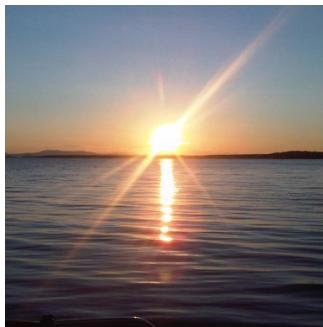


FIRST  
NATIONS  
MAJOR  
PROJECTS  
COALITION

# GUIDE TO EFFECTIVE INDIGENOUS INVOLVEMENT IN FEDERAL IMPACT ASSESSMENT



OCTOBER 2020

# **FIRST NATIONS MAJOR PROJECT COALITION**

## **GUIDE TO EFFECTIVE INDIGENOUS INVOLVEMENT**

### **IN FEDERAL IMPACT ASSESSMENT**

OCTOBER 2020

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This guide should be treated as an “evergreen” document that periodically will be updated through subsequent editions as new relevant information emerges.

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# GLOSSARY OF IMPACT ASSESSMENT TERMS

IN THE GUIDE, YOU WILL FIND NEW TERMS IN **BOLD ORANGE** DEFINED IN THE GLOSSARY (CLICK TO HYPERLINK).

**Alternatives assessment** An analysis of potential alternative means for carrying out the project, and/or in the case of Crown infrastructure projects, alternatives to the project to achieve the same public objectives. An alternative assessment is often conducted through a multiple accounts evaluation methodology that provides a transparent basis for presenting, discussing and exploring differences of opinion (between governments, rights-holders and stakeholders) in what is otherwise a complex values-based alternatives selection process.

**Canadian Impact Assessment Registry** An online database for projects undergoing the impact assessment process. It is established and maintained by the Canadian Impact Assessment Agency and provides public access for anyone interested in a project or the impact assessment process.

**Conditions** The enforceable requirements set out in the federal government's Decision Statement with which the project proponent must comply when carrying out the project, including mitigation measures and follow-up requirements.

**Cumulative Effects** Changes to environment, rights, culture, and/or society that are caused by the combined effects of past, present, and future actions.

**Cumulative Effects Assessment** The examination of how all past, present and likely future activities combine to impact an area or specific values (such as moose or salmon).

**Decision Statement** A public document issued at the end of the impact assessment that sets out the government's decision (i.e., the "public interest determination" made by the Minister or Cabinet) in respect to the

project, supporting rationale, and enforceable mitigation and follow-up program conditions for addressing potential adverse effects within federal jurisdiction.

**Designated Project** Designated projects include one or more physical activities that (a) are carried out in Canada or on federal lands; and (b) are designated by the Physical Activities Regulations or by a ministerial order. It also includes any physical activity that is related to those physical activities. For further information, refer to section 2 of the *Impact Assessment Act*.

## ACRONYMS AND ABBREVIATIONS

<b>The Act</b>	Impact Assessment Act
<b>CEAA 2012</b>	Canadian Environmental Assessment Act, 2012
<b>DPD</b>	Detailed Project Description
<b>EA</b>	Environmental Assessment
<b>FNMPC</b>	First Nations Major Project Coalition
<b>FPIC</b>	Free, Prior and Informed Consent
<b>GBA+</b>	Gender Based Analysis +
<b>IA</b>	Impact Assessment
<b>IA Process</b>	Impact Assessment Process
<b>IBA</b>	Impact and Benefits Agreement
<b>IEPP</b>	Indigenous Engagement and Partnership Plan
<b>IK</b>	Indigenous Knowledge
<b>IPD</b>	Initial Project Description
<b>Registry</b>	Canadian Impact Assessment Registry
<b>RIA</b>	Rights Impact Assessment
<b>SEIA</b>	Socio-economic Impact Assessment
<b>TISG</b>	Tailored Impact Statement Guidelines
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous People
<b>VC</b>	Valued Component

**Detailed Project Description (DPD)** Document containing updated information about the designated project including information about the possible environmental, social, health and economic effects of the project and any changes in response to the Summary of Issues.

**Effects** Changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes.

**Effects within federal jurisdiction** Effects related to a physical activity or a designated project that change:

- (a) environmental components within the legislative authority of Parliament such as fish, other aquatic or migratory birds;
- (b) the environment on federal lands, in another province other than the one where the physical activity or designated project is being carried out, or outside Canada;
- (c) the environment where it results impacts on Indigenous peoples' physical and cultural heritage, current use of lands and resources for traditional purposes, or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
- (d) the health, social or economic conditions of the Indigenous peoples of Canada; and
- (e) a health, social or economic matter that is within the legislative authority of Parliament and is set out in Schedule 3 of the *Impact Assessment Act*.

See section 2 of the *Impact Assessment Act* for more information.

**External Technical Review** Tool that can be used by the Impact Assessment Agency of Canada or a Review Panel as required to complement the reviews conducted by expert federal departments. External Technical Review provides the opportunity for experts to contribute specialized knowledge on complex science issues related to a designated project and helps inform complex scientific elements of the assessment.

**Federal Authorities** Federal departments or agencies that are in possession of specialist or expert information or knowledge with respect to a designated project, and who make information available to the Agency, Review Panel or body conducting the impact assessment. Federal authorities may contribute their expertise at any stage of the impact assessment process, including in the Planning Phase.

**Follow-up Program** Program for verifying the accuracy of the impact assessment of a designated project, determining the effectiveness of any mitigation measures and identifying adaptive management measures.

**Governor in Council** The Governor General of Canada acting by and with the advice and consent of the Queen's Privy Council for Canada (i.e., Cabinet). The Governor in Council Makes the public interest determination during the decision making phase, if referred to the Governor in Council by the Minister.

**Hearing** A public forum organized for projects referred to a review panel to obtain the information required to complete its assessment and for Indigenous groups, the public and other participants to contribute their views and questioning information on the record.

**Impact Assessment (IA)** Assessment of the effects of a designated project conducted in accordance with the *Impact Assessment Act*.

**Impact Assessment Agency of Canada (the Agency)** The Impact Assessment Agency of Canada leads and manages the impact assessment process for all federally designated major projects and serves as a centre of expertise for federal impact assessment in accordance with the *Impact Assessment Act*. The Agency also leads Crown engagement and is the single point of contact for Indigenous consultation during impact assessments. The Agency is accountable to the Minister of Environment and Climate Change.

**Impact Assessment Report** Document summarizing the full impact assessment process that takes into consideration the information, knowledge, data, input and analysis by the

proponent, federal departments, Indigenous groups, the public and provincial, territorial, or Indigenous jurisdictions. The Impact Assessment Report must provide sufficient information to the Minister of Environment and Climate Change or Cabinet to support the public interest decision.

#### **Impact Assessment Report by a Review Panel**

Report prepared by the Review Panel that reviews the Review Panel's findings on the project's effects, the significance of effects, the consideration of Indigenous Knowledge, a summary of comments and the Review Panel's rationale, conclusions and recommendations. In the case of Integrated Review Panels, the report will include recommendations on potential conditions associated with the *Impact Assessment Act*'s regulations as well as lifecycle regulator provisions.

**Impact Statement** Detailed technical document, usually in the form of compiled technical reports that can be anywhere between 5,000 and 20,000 pages in length, prepared by the proponent in manner that is intended to meet the requirements set out in the Tailored Impact Statement Guidelines.

#### **Indigenous Engagement and Partnership Plan (IEPP)**

Document developed by the Impact Assessment Agency of Canada in collaboration with Indigenous groups outlining how Indigenous groups may wish to participate in the impact assessment process.

**Indigenous Governing Body** A term included in the *Impact Assessment Act* that broadly refers to "a council, government or other entity that is authorized to act on behalf of an Indigenous group, community, or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*."

**Initial Project Description (IPD)** Document prepared by the proponent that provides preliminary information about a proposed project and includes the prescribed information set out in the Information and Management of Time Limits Regulations, including the project location, local communities and Indigenous groups who may be affected.

**Integrated Review Panel** When an impact assessment is required for a designated project regulated by a lifecycle regulator, the Minister of Environment and Climate Change must refer the assessment to an Integrated Review Panel. The impact assessment will integrate the requirements of the *Impact Assessment Act* and the legislation for which the lifecycle regulator is responsible, including the *Nuclear Safety and Control Act*, *Canadian Energy Regulator Act*, *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

**Jurisdiction** Under the Act, a Jurisdiction may refer to: a federal authority, an agency or body established under an Act of Parliament, the government of a province, an agency or body established under an Act of legislation of a province, any body established under a land claim agreement, an Indigenous governing body, a foreign government, or an international organization of states.

**Lifecycle Regulator** Under the Act, lifecycle regulators include the Canada Energy Regulator, the Canadian Nuclear Safety Commission, and the Offshore Petroleum Boards. The Impact Assessment Agency of Canada will work collaboratively with the lifecycle regulators on designated projects that are also regulated under the *Nuclear Safety and Control Act*, *the Canadian Energy Regulator Act*, *the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, and *the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*.

**Mitigation Measures** Measures designed to eliminate, reduce, control or offset the adverse effects of a project.

**Nation-to-Nation Agreements** For the purposes of this guide, this term refers to agreements negotiated between an Indigenous Nation and Canada (under the Minister of Environment and Climate Change Canada for the Impact Assessment Agency of Canada) for the purpose collaboration in federal impact assessment processes.

**Notice of Commencement** Notification posted on the Canadian Impact Assessment Registry by the Impact Assessment Agency of Canada at the end of the 180-day Planning Phase. The notice sets the start of the Impact Statement Phase and includes the Tailored Impact Statement Guidelines.

**Participants** Participants in the impact assessment include Indigenous groups, federal authorities, other jurisdictions (provincial, territorial, and Indigenous), the public, proponents, and lifecycle regulators (when applicable).

**Planning Phase** Phase of the impact assessment in which the public and Indigenous peoples are invited to provide information and contribute to planning the assessment.

**Precautionary Principle** In impact assessment, the precautionary principle refers to the need to err on the side of caution in face of uncertainties of knowledge and information by assuming that adverse effects posed by a new project or activities on the environment or people may be significant.

**Process Agreements** Agreements between the proponent and Indigenous Nations that set out the expectations for engagement for the impact assessment, such as funding, collaboration, studies, engagement expectations, etc.

**Project List** The list of the different types of projects that may require an impact assessment under the Physical Activities Regulations of the *Impact Assessment Act*.

**Proponent** A person or entity (federal authority, government, body, or company) that has proposed the project or carries out the project.

**Public Interest Determination - Minister's decision** Once the Minister has reviewed the impact assessment report of a designated project, the Minister must

- (a) determine whether the adverse effects are in the public interest; or
- (b) refer to the Governor in Council the question of whether the effects are in the public interest.

See section 60 (1) of the *Impact Assessment Act*.

**Public Interest Determination – Governor in Council's Determination** In cases where the Minister refers the decision to the Governor in Council, the Governor in Council must determine whether the adverse effects are in the public interest. See section 62 of the *Impact Assessment Act*.

**Response to the Summary of Issues** Information responding to the issues outlined in the Summary Issues that is prepared by the proponent and included in the Detailed Project Description.

**Residual Effects** The adverse effects of a project on a Valued Component or Right after efforts/actions to mitigate those effects are considered; or the effects of a project that cannot be mitigated.

