be comprehensive and include all changes that may occur to the environment (land, water, air and the species residing within them).
4. **Triggers:** Current, only those projects on a limited list "Regulations Designating Physical Activities (RDPA)" or designated by the Minister of Environment on a discretionary basis may be subject to federal environmental assessment. This neglects consideration of the fact that projects, regardless of size, have directly or indirectly contributed to the cumulative degradation of the environment. Coupled with little to no constraint on Ministerial discretionary authority and lack of public disclosure, these measures have seriously undermined the validity and public trust in the process.

The new environment assessment process should restore the CEAA 1992 "in unless out" approach, coupled with regional and strategic assessments to trigger assessments to determine and limit cumulative effects of projects on the environment. We believe that environmental assessments should also include activities, projects, and programs such as budgets and policies. Additionally, environmental assessments must be mandatory for any proposed project in federal terrestrial or marine protected areas, habitat for species at risk and internationally recognized natural areas. Discretionary measures must be limited, and decisions on whether an assessment is required must meet explicit criteria and be open to public review and appeal.

5. **Strategic Environmental Assessments:** It will be essential to incorporate comprehensive strategic environmental assessments in the decision making process. These assessments evaluate whether proposed activities, projects and plans meet the sustainability goals expressed in broad commitments and policies such as land use plans, species at risk recovery strategies, and international agreements such as the *Migratory Birds Act*, UNDRIP, and the Paris Agreement<sup>4</sup>.
6. **Cumulative Effects:** Cumulative effects have played a major role in driving species declines, degrading water quality and quantity, and fragmenting landscapes throughout Canada. Simply put, environmental assessments are incomplete without proper consideration of the cumulative impacts on the environment.

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<sup>3</sup> Baxter, W., Ross, W.A. and H. Spaling. 2001. Improving the practice of cumulative effects assessment in Canada, *Impact Assessment and Project Appraisal* 19(4): 253-262

<sup>4</sup> Noble, B. and K. Nwanekezie. 2016. Conceptualizing strategic environmental assessment: Principles, approaches and research directions. *Environmental Impact Assessment Review*, <http://dx.doi.org/10.1016/j.eiar.2016.03.005>

The following are some important points for consideration when incorporating cumulative effects into the environmental assessment process:

- **Regional and strategic:** Currently, cumulative effects of projects are considered on a project-by-project approach, with a single project proponent carrying out cumulative effects assessments. This often leads to projects erroneously being "measured against" the effects of other projects, instead of focusing on total environmental effects. Although project-by-project environmental assessments remain important to target site specific environmental impacts, a regional and strategic approach to assess cumulative effects is also essential.<sup>5</sup> An attached briefing note to this letter outlines the importance of conducting regional cumulative effects assessments in the context of species at risk.
  - **Spatial Scale:** Assessments should be required to occur across multiple spatial scales and be comprehensive enough to include relationships between the proposed project and other existing and future impacts in the context of ecologically relevant boundaries such as watershed basins, migratory routes, etc. This will need to be written into the legislation, and will require regional disturbance targets and thresholds.
  - **Temporal Scale:** Currently, environmental assessments place too much focus on current environmental condition, neglecting past and future considerations. Omitting consideration of past anthropogenic impacts creates a problem known as a shifting baseline whereby the incremental degradation of the environment by the accumulation of multiple activities on a landscape is never fully captured or is simply ignored. A pre-industrial baseline must be used when considering cumulative effects. There must also be a requirement for foreseeable future cumulative effects such as habitat fragmentation, urban sprawl, climate change, floods, and fires to be included in both the project area and the relevant ranges of affected species.
  - **Targets as triggers, thresholds as limits:** Regionally, cumulative effects targets should be set below natural carrying capacities at which point environmental assessments are triggered. Policies and plans such as recovery strategies for species at risk and regional plans should guide future decisions in a precautionary manner to ensure that disturbance and environmental degradation stays below threshold levels. Thresholds for cumulative effects should be set as limits for development in each region. If cumulative effects thresholds are exceeded, then the focus should shift to recovery and restoration. This will require inter-jurisdictional cooperation at all levels of government.
7. **Restoring credibility and public trust:** We firmly believe that a modern *Canadian Environmental Assessment Act* must be revised with enough clarity that assessments are completed in a process that is legitimate, predictable, and transparent. Working to prevent, eliminate, and publicly disclose any potential conflicts of interests is crucial to restoring public trust in the process. Restoring credibility to environmental assessments also requires that assessments are truly independently conducted and reviewed and are completed using the best available science. The full assessment, including raw scientific data, must be permanently available to the public to allow for public review and evaluation during and after decision-making. The ability for the wider Canadian public to meaningfully engage in all environmental assessments necessarily includes increased time windows for public engagement.

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<sup>5</sup> Harriman, J.A. and B.F. Noble. 2008. Characterizing project and strategic approaches to regional cumulative effects assessment in Canada. *Journal of Environmental Assessment Policy and Management* 10(1): 25-50

8. **Decision Making:** Decision making should recognize and select the best option among a host of alternatives; alternatives must always include an option of not proceeding with the activity. Decisions must limit discretion and outline explicit criteria for approving or denying a project, with all the information considered and the trade-offs and benefits clearly listed. All decisions must be open and available to public scrutiny.
9. **Enforcement and accountability:** For any changes to the Canadian Environmental Assessment process to be effective, they must be coupled with adequate capacity to implement monitoring and enforcement work. Implementation of biologically relevant mitigation measures must be monitored and noncompliance must be consistently enforced. All authorizations, permits, as well as proponent follow-up reports and monitoring data should be publicly available. Disclosing information on why projects and programs are either successful or unsuccessful would add to the body of public knowledge and would help decision-makers learn from past experience to guide future proposals.

Changes to the environmental assessment act should include a mechanism to track information to inform whether the system works - has net sustainability been achieved, are mitigation measures working? There must be an adaptive feedback loop to improve future environmental assessment processes.

In conclusion, AWA believes that reform to ensure a robust and credible environmental assessment process is required in conjunction with increased capacity to perform assessments. Any changes must be transparent and open to scientific and public review.

Thank you for consideration of these comments.

With regards,

ALBERTA WILDERNESS ASSOCIATION



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