**Substitution** Process that allows another jurisdiction (see “jurisdiction”) to conduct the federal assessment if conditions set out in the Act are met and the Minister approves of the process of the other jurisdiction.

**Summary of Issues** Document prepared by the Impact Assessment Agency of Canada to summarize the issues raised through the initial engagement processes—including with Indigenous groups and the public—in the Planning Phase. This document provides the proponent with an understanding of issues and allows participants to see how their comments and concerns have been characterized.

**Sustainability** The ability to protect the environment in a manner that benefits present and future generations and contributes to the social, economic, and physical well-being of the people of Canada.

**Tailored Impact Statement Guidelines (TISG)**

Document prepared by the Impact Assessment Agency of Canada that outlines all information and studies required for the proponent to conduct the impact assessment.

**Valued Component** Cultural, environmental, economic, health, social, and other elements of the natural and human environment that is identified as having scientific, social, cultural, economic, historical, archaeological or aesthetic importance.



## PART I

# INTRODUCTION AND CONTEXT

# PURPOSE OF THE GUIDE

**T**his *Guide to Effective Indigenous Involvement in Federal Impact Assessment* (the guide) is intended to enhance the capacity of Indigenous Nations to effectively engage in the new federal impact assessment (IA) process. It is also intended to support Indigenous Nations' active involvement as key players, rather than mere participants, in the new IA process.

This guide is written for technical staff and leadership of member Nations of the First Nations Major Project Coalition (FNMPC), as well as of any other Indigenous Nation, who are looking for ways to make the most of the new IA process and gain a greater degree control when major projects are proposed within Nations' traditional territories. Ultimately, the guide seeks to empower Indigenous Nations to take advantage of new opportunities that exist within the new IA process, supporting effective involvement and advancing the rights and interests of Indigenous Nations within the process.

The guide is organized as follows:

- Part I introduces the FNMPC and provides the background and context of the guide.
- Part II reviews the new IA process and highlights key changes from the previous IA process that are relevant to FNMPC members.
- Part III presents and discusses tools to help Indigenous Nations realize the opportunities for effective Indigenous involvement in the new process, including how to successfully prepare for, and contribute to, an IA.
- Part IV outlines opportunities through the FNMPC for gaining additional technical support, and identifies areas where further guidance development related to IA is expected in the coming months and years.

This guide seeks to empower Indigenous Nations to take advantage of new opportunities that exist within the new IA process, supporting effective involvement and advancing the rights and interests of Indigenous Nations within the process.

# ABOUT THE FNMPC

The First Nation Major Projects Coalition was established in October 2015 by First Nations that chose to establish a collective approach to proposed major resource projects in their territories. The FNMPC's vision is for member First Nations to work collaboratively, cooperatively and cohesively towards the enhancement of economic well-being for member Nations, understanding that a strong economy is reliant upon a healthy environment, supported by vibrant cultures, languages and expression of traditional laws. A key purpose of the FNMPC is to safeguard our air, land, water and medicine sources from the impacts of resource development by asserting its members' influence and traditional laws on environmental, regulatory and negotiation processes.

The now more than 65 First Nations that make up the FNMPC participate in IAs and project development on an individual basis, but work together to create shared approaches and strategies for best practices. The FNMPC is one of the largest, if not the largest, grassroots Indigenous service organizations providing environmental (as well as economic) supports in Canada.

In 2018, the FNMPC adopted an Environmental Stewardship Framework to support its member Nations' engagement in stewardship, governance, environmental assessment (EA), monitoring and regulatory activities and processes. As part of the Environmental Stewardship Framework, the FNMPC is committed to providing members with the best possible tools to meaningfully engage in EA/IA processes, and to support membership through direct liaison between the FNMPC's Environmental Stewardship Technical Team (**ESTT**) and industry and government involved in these assessment processes.

The FNMPC's primary role is to support its member Nations by developing materials, resources, and collective strategies to strengthen the conduct of IAs for projects located in or near Indigenous lands and to promote economic benefits for their communities.

Between 2017 and 2020, the FNMPC has participated in the development and implementation of the federal *Impact Assessment Act* (the Act), supported development of new federal guidance for incorporating Indigenous knowledge (IK) into regulatory processes and decision-making, and developed the FNMPC Major Projects Assessment Standard (an IA best practice guidance document).

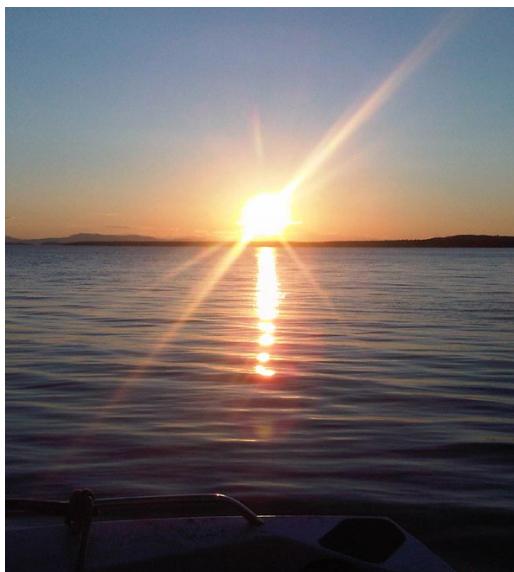


**The FNMPC was established by First Nations that chose to establish a collective approach to proposed major resource projects in their territories. Now more than 65 members participate.**

# HISTORIC AND CONTEMPORARY CONTEXT OF INDIGENOUS INVOLVEMENT IN IMPACT ASSESSMENT

Indigenous Nations have historically been left to the periphery of Canadian IA processes. Impact assessments and environmental policy development have largely proceeded without the direct participation of Indigenous groups in whose territories major projects have been proposed. Where it has occurred, Indigenous groups' involvement in IA processes has generally been limited to providing basic inputs, such as baseline traditional knowledge. In contrast, topics of central importance to Indigenous Nations—such as culture, rights and long-term planning in IA—have not been adequately considered. Moreover, Indigenous Nations have been excluded from meaningful control over the IA process, outcomes, and decision-making. In short, Indigenous perspectives have been underrepresented in IA in Canada.

In recent years, however, Indigenous Nations have become increasingly involved in IA. This enhanced role is part of a larger movement by Indigenous Nations to assert their inherent jurisdiction and rights in respect to major project development decisions within their traditional territories and to impress upon government and industry the value in seeing collaboration with Indigenous Nations as an “imperative” rather than as an “impediment” to major project development. This movement has been prompted by Indigenous Nations’ demand for the recognition of the right of free, prior and informed consent (**FPIC**) with respect to any major project proposed within their territories. Critical court cases have paved the way for a new set of relationships between Indigenous governments, the federal government, and project proponents.<sup>1</sup> The federal government’s commitment to implement the United Nations Declaration of the Rights of Indigenous Peoples (**UNDRIP**) and build Nation-to-Nation relationships forms a new foundation for Indigenous participation in IA of major projects in Canada.



The federal government’s commitment to implement the UN Declaration of the Rights of Indigenous Peoples and build Nation-to-Nation relationships forms a new foundation for Indigenous participation in IA of major projects in Canada.

# A SEAT AT THE TABLE: ASSERTING INDIGENOUS INHERENT AUTHORITY AND JURISDICTION IN IAs

**E**ffective involvement in IA supports Indigenous Nations' movement towards self-determination, de-colonization and Nation-to-Nation co-governance. When effectively engaged in IA, Indigenous Nations are able to:

- Increase control over decision-making for land and water uses within traditional territories;
- Have an opportunity for the Nation's input — such as perspectives on the project and its impacts, knowledge of the area and how the project may impact it, and the future use of the area and the project's impacts to future use — to influence how and if a proposed project should be developed;
- Increase opportunities to benefit from developments proposed within the Nations' territories;
- Be meaningfully consulted and accommodated in respect to any potential adverse effects of the project; and
- More effectively document and communicate consent requirements to project proponents and government decision-makers.

Effective involvement in IA supports Indigenous Nations' movement towards self-determination, de-colonization and Nation-to-Nation co-governance.



# LIMITATIONS OF THIS GUIDE

The guide has been developed and made public within the first year that the new IA process was first introduced in August 2019. Therefore, some uncertainty still exists regarding how the Act will ultimately be implemented across Canada. The guide should be treated as an “evergreen” document that periodically will be updated through subsequent editions as new relevant information emerges.

Areas of remaining uncertainty in the process, which therefore cannot be addressed in detail in this initial edition of the guide, include:

- Regulations and policy instruments related to collaborative IA processes between Indigenous Nations and the federal government;
- The availability and amount of federal funding for Indigenous-led IA components;
- The structure, format and function of the IA Technical Advisory Group;
- The accessibility of the IA substitution process for Indigenous Nations;
- The anticipated approach for health IA (beyond Human Health Risk Assessment);
- The management and integration of western science and IK;
- The anticipated approach for determining the “extent of significance”;
- The anticipated approach for health, social and economic assessment, including content for Schedule 3 of the Act;
- The process for assessing impacts to culture; and
- How gender based analysis + (GBA+) will be applied in assessment.

While some uncertainty remains about how the Act will ultimately be implemented across Canada, the guide provides a roadmap based on what is known at this moment in time about the federal government’s intentions regarding implementation of the new process. The goal of the guide is to highlight opportunities for effective Indigenous involvement within the new system and enable your Nation to identify the tools and resources most important for your context, capacities and needs.

While some uncertainty remains about how the Act will ultimately be implemented across Canada, the guide provides a roadmap based on what is known at this moment in time about the federal government’s intentions regarding implementation of the new process.

## PART II

# NEW FEDERAL IMPACT ASSESSMENT PROCESS

## PART I | SECTION 1

# WHAT IS NEW IN THE IMPACT ASSESSMENT ACT

**T**

his section introduces and summarizes key elements and processes within the *Impact Assessment Act* that have particular relevance for Indigenous Nations.

Key questions that will be reviewed in this section include:

- What is an IA?
- How does IA work in Canada?
- How does the new Act change the way major projects are required to be reviewed?
- Why does the Act matter for your Nation?

## What is an impact assessment and what does it mean for Indigenous Nations?

An **impact assessment (IA)** is a process that examines the potential harms and benefits that a proposed project may have on the environment and people (health, socio-economic conditions, culture, traditional harvesting) before a decision is made to approve the project. This process looks at management steps that can be taken to lower potential harms and increase project benefits. An IA informs the decision about whether a project should be approved and the conditions that must be in place to minimize the potential impacts.

Key **participants** in the assessment process include the project **proponent** (i.e., the company, entity, or government that is proposing the project), the federal government, Indigenous Nations, the provincial government, municipal governments, and public stakeholders. The IA process creates, in effect, a “planning forum” in which participants prepare and review information related to the project, present their respective views and concerns regarding project effects and benefits, and consider and recommend measures to avoid or reduce potential negative impacts. For Indigenous Nations, IA is an important process for identifying potential risks to Indigenous rights and interests, as well as the measures and conditions that are required to protect a Nation’s rights, interests and well-being from harm.

### THE THREE KEY MANDATES OF THE *IMPACT ASSESSMENT ACT*





### WHAT IS THE PRECAUTIONARY PRINCIPLE?

In impact assessment, the precautionary principle refers to the need to err on the side of caution in face of uncertainties of knowledge and information by assuming that adverse effects posed by a new project or activities on the environment or people may be significant.

## How are impact assessments for major projects conducted in Canada and what is the Impact Assessment Agency of Canada?

In Canada, impact assessments for major projects are conducted by the federal and provincial governments. In some cases, both the federal and provincial government are involved in the assessment of a project. For the purposes of this guide, we will consider the main forms of federal IAs that fall under the following three categories:

1. **Designated Projects** and activities that appear on the federal **Project List** (i.e., the *Physical Activities Regulations*), including with respect to transportation (e.g., railways), oil and gas (e.g., oil or gas facility or oil and gas pipeline), mining (e.g., a gold mine), nuclear (e.g., a nuclear plant), and infrastructure (e.g., road corridor, bridge).
2. Projects not on the Project List but which the Minister designates for review based on the opinion that carrying out the project “may cause adverse **effects within federal jurisdiction** or adverse direct or incidental effects, or public concerns related to those effects warrant the designation” (Section 9 of the Act).
3. A project that falls within multiple provincial boundaries, such as inter-provincial pipelines.

The **Impact Assessment Agency of Canada** (“the Agency”) is the single federal authority responsible for leading all federal Impact Assessments and consultation with Indigenous Nations for major projects proposed in Canada outside of the Yukon, Northwest Territories and Nunavut. The Agency is headquartered in Ottawa with regional offices across Canada (including Halifax, Quebec City, Toronto, Edmonton, and Vancouver).

The mandate of the Agency is to conduct its duties in a manner that fosters **sustainability**, respects the Government’s commitments with respect to the rights of Indigenous peoples of Canada, applies



### THE RIGHTS OF INDIGENOUS PEOPLES IN CANADA INCLUDE:

- Aboriginal and treaty rights
- Right to the land (treaty entitlement lands, treaty settlement lands, Aboriginal title lands)
- Right to harvesting resources and activities
- Right to practice culture and customs including language and religion
- Right to self-determination and self-government

the precautionary principle and adheres to the principles of scientific integrity, honesty, objectivity, thoroughness and accuracy.<sup>2</sup>

In addition, the Agency is responsible for the following:

- Leading and coordinating regional and strategic assessments in collaboration with provincial and Indigenous governments;
- Promoting cooperation and communication between federal and provincial governments with respect to IA;
- Promoting cooperation and communication with Indigenous peoples with respect to the IA;
- Ensuring respect for the rights of Indigenous peoples through the course of IAs and related decision-making;
- Ensuring opportunities for meaningful public participation are afforded during an IA, regional assessment or strategic assessment;
- Promoting, monitoring and enforcing compliance with project conditions associated with a Ministerial Statement to ensure the protection of the environment and promotion of sustainability;
- Establishing an expert committee to advise it on issues related to IAs and regional and strategic assessments, including scientific, environmental, health, social or economic issues;
- Developing policy related to the Act; and
- Promoting or conducting research in matters related to IA and encouraging the development of IA techniques and practices, including testing programs, alone or in cooperation with other agencies or organizations.

The mandate of the Agency is to conduct its duties in a manner that fosters sustainability, respects the Government's commitments with respect to the rights of Indigenous peoples of Canada, applies the precautionary principle and adheres to the principles of scientific integrity, honesty, objectivity, thoroughness and accuracy.

## What is new in the *Impact Assessment Act*?

### Background to the new process

Several key changes in the new federal IA process encourage more direct involvement of Indigenous Nations in the Impact Assessment process. The changes under the new system are the result of a combination of legal, policy and political shifts within the Canadian and international context. For example:

- Following key Supreme Court of Canada decisions in 2004 and 2005, the federal government decided to rely upon existing IA processes, “to the extent possible,” to support the Crown’s legal duty to consult and accommodate Indigenous nations.
- Between 2004 and 2019, a series of pivotal Supreme Court of Canada decisions required the federal and provincial governments to meaningfully consult and accommodate Indigenous Nations regarding the potential impacts of proposed projects on Aboriginal and treaty rights, prior to issuing permits and other project approvals.<sup>3</sup>
- In 2015, the federal government committed to reconciliation with Indigenous Nations and in 2016 removed its objector status to UNDRIP, publicly stating that “we intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution.”<sup>4</sup>
- In 2015 and 2016, three Indigenous Nations completed and reported on their Indigenous-led EAs. In 2015 the Squamish Nation concluded their own assessment of the Woodfibre LNG project, the Tsleil-Waututh Nation completed their own assessment of the Trans Mountain Expansion Project, while the Stk’emlúpsemc te Secwépemc Nation completed its own independent assessment of the KGHM-Ajax Mine Project. These assessments were conducted in accordance with Indigenous laws and governance, emphasizing the importance of Indigenous cultural perspectives, knowledge and history. These assessments were independent, stand-alone EAs, and stemmed from the concern that the federal and provincial IA processes were inadequate to address the concerns and perspectives of Indigenous Nation.
- Between 2016 and 2018, the federal government undertook a review of the IA process under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). The expert panel appointed to lead the review in 2017 issued a report with wide-ranging recommendations for improving the federal review process, including expanding the assessment process to focus on social, economic and cultural factors, and creating a process for advancing reconciliation with Indigenous Peoples.<sup>5</sup> In addition, as a result of the expert panel report, the federal government changed the name of its major project review process to “impact assessment” rather than “environmental assessment” to reflect a broader focus on assessing impacts on people as much as on the biophysical environment.

## CHANGES TO WHAT HAS TO BE CONSIDERED IN THE IMPACT ASSESSMENT: SECTION 22 FACTORS

Assertions of Indigenous jurisdiction, along with these major shifts in the legal and policy landscape, have changed what the federal IA process must assess in respect to potential impacts on Indigenous communities. A federal IA now must consider a much wider range of “factors” that are set out under **Section 22 of the Act**, which include:

- Changes to the environment, including effects of malfunction and accidents in connection to the project and cumulative effects;
- Changes to health, social or economic conditions (including malfunctions, accidents and cumulative effects), including effects of malfunction and accidents in connection to the project and cumulative effects;
- Mitigation measures for reducing the adverse effects of the project;
- Impacts of the project on any Indigenous group and on the rights of Indigenous peoples;
- The purpose and need for the project;
- Alternative means of carrying out the project;
- Alternatives to the project that are technically and economically feasible and are directly related to the project;
- Indigenous knowledge;
- The project’s net contribution to sustainability;
- Contribution to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;
- Any change to the designated project that may be caused by the environment;
- The requirements of the follow-up program proposed in respect to the proposed project;
- Considerations related to Indigenous cultures with respect to the project;
- Community knowledge provided in relation to the project;
- Public comments;
- Comments received from other jurisdictions (including Indigenous governing bodies) if and when the impact assessment of a designated project is referred to a review panel, and, an offer by the Agency is extended to the jurisdiction to consult and cooperate with respect to the impact assessment;
- Relevant regional or strategic assessments;
- Assessments conducted by Indigenous governing bodies provided in relation to the proposed project;
- Regional studies or plans conducted by a jurisdiction (including Indigenous governing bodies);
- The intersection of sex and gender with other identity factors; and
- Any other relevant factor that the Agency requires to be taken into account.

Certain factors listed above apply specifically to the Crown’s legal consultation and accommodation obligations and UNDRIP commitments, including factors related to Indigenous-knowledge, Indigenous culture, impacts to Aboriginal and treaty rights, and Indigenous-led assessments.



#### FOR FURTHER REFERENCE:

- Appendix A provides sources of new information on the IA system.
- Appendix O sets out some of the new Section 22 factors in detail, along with related information requirements that are particularly relevant to the assessment of project effects on Indigenous Nations. Refer to Appendix O for suggestions related to potential opportunities these new factors may provide when advocating for the protection of your Nation's rights, interests and well-being during an IA.
- Appendix N identifies the articles of UNDRIP that correspond to sections of the Act discussed in this guide.

## Structural Changes to Federal Impact Assessment

The new federal IA process has also introduced important structural changes to the process itself that will likely affect how your Nation engages in the new IA system. The most impactful of these to Indigenous involvement are:

- The new Planning Phase;
- Final Minister's decision and the treatment of "public interest" factors;
- A new potential role for Indigenous governments (referred to as "Indigenous Governing Bodies" in the Act) in federal IA;
- One single IA body for all federal assessments;
- Consideration of Indigenous-led studies;
- Types of federal IA; and
- Revised time limits.

### New Planning Phase

Under the previous federal IA process, the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), there was no formal opportunity for Indigenous Nations to review and comment on the project description, or to be involved in planning the assessment process. There is now a mandatory 180-day Planning Phase for early planning and engagement between the project proponent, the Agency and affected Indigenous Nations. This means the project proponent and the Agency must engage with Indigenous Nations as soon as possible to identify and discuss issues of concern related to project design, as well as receive Indigenous Nations' input on the design of the IA process itself. The new Planning Phase, in effect, sets the stage for the rest of the IA.

See Part III, Section 1 for more information on the Planning Phase.

## Final Minister’s Decision and the Treatment of “Public Interest” Factors

The federal government has retained sole decision-making authority for the final IA decision and related conditions. However, unlike previous federal assessment legislation, *the reasons for federal decisions* must now be based on legislated “public-interest” factors and how these are weighed and considered by the federal decision-maker must be publicly reported. The five **public interest** factors that the federal government must consider in making its decision (as per Section 63 of the Act) are:

1. Whether and how the project contributes to sustainability;
2. Whether and how the adverse effects within federal jurisdiction are significant;
3. The implementation of mitigation measures approved by the Minister or Governor in Council;
4. Impacts on Indigenous groups and impacts on the rights of Indigenous peoples; and
5. Whether and how the project may impact the federal government’s ability to meet environmental obligations and climate change commitments.

Although the IA process does not grant Indigenous Nations a direct role in decision-making, these new factors elevate the importance of Indigenous Nations’ assessment of project impacts on the Nation’s rights, territory, interests and well-being.

## New Potential Role for Indigenous Governments (referred to as “Indigenous Governing Bodies” in the Act) in Federal IA

Under Section 114 of the Act, there is now an opportunity for Indigenous governments to enter into agreements with the Minister to assume responsibilities for conducting certain parts of the IA. Through a Section 114 agreement, an Indigenous government may be authorized to exercise any powers or perform any duties or functions under the Act (except decide whether an IA is required). However, this can only happen once “Indigenous Collaboration” regulations are put in place, which is not expected until 2021 at the earliest.

In addition, there are two sections of the Act that present mechanisms of Indigenous Nations to have their authority to undertake all or parts of an IA recognized by Canada. Under Section 29 of the Act, the Agency may delegate any part of the IA and preparation of the impact assessment report to an **Indigenous Governing Body**. This means Indigenous governments can conduct part or all of the assessment depending on their capacities and resources. Under Section 31 of the Act (subject to certain limits set out in Sections 32-33), it is now possible to substitute the responsibility to conduct the assessment to an Indigenous government.



The content of the new Indigenous Collaboration regulations (and accompanying policy guidance) is still to be determined, and the Agency anticipates engaging with Indigenous Nations and organizations through 2020 and 2021 during the development of the regulations.

The delegation or substitution of an impact assessment applies only to Indigenous governments that fall under the definition of a **jurisdiction** in the Act. This definition includes:

- A group established under a land claim agreement referred to in section 35 of the *Constitution Act, 1982* and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project.
- An Indigenous governing body that has responsibilities in relation to an assessment (i) under a land claim agreement referred to in section 35 of the Constitution Act, 1982, or, (ii) under other federal or provincial legislation that implements a self-government agreement.
- An Indigenous governing body that has entered into an agreement or arrangement with the Minister.

It remains unclear as to how accessible this option will be to Indigenous Nations under the new system. There is currently only a relatively small number of Indigenous Nations that, under the legislation, may qualify as a jurisdiction and could entertain the idea of leading an IA process extensive enough to cover off all of the federal government's requirements for substitution or delegation. Because of this, the option will likely be rarely be made available. Since guidance is still under development about how this will be implemented, the guide does not go into this topic extensively.

For more information, see Part III, Section 1 on collaboration opportunities and agreements and Part III, Section 2 for overview of Indigenous-led studies and assessments.

### **One Single Impact Assessment Body for All Federal Assessments**

The federal IA process is under the primary authority of the Agency. All federal assessments of oil, gas and electricity energy projects formerly led and conducted by the National Energy Board (now the Canada Energy Regulator or CER), and all projects related to nuclear energy production (including uranium mines) formerly led and conducted by the Canadian Nuclear Safety Commission (CNSC), will now be coordinated by the Agency and conducted by an **Integrated Review Panel**.

See Appendix C for information on how Review Panels work and how are they different from an Agency-run IA.

### **Consideration of Indigenous-led Studies**

There is now a requirement for the Agency to consider studies or reports conducted by Indigenous groups as a factor of the IA. This means that Indigenous-led studies are an expected component of the new federal IA process.

See Part III for more information on studies in the IA.

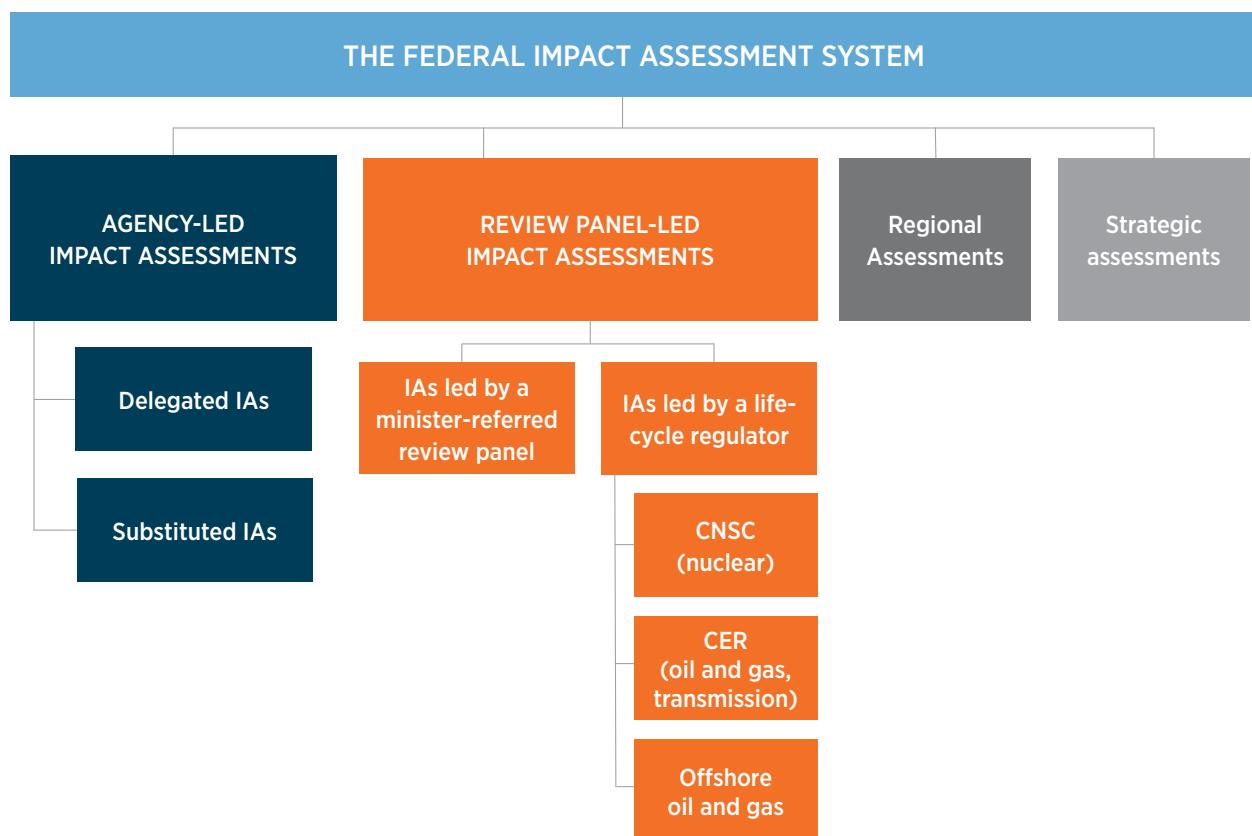
## Types of Federal Impact Assessment

There are now four different types of Impact Assessments under the new system:

1. Agency-led IAs;
2. Review Panel IAs;
3. Regional Assessments; and
4. Strategic Assessments.

The different types of IAs occur for different reasons and allow for different opportunities for Indigenous involvement.

**Figure 1: Four Types of Impact Assessment**



Different types of impact assessments occur for different reasons and allow for different opportunities for Indigenous involvement.

**AGENCY-LED IAs** will likely be the most common type of IA that major projects are reviewed under. See Section 2 below for overview of the five phases and their associated steps and documents.

#### **REVIEW PANEL IAs** take place under two circumstances:

- **Minister-referred review panel:** The Minister will refer a project assessment to review panel if the Minister decides it is in the public interest. When it is determined to be in the public interest, a review panel is appointed from an online roster. Indigenous Nations can suggest certain individuals from the roster. Once appointed, the review panel collects information, holds a public hearing, and prepares the Impact Assessment Report. Review panels have the power to call witnesses and to ensure the protection of sensitive information, knowledge, and people. Hearings are expected to be informal and flexible and provide opportunities for Elders and other Indigenous knowledge holders to present directly to those preparing the IA Report.
- **Integrated Review Panel:** Integrated Review Panels are used for designated projects that integrate the legislative requirements of both the Act and the legislative requirements of a lifecycle regulator. They are for projects that include physical activities that are regulated under the *Nuclear Safety and Control Act; Canadian Energy Regulator Act, Canada-Newfoundland and Labrador Atlantic Accord Implementation Act, or Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

See Appendix C for more information on how Review Panels work.

**STRATEGIC ASSESSMENTS** are a tool for providing guidance on how existing environmental frameworks (policies, plans and programs) will be considered in IA. Strategic assessment may also be undertaken for an issue or a class of projects in order to inform individual project IAs within that class about likely impacts. See Appendix B for more information on Strategic Assessments.

**REGIONAL ASSESSMENTS** are a distinct non-project-specific form of IA intended to help understand the effects of past, present and anticipated future development, and its implications, within a geographic region. If a region in question is partially located on federal lands or located entirely off federal lands, the Minister can enter into an agreement or arrangement with a jurisdiction (including an Indigenous jurisdiction) to establish a joint committee to undertake the regional assessment, or authorize the Agency to conduct the assessment (section 93 of the Act). See Appendix B for more information on Regional Assessments.

#### **Revised Time Limits**

The *Act* retains the ability provided for in CEAA 2012 to suspend time limits (i.e., “the process clock”). However, time limit suspension now must be based on regulated criteria. These criteria tie the Agency’s ability to suspend time limits to requests from the project proponent. Under CEAA 2012, time limits were suspended during the time taken by a project proponent to respond to information requests. Under the new system, information requests occurring during the Impact Assessment phase (Phase 3) will not result in automatic suspension of the process clock.

The time limit for the Planning Phase (Phase 1) is 180 days while the time limit for the Impact Assessment Phase (Phase 3) is 300 days. This may seem like a long time, but it is difficult to predict how

time will be managed by any one project proponent and the Agency before the IA process has been fully implemented. Moreover, in terms of the amount of work required by all parties throughout this process, there is a strong possibility that total available time for Indigenous involvement in the new IA Process may be less than what was afforded under the CEAA 2012 process. Therefore, it will be important for your Nation to plan ahead and be prepared in order to ensure meaningful involvement during the IA.

See Section 2 for an overview of the phases and time limits.

While the new Act has several new features, there are some important aspects that have been retained from the CEAA 2012 process, including:

- The scope and types of projects that are considered for review (**Designated Project List**, or “What kinds of projects can be designated for review under the new IA process?”).
- The way the federal IA fits with provincial IA processes (e.g., cooperative and substitution arrangements) remains largely unchanged.
- The centralized management of IA.
- Time limits are still strict. In fact, they are even more stringent and prescribed under the Act than under CEAA 2012 when the Agency had the ability to “stop the clock” more freely.
- There remains a lack of clarity on cumulative effects assessment (see Part II, for information on how to maximize your opportunities for cumulative effects assessments).

#### MAJOR PROJECTS WITHIN THE FOLLOWING SECTORS CAN BE FOUND ON THE DESIGNATED PROJECT LIST:

- Transportation
- Oil and gas
- Mining
- Nuclear
- Infrastructure
- Renewable energy
- Marine and freshwater
- Hazardous waste
- Federal lands and protected areas.

## WHAT WE LEARNED AND WHAT IS NEXT...

The new Act provides opportunity for Indigenous involvement; however, the onus is on Indigenous Nations to plan ahead and make the most of these opportunities. This means planning even before a project IA begins by developing tools and approaches ahead of time. This also means staying on top of project time limits and opportunities for providing input and collaboration.

The next section explains the main phases and processes of the IA. You will learn about the steps, documents, and time limits for each phase to prepare you for developing the tools your Nation might use in an IA.

## PART II | SECTION 2

# FIVE PHASES OF THE IMPACT ASSESSMENT PROCESS EXPLAINED

**T**here are five distinct phases in the new federal IA process. Each phase has associated time limits, key documents, process steps, roles and targeted outcomes. Each successive phase builds on the previous phase. This section briefly reviews each phase along with a discussion of how your Nation can be engaged meaningfully in each one.

## Phase 1: Planning Phase

The Planning Phase (Phase 1) begins when the Agency posts the project proponent's **Initial Project Description** (IPD) on the Canadian Impact Assessment Registry and ends when the Agency posts the **Tailored Impact Statement Guidelines** (TISG). Some of the goals of Phase 1 most relevant to Indigenous Nations include:

- Opportunity to review and provide input on the IPD;
- Identification of the main initial issues related to the project as proposed;
- Federal determination whether an IA is required, based on identified issues;
- Determination of how the Agency and Indigenous Nation will consult with each other through the process;
- Provide input for finalizing the TISG; and
- Decide on the plans for the IA process.

This section briefly reviews each phase along with a discussion of how your Nation can be engaged meaningfully in each one.



### WHAT IS THE INITIAL PROJECT DESCRIPTION (IPD)?

The document prepared by the project proponent outlining the preliminary project information.

Figure 2: Five Phases of a Federal Impact Assessment  
With Corresponding Indigenous Involvement



IAA PROCESS SYMBOLS LEGEND:

	PROVENT		INDIGENOUS GROUPS		IMPACT ASSESSMENT AGENCY OF CANADA		OTHER JURISDICTIONS
	REVIEW PANEL		FEDERAL AUTHORITIES		MINISTER		GOVERNOR IN COUNCIL
	PUBLIC						



### WHAT ARE THE TAILORED IMPACT STATEMENT GUIDELINES (TISG)?

The document prepared by the Agency outlining the information and studies required in the proponent's Impact Statement.

Phase 1 has two main parts and lasts 180 days in total. Phase 1 opportunities for Indigenous Nations are:

1. Reviewing and providing comments on the IPD in order to inform the **Detailed Project Description** (DPD);
2. Developing a list of possible impacts and concerns, Value Components (VCs), and share these with the Agency;
3. Developing an engagement plan and/or process agreement with the Agency;
4. Establishing an engagement plan and a process agreement with the project proponent;
5. Developing a list of studies and information the Nation would like considered in the assessment; and
6. Reviewing and commenting on the TISG.

In the first part of the Planning Phase (the first 80 days), the Agency begins consulting with Indigenous Nations, the public and other parties on the IPD and prepares a Summary of Issues raised. Indigenous input into the IPD and related Summary of Issues is a critical component of this part of the Planning Phase. The project proponent prepares a response to the Summary of Issues and prepares the Detailed Project Description (DPD). Based on the information gathered, at approximately 80 days into the Planning Phase, the Agency determines whether an IA is required. See Figure 3 on the following page for a breakdown of the steps within this phase.

If the Agency determines that a proposed project requires an IA, the process advances to the second half of Phase 1 where the Agency has 100 days to prepare, consult on and draft the TISG and other process plans that will shape the IA process. The Agency will then provide the TISG to the proponent and post the documents to the Registry with the Notice of Commencement.

Figure 3 on the following page shows the full extent of Phase 1, with some, not all possible, suggested options for corresponding Indigenous-led steps.



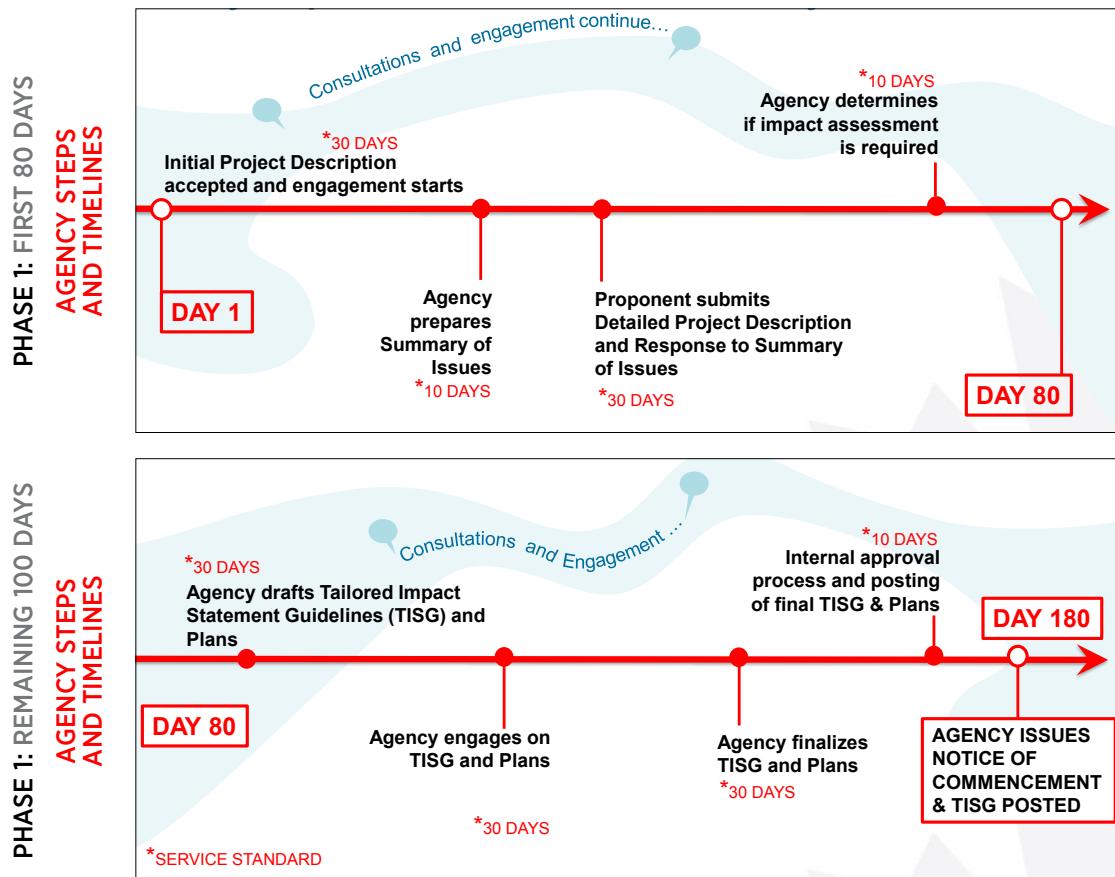
### WHAT IS THE DETAILED PROJECT DESCRIPTION (DPD)?

An updated version of the IPD that is prepared by the proponent based on input during the Planning Phase.

Figure 3: Key Steps and Timelines in Phase 0 – Pre-Planning Phase (Indigenous-led steps only)



Figure 4: Key Steps and Timelines in Phase 1 – Planning Phase



Source: Impact Assessment Agency of Canada, *Overview of the Impact Assessment Act, Level 1 Training*



In the first part of the Planning Phase (the first 80 days), the Agency begins consulting with Indigenous Nations, the public and other parties on the IPD and prepares a Summary of Issues raised. Indigenous input into the IPD and related Summary of Issues is a critical component of this part of the Planning Phase.

### HOW CAN YOUR NATION PREPARE FOR EFFECTIVE INVOLVEMENT IN THE PLANNING PHASE?

- Reviewing and commenting on the Initial Project Description (IPD) and the Detailed Project Description (DPD). The comment period for the IPD is a key time to reflect on how the proposed project fits into your Nation's vision for the future and to provide the project proponent and the Agency with clear feedback on whether or not the project has the potential to "fit" with the your Nation's vision, goals and objectives. For more information, see Part III, Section 1.
- Developing a list of possible impacts and concerns, Valued Components (VCs), and share these with the Agency.
- Developing a collaborative process agreement, including a consultation work plan, with the Agency. For more information on engagement plans see Part III, Section 1.
- Establishing a process agreement, including an engagement work plan, with the *project proponent*. For more information on agreements, see Part III, Section 1.
- Identifying the Nation's information requirements and what related studies the Nation would like to lead. For information on Indigenous-led studies, see Part III, Section 2.
- Reviewing and commenting on the Tailored Impact Statement Guidelines (TISG). The TISG outlines all information and studies needed for the IA and considers key factors. For more information on the TISG, see Part III, Section 1.

## Phase 2: Impact Statement Phase

During Phase 2, the project proponent prepares the **Impact Statement** based on the information requirements set out in the TISG. The Impact Statement includes baseline data, scientific information, Indigenous and community knowledge, analysis of impacts and measures proposed to mitigate impacts, and the proponent's initial conclusions related to potential positive and negative impacts of the project.

The project proponent is encouraged to engage and coordinate with Indigenous Nations in co-developing relevant studies that will inform the conclusions of the Impact Statement, especially those that pertain to impacts on Indigenous Nations. Indigenous Nations may enter into one or more agreements (e.g., a “process agreement”) with the proponent that would set out terms of cooperation and information sharing protocols, as well as resources for Indigenous-led studies.

The goals of this phase, in the order set out below, are to:

- Gather important information, knowledge, data, and evidence needed to inform the Impact Statement;
- Develop an Impact Statement that will provide the proponent's assessment of positive and negative effects of the project; and
- Review a consolidated draft of the Impact Statement against the requirements in the TISG and determine whether the information requirements set out in the TISG have been met before advancing to the next phase of the IA.

Phase 2 can last up to a limit of three years, depending on how long the project proponent takes to prepare the draft Impact Statement. By the end of the phase, the Agency will post a notice of determination if it is satisfied that the project proponent has met the information requirements set out within the TISG.

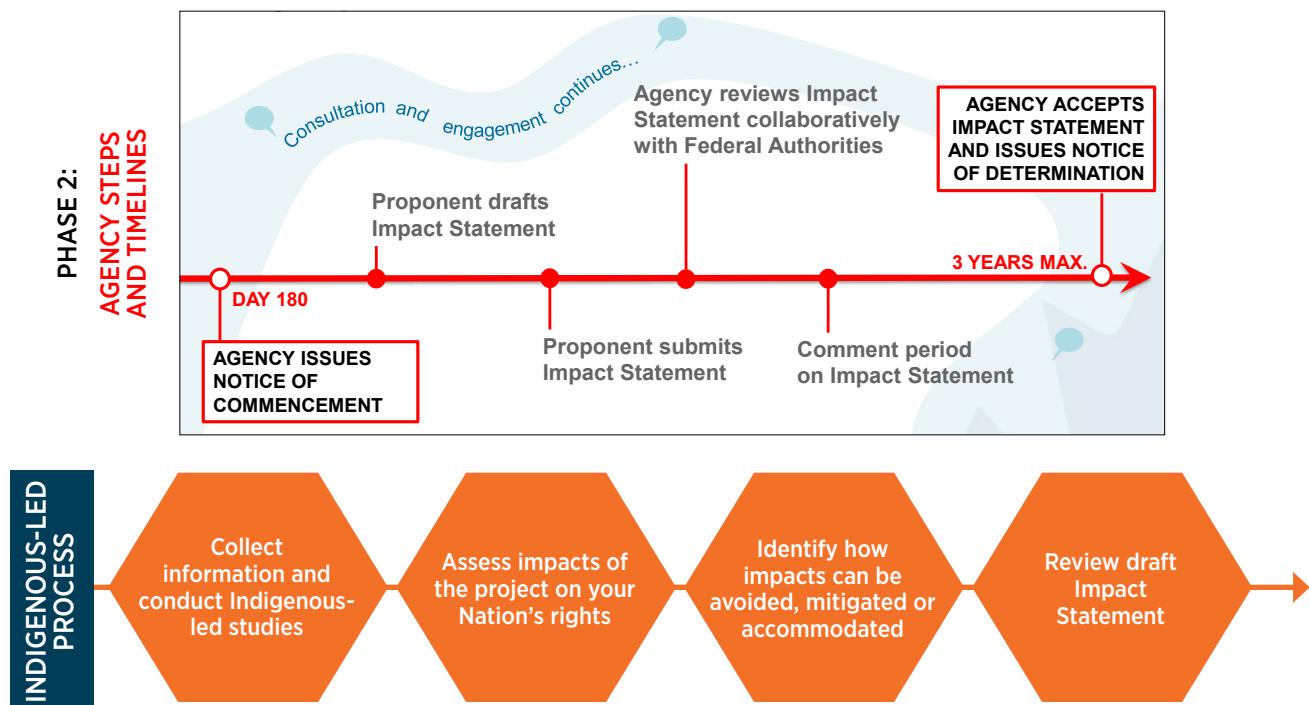
Phase 2 opportunities for Indigenous Nations include:

- Conducting Indigenous-led studies, collecting data, and collaborating with the proponent in studies related to the Impact Statement;
- Assessing impacts of the project on your Nation's rights and providing information on how these impacts can be avoided, mitigated or accommodated;
- Providing suggested mitigation and accommodation measures;
- Reviewing and commenting on the draft Impact Statement and helping the Agency determine if information requirements set out in the TISG have been met; and

See Figure 5 on the following page for a breakdown of this phase.

Phase 2 can last up to a limit of three years, depending on how long the project proponent takes to prepare the draft Impact Statement.

Figure 5: Key Steps and Timelines in Phase 2 – Impact Statement Phase



### WHAT SHOULD YOUR NATION PLAN FOR IN THE IMPACT STATEMENT PHASE?

- Conducting any study that you identified in Phase 1 and contributing any Indigenous knowledge that you consider necessary for decision-making. For information on Indigenous-led studies see Part III, Section 2.
- Assessing impacts of the project on your Nation's rights and providing information on how these impacts can be avoided, mitigated or accommodated. For information on rights impact assessment, see Part III, Section 2.
- Providing suggested mitigation and accommodation measures. For more information on how to review the Impact Statement see Appendix H.
- Reviewing and commenting on the draft Impact Statement and helping the Agency determine if information requirements set out in the Tailored Impact Statement Guidelines (TISG) have been met. For more information on how to comment on the TISG see Part III, Section 1 and Appendix F.

## Phase 3: Impact Assessment Phase

The time limit of the Impact Assessment Phase (Phase 3) depends on whether the assessment is Agency-led or conducted by a Review Panel. An Agency-led assessment can last up to a maximum of 300 days while an assessment conducted by a Review Panel can extend between 300 and 600 days. During this phase, the Agency or the Review Panel conducts a detailed technical review of the project's potential impacts and produces the **Impact Assessment Report** and proposed enforceable **Conditions** to which the project proponent must comply when carrying out the project. The Agency's or Review Panel's analysis is informed by information and evidence provided by expert federal departments, Indigenous groups, public, and the provincial, territorial and Indigenous jurisdictions.

The Impact Assessment Report must present:

- Analysis of all Section 22 factors including positive and adverse effects
- Analysis of adverse effects and how significant these effects are
- A description of how Indigenous knowledge was considered
- A summary of public comments
- Recommendations for **mitigation measures** and the **follow-up programs**, including the Agency / Review Panel's rationale and conclusions

Phase 3 opportunities for Indigenous Nations include:

- Involvement in the detailed technical review of the Impact Statement<sup>6</sup>
- The development of a rights impact assessment (RIA) in collaboration with the Crown
- A review of the Agency's draft conclusions, recommendations and conditions contained in the draft Impact Assessment Report and draft Conditions and/or draft sections of the IA Report
- The Nation's technical team engages with leadership and community members through formal meetings to gain views on technical team's findings of the IA process, to support the Nation's consent-based decisions on the project

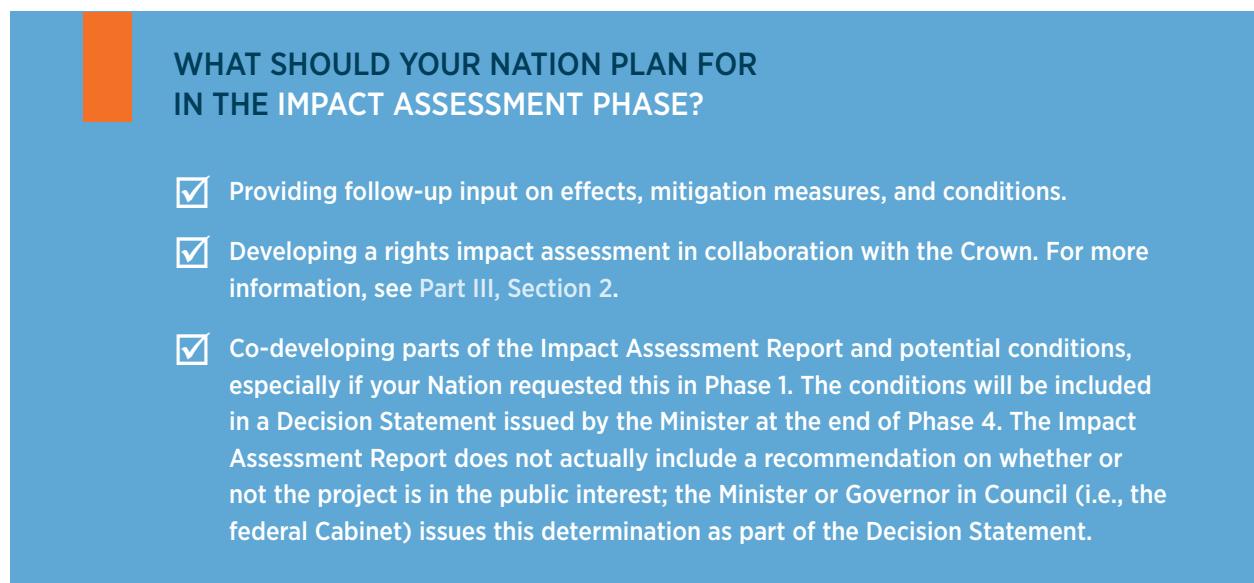
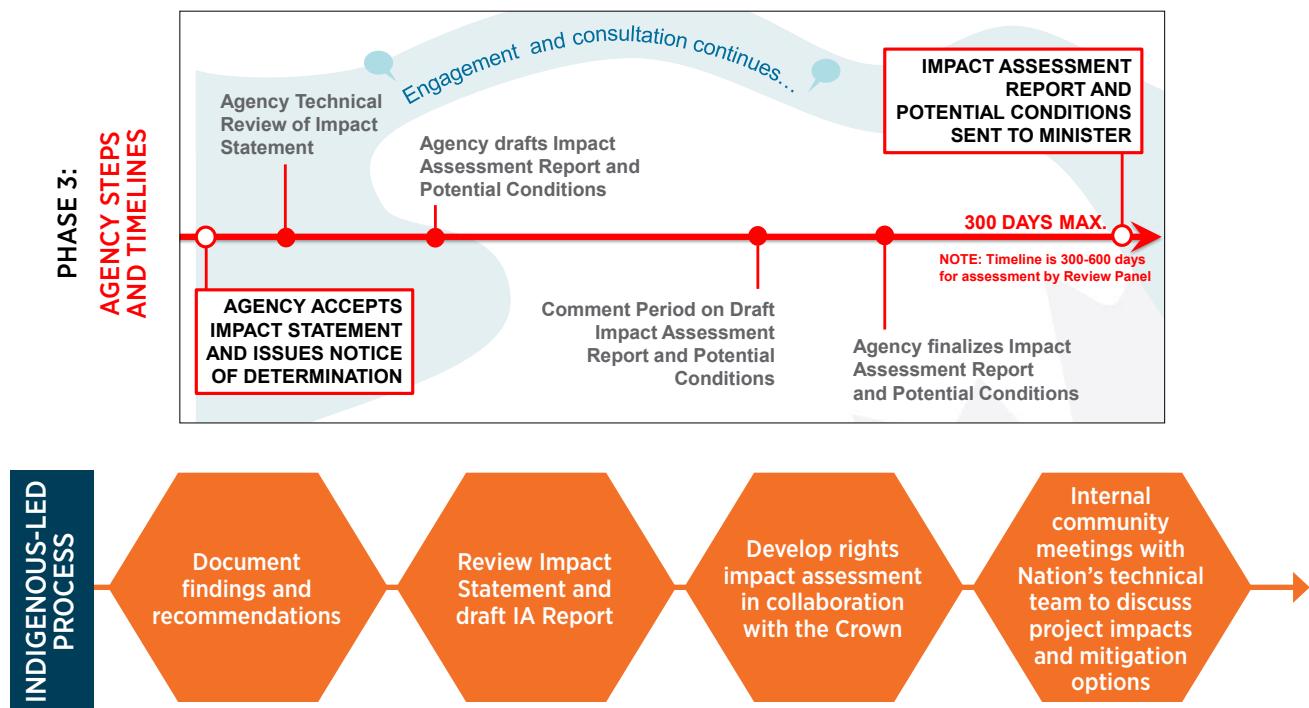
**Figure 6 on the following page provides an overview of the Impact Assessment Phase.**



### WHAT IS THE IMPACT ASSESSMENT REPORT?

The IA Report presents the information and analysis provided by the Agency, to aid in the Minister's decision.

Figure 6: Key Steps and Timelines in Phase 3 – Impact Assessment Phase



## Phase 4: Decision-Making Phase

Phase 4 can last either 30 days (if the Minister is making the decision) or 90 days (if the Governor-in-Council is making the decision). At the end of Phase 4, the Minister or the **Governor in Council** must issue a determination on the project based on the Impact Assessment Report and five public interest factors.

The federal government's objectives of Phase 4 are to:

- Determine whether the adverse effects of the project are in the public interest in a timely, transparent and accountable manner; and
- Issue the federal government's **Decision Statement** that sets out the reasons for the decision and enforceable Conditions.

Phase 4 opportunities for Indigenous Nations include:

- Conducting an internal review of whether your Nation has gained sufficient information throughout the IA to make a decision on the project;
- Making a final decision on whether or not your Nation consents to the project proceeding;
- Submitting a formal notice of your Nation's decision to the Minister;
- Submitting a parallel submission to the federal government if your Nation disagrees with the conclusions in the IA Report. The submission will set out the Nation's views and conclusions regarding the project and its potential adverse effects; and
- Issuing a public statement related to the potential effects of the project and the Nation's position on the project.

Figure 7 on the following page provides an overview of the Decision-Making Phase (Phase 4).

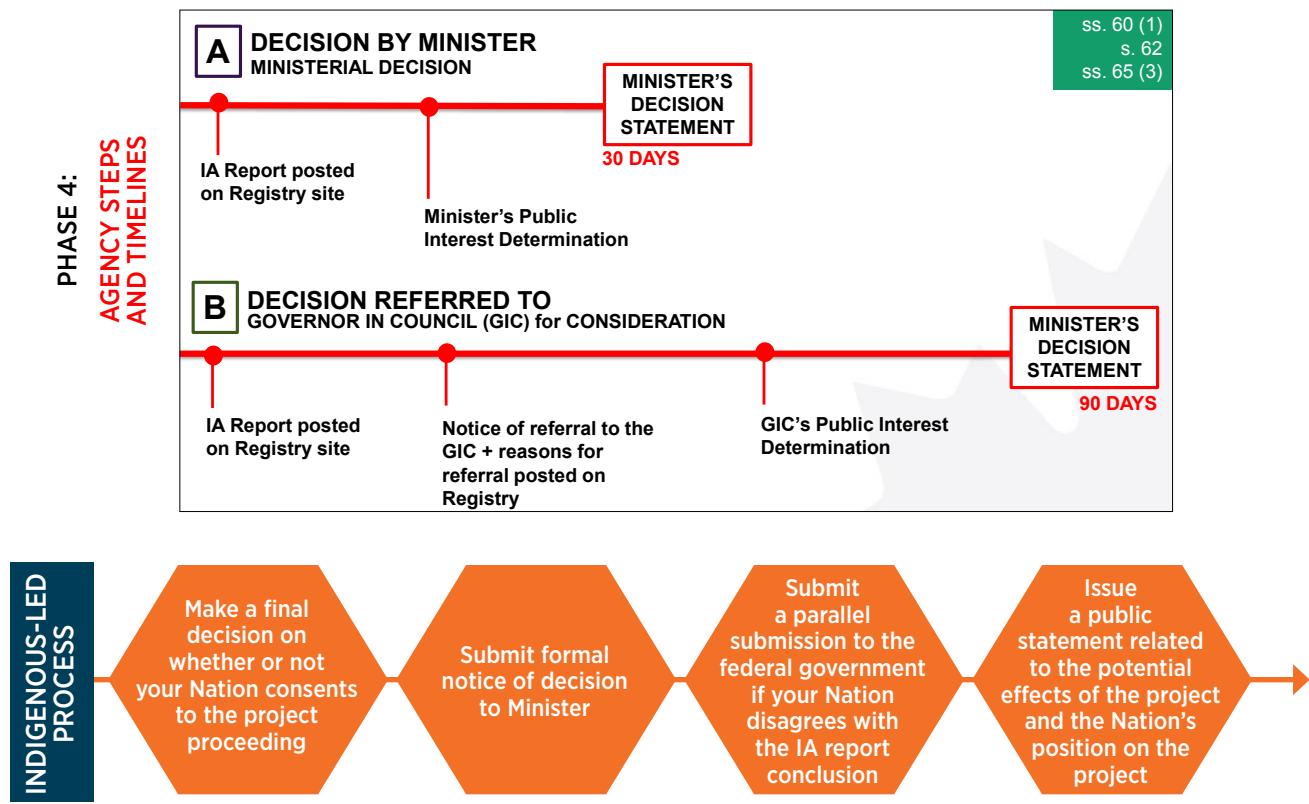
Phase 4 can last either 30 days (if the Minister is making the decision) or 90 days (if the Governor-in-Council is making the decision).



### WHAT IS THE DECISION STATEMENT?

The document issued by the Minister at the end of the Decision Phase that informs the project proponent and the public of the IA decision outcome and sets out enforceable conditions.

Figure 7: Key Steps and Timelines in Phase 4 – Decision-Making Phase



### WHAT SHOULD YOUR NATION PLAN FOR IN THE DECISION-MAKING PHASE?

There is no role assigned to Indigenous Nations in Phase 4 of the federal Impact Assessment process. The federal government – either the Minister or Governor in Council – will reach a decision on the project independently of other levels of government, including Indigenous governments. However, in advance of issuing its Decision Statement, the Minister or Governor in Council will review input and information related to impacts to Indigenous groups (among other issues in the report) for consideration in its decision.

If an Indigenous Nation disagrees with the conclusions of the Impact Assessment Report, or the related Rights Impact Assessment, the Nation can prepare and submit a parallel submission to the federal government setting out the Nation's views and conclusions regarding the project and its potential adverse effects.

## Phase 5: Post-Decision Phase

Phase 5 extends through the life of the project, from the commencement of operations through to the closure and decommissioning of the project. During this period, the project proponent is required to comply with the **Conditions** set out in the **Decision Statement**, including the implementation of monitoring and follow-up programs.

The federal government's objectives for this phase are to:

- Monitor and enforce compliance with the Conditions of the Decision Statement;
- Verify that required mitigation measures are working;
- Verify that follow-up programs are working; and
- Verify that appropriate adaptive management measures are being applied, as needed to meet objectives of Conditions of the Decision Statement.

Phase 5 opportunities for Indigenous Nations may include:

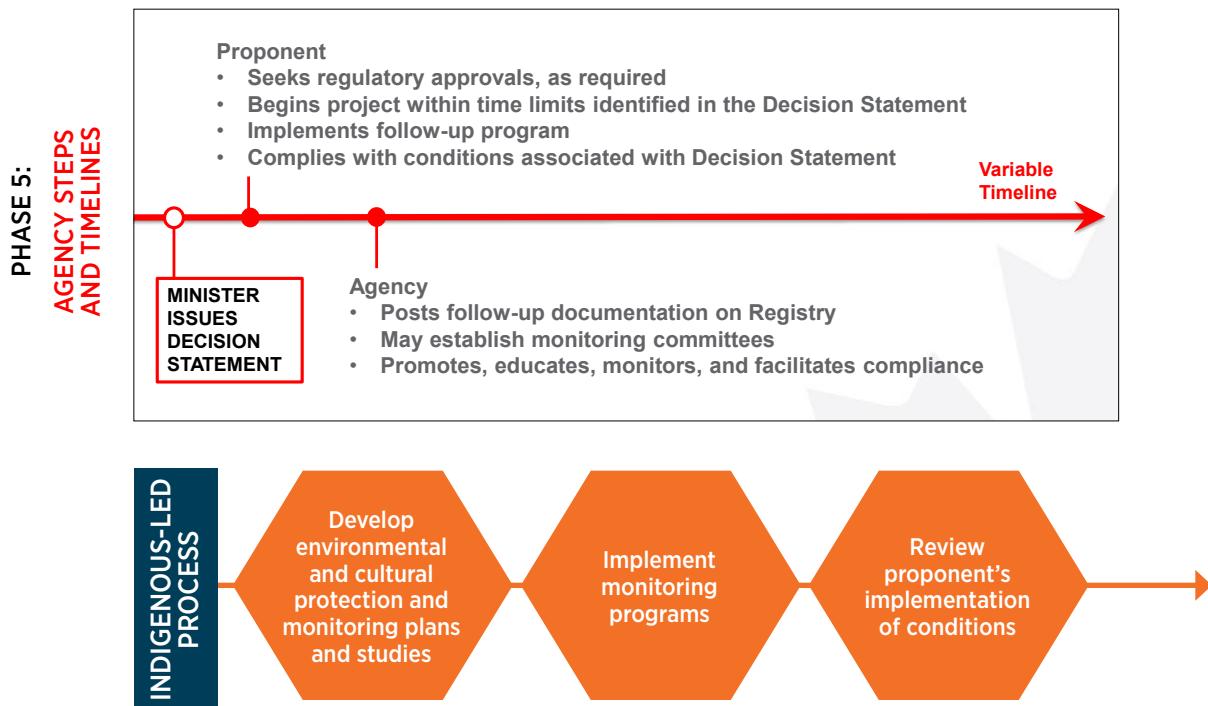
- Involvement in developing and implementing environmental management and protection plans;
- Involvement in developing and implementing habitat offsetting plans;
- Leading the developing and implementing an Indigenous monitoring program, including supplementary environmental studies;
- Leading the developing and implementing ecological and cultural protection and/or restoration plans; and
- Reviewing the proponent's implementation of the Conditions set out in the Decision Statement.

**Figure 8 on the following page provides an overview of the Post-Decision Phase (Phase 5).**

Table 1 on page 40 provides a quick reference guide to the key steps that are required at different phases of the IA, and the time limits that are associated with each of these phases.

Phase 5 extends through the life of the project, from the commencement of operations through to the closure and decommissioning of the project.

Figure 8: Key Steps and Timelines in Phase 5 – Post-Decision Phase



### WHAT SHOULD YOUR NATION PLAN FOR IN THE POST-DECISION PHASE?

This phase is ongoing and Indigenous involvement should also be ongoing.

Indigenous groups may be involved in follow-up programs, monitoring, and other programs set out in the conditions and measures. Indigenous Nations will also be able to provide comments if there are amendments to the Decision Statement.

However, reaching agreement between your Nation and the Agency and/or the proponent will be crucial for securing the adequate long-term resourcing that will be needed to support your Nation's meaningful involvement in the Post-Decision phase.

Therefore, it is recommended that Indigenous Nations begin discussions with government and the project proponent prior to the beginning of this phase, if and when possible.

# OVERVIEW OF KEY STEPS

Table 1: Legislated Timelines and Key Steps for Effective Involvement for each Phase of the IA

PHASE/TIME LIMITS	KEY STEPS FOR EFFECTIVE INVOLVEMENT
<b>PHASE 0: PRE-PLANNING</b>	<ul style="list-style-type: none"> <li>■ Meet with the project proponent to establish initial requests for the Impact Assessment (IA). Initial discussions can include the following requests: a list of the kind of information your Nation wants considered, how you want the information collected and considered, that the project proponent should read and follow the FNMPA Major Projects Assessment Standard and accompanying guidance, that the project proponent provide financial support for the collection of Indigenous-led studies, the project proponent enter into an agreement with the Nation, etc.</li> <li>■ It is possible that the project proponent won't reach out to your Nation before the assessment has officially started. In this case, you can begin these discussions in Phase 1. One option to stay on top of proposed projects in your territory is to maintain an open dialogue with your regional Agency contacts and ask them to inform you of upcoming project IAs so you can reach out to the project proponent as early as possible in the process.</li> </ul>
<b>PHASE 1: PLANNING PHASE, STAGE 1</b>  <i>Legislated timeline: 0 to 90 days</i>	<ul style="list-style-type: none"> <li>■ Review and comment on the Initial Project Description (IPD), meet with project proponent and Agency, provide comment on draft Summary of Issues and draft Detailed Project Description (DPD).</li> <li>■ Seek agreement with the Agency and the project proponent on process and funding arrangements for your Nation's involvement in the IA (this should include details on studies, IK, level of collaborations, etc.).</li> <li>■ Agency decides whether an IA is required.</li> </ul>
<b>PHASE 1: PLANNING PHASE, STAGE 2</b>  <i>Legislated timeline: 91 to 180 days</i>	<ul style="list-style-type: none"> <li>■ Review and comment on the draft TISG and draft Indigenous Engagement and Partnership Plan. Prepare any other related protocols/agreements that your Nation considers necessary, e.g., an Indigenous Knowledge Protocol.</li> </ul>

PHASE/TIME LIMITS	KEY STEPS FOR EFFECTIVE INVOLVEMENT
<b>PHASE 2: IMPACT STATEMENT PHASE</b>  <i>Legislated timeline: Up to 3 years</i>	<ul style="list-style-type: none"> <li>■ Conduct the studies your Nation identified in Phase 1 and collect/contribute any Indigenous knowledge you consider necessary for decision-making.</li> <li>■ Assess impacts of the project on your Nation's rights and provide information on how these impacts can be avoided, mitigated or accommodated.</li> <li>■ Provide suggested mitigation and accommodation measures.</li> <li>■ Review and comment on the draft Impact Statement and help the Agency determine if information requirements set out in the TISG have been met.</li> </ul>
<b>PHASE 3: IMPACT ASSESSMENT PHASE</b>  <i>Legislated timeline: 300 days for Agency-led IA; 600 days for Review Panel IA</i>	<ul style="list-style-type: none"> <li>■ Provide follow-up input on effects, mitigation measures, and conditions.</li> <li>■ Co-develop parts of the Impact Assessment Report and potential conditions, if your Nation requested this in Phase 1.</li> <li>■ Review draft IA report and draft conditions to be included in a Decision Statement issued by the Minister in Phase 4.</li> <li>■ Prepare and submit final comments on the findings of the draft IA report and draft conditions to Minister.</li> </ul>
<b>PHASE 4: DECISION PHASE</b>  <i>Legislated timeline: 30 days</i>	<ul style="list-style-type: none"> <li>■ No direct actions during this phase related to the federal IA.</li> <li>■ Indigenous Nations to pursue internal decision making, re: Free, Prior and Informed Consent, on project based on assessment of effects of the project on the environment, people, and rights.</li> </ul>
<b>PHASE 5: POST-DECISION PHASE</b>  <i>Legislated timeline: Ongoing during project construction and operations</i>	<ul style="list-style-type: none"> <li>■ Indigenous Nations may be involved in follow-up programs, monitoring, and other environmental management programs. The scheduling of these programs and initiatives will depend on the conditions set out in the Decision Statement and any additional conditions or arrangements contained in a Project Agreement reached between the proponent and Indigenous Nations.</li> </ul>



## WHAT WE LEARNED AND WHAT IS NEXT...

- The new IA process has new opportunities for Indigenous involvement in the IA. These new opportunities are based on new factors that are considered in the IA (including IK, Indigenous culture, Indigenous rights, Indigenous studies, etc.), as well as new approaches enhancing Indigenous involvement in the IA process (such as Indigenous-led assessments).
- Despite the new opportunities, some challenges remain, including time limits, undefined funding, and a need for Indigenous Nations to “negotiate” a better place for themselves within the process.
- These opportunities can only be realized with effective planning and adequate resources

The following sections will expand on what the new system will look like in practice and how your Nation can make the most of it.

Part III of the guide dives deeper into the type of studies, agreements, and tools to help your Nation plan for and make the most of the new opportunities in the new federal IA process.

## PART III

# KEYS TO EFFECTIVE INDIGENOUS INVOLVEMENT IN FEDERAL IMPACT ASSESSMENT

## PART III | SECTION 1

# FOUNDATIONS OF EFFECTIVE INVOLVEMENT IN THE PLANNING PHASE

**T**

his section describes the key elements of the Planning Phase of the IA process. The goal of this section is to outline tools that can help your Nation effectively engage in the Planning Phase.

In this section you will learn about:

- Why the Planning Phase is a “make or break” moment in the new federal assessment process and the different tools your Nation can develop in order to get a head start on this phase.
- How to influence the review process and project design during the Planning Phase to avoid unacceptable impacts to your Nation’s rights and interests.
- Why and how building relationships with the Agency and the project proponent are important to ensure your Nation’s effective involvement in an IA.

### THE PRE-PLANNING PHASE

Although the new IA process doesn’t have an “early engagement” phase, we have dubbed the preparation for the Planning Phase as a Pre-Planning Phase, or “Phase 0.” This is the time period preceding the submission of the Initial Project Description (IPD) by the proponent.



During the Pre-Planning Phase, the project proponent prepares the IPD, works with the Agency and ideally is reaching out to potentially impacted Indigenous Nations. The Agency and the project proponent may meet to discuss whether the project is on the Project List; the scope of the project; expectations related to the IPD; the impact assessment process and timelines; and preliminary identification of potentially affected Indigenous groups.

This is a good time for Indigenous Nations to begin early discussions with the proponent regarding the proposed project and how your Nation can be effectively involved in the impact assessment process.

It is important for your Nation to have the tools and capacity in place *before* the proponent knocks on your door and the IA begins.

## Why the Planning Phase is a “Make or Break” Moment in the New Federal Impact Assessment Process

In the new federal IA process, the Planning Phase (Phase 1) sets the stage for all subsequent phases that follow. It is during this phase that many important decisions are made that define how the assessment will take place. To ensure your Nation’s concerns are heard, several key steps are recommended:

- Develop an engagement plan and/or agreement with the Agency. This can be attached to, or complement, the Agency’s more general **Indigenous Engagement and Partnership Plan** (IEPP) and/or with a nation-to-nation collaboration agreement between your Nation and the Agency.
- Establish an engagement plan and a process agreement with the project proponent.
- Develop a list of possible impacts and concerns and Valued Components (VCs) and share these with the Agency. The Agency will include your Nation’s list of concerns in the Summary of Issues.
- Review the IPD and the DPD and provide critical input with respect to how the project may impact your Nation. Consider how the proposed project fits into your Nation’s vision for the future of the territory and the Nation in general. Provide the project proponent and the Agency with clear feedback on whether the project has the potential to “fit” with the vision, goals and objectives of your Nation. **If your Nation has a land-use plan for its territory, this can be an important reference document to share with the Agency and the proponent from the outset.** A checklist for reviewing the IPD and the DPD are provided in Appendix D and Appendix E respectively.
- Develop a list of studies and information the Nation requires for the assessment, including studies that the Nation itself intends to lead.
- Review and comment on the TISG. A checklist for reviewing the TISG is provided in Appendix F.

As explained in Part 2, in most situations during the impact assessment only the project proponent can suspend the process time limits and deadlines. Especially during the Planning Phase, timelines can be relatively short. Hence, it is important for your Nation to have the tools and capacity in place *before* the proponent knocks on your door and the IA begins. This will allow your Nation to approach the project proponent and the Agency with a clear understanding of your Nation’s primary concerns and values, and the approach your Nation wants to take to address your concerns and protect your values.

As soon as the Planning Phase begins, your Nation should consider what matters most to your Nation, including important Values and **Valued Components** (i.e., the attributes of an environment that are determined to have intrinsic, legal, scientific, socio-cultural, economic or aesthetic value). A facilitated community scoping meeting can be very helpful to identify what values and issues are most important for the Nation to highlight for assessment during the IA. Community sessions will need to include an explanation of the project either by inviting the proponent to present or by requesting information materials from the proponent for your Nation’s staff to present on. Some Nations may wish to have the proponent present this information directly to Chief and Council and/or at a community meeting.

Further, scoping discussions should always be closed-door meetings with the option to have the proponent leave before the internal community discussion portion of the meeting begins.

Key questions that can be posed to capture what matters most to a Nation's membership may include, but are not limited to:

- What are the most important values for Nation member community wellbeing? What makes life worth living? What makes you happy?
- What do you want to protect the most?
- Are there key areas that need protection? Key species, animals, or plants?
- What changes have been seen on the land already?
- What are the most important concerns about potential impacts from the project on your Nation's Aboriginal and treaty rights and/or traditional way of life? What impacts might the proposed new project have?
- What is the best way to learn more about peoples' concerns?

The following page sets out a list of some important tools to ideally to have in place *before* an assessment begins.

Steady and active involvement during the Planning Phase work will help get your Nation started in the IA on a solid footing. It is for this reason that we are calling the Planning Phase a “make or break” moment for Indigenous Nations to realize the full potential of the new IA process.

## WHAT WE LEARNED AND WHAT IS NEXT ...

Once your Nation has identified Valued Components and concerns, pinpointed which tools to use, and established your Nation's assessment approach, it will become easier to provide concrete input on the proponent's submissions and the Agency's assessment process plans.

The next subsection reviews the kinds of documents your Nation should be prepared to review and how to review them.

## BEST PRACTICE: TOOLS AND RESOURCES TO HAVE IN PLACE BEFORE AN IMPACT ASSESSMENT BEGINS

- Lands or Natural Resources (or Aboriginal or Treaty Rights) manager
- A negotiator for preparing agreements – this can be either a lawyer on staff, a lawyer hired out for key negotiations, or a consultant
- Long-term vision statements and strategic plans, and territory-based land use plans for resource development
- Consultation protocol
- A list of information requirements that apply to environmental assessments, impacts assessments, and any other decision(s) based on Free, Prior, and Informed Consent, including but not limited to:
  - A list of information about the project
  - A list of mandatory studies and their costs you require funded to assess a project
  - Requirements for governments and proponents to read and follow relating to your Nation's consultation protocol and IK protocol
  - Preliminary funding for negotiating a process or collaboration agreement
- A one-window approach to Crown and proponent engagement
- Funding requirements (i.e., fee schedule) to be applied to all referrals and major projects
- Funding tools and resources to build your Nation's capacity and prepare for forthcoming project assessments
- Guidance documents for priority values – such as Indigenous knowledge collection and management protocol

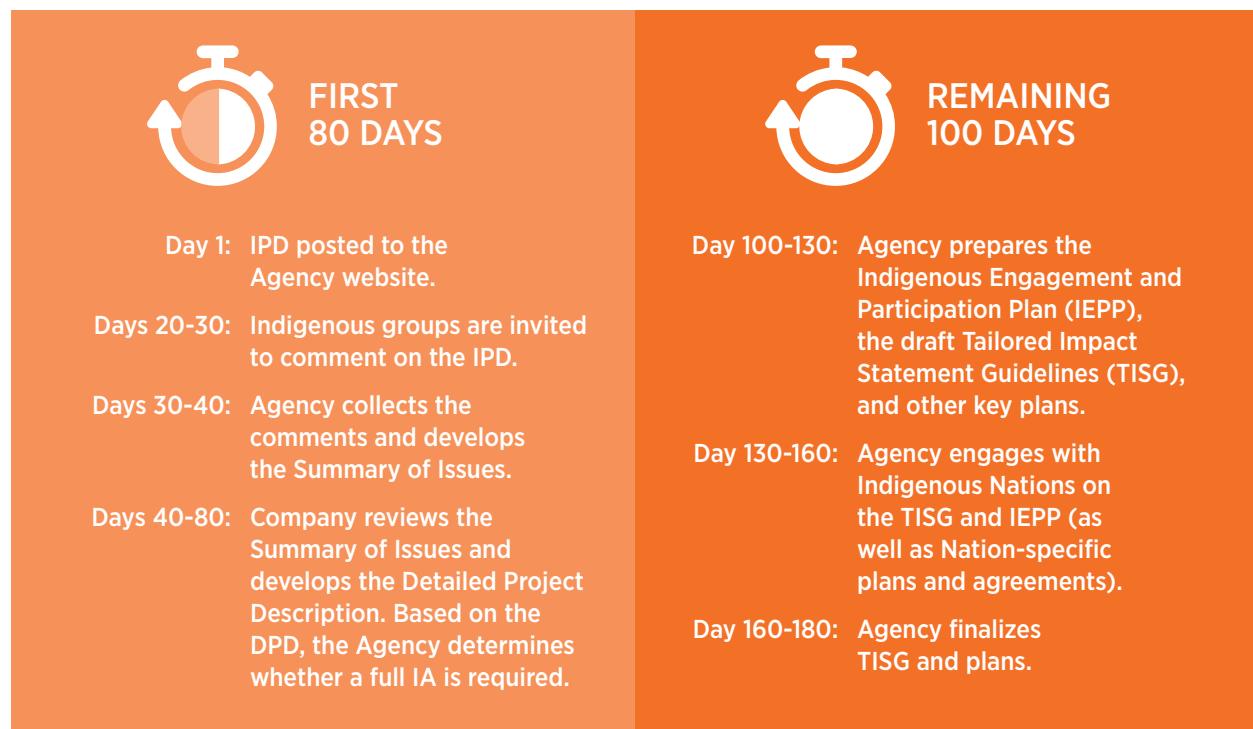
## How to Influence the Review Process and Project Design During the Planning Phase

### Key Documents and Comment Periods

In the Planning Phase, Indigenous Nations will be asked by the Agency to review and provide comments on several important documents that are developed and submitted by the proponent and the Agency, including the Initial Project Description (IPD), the Detailed Project Description (DPD), and the Tailored Impact Statement Guidelines (TISG).

Figure 9 breaks down key steps and document review that is required of Indigenous Nations in the Planning Phase, and highlights the importance of Indigenous Nations raising concerns as early and as often as possible.

**Figure 9: Key Steps and Documents for Indigenous Input in the First 180 Days**



In the Planning Phase, Indigenous Nations will be asked by the Agency to review and provide comments on several important documents that are developed and submitted by the proponent and the Agency, including the IPD, the DPD, and the TISG.

## Initial Project Description

The IA officially begins when the **Initial Project Description** (IPD) is posted on the Agency's Registry. This means that the IPD is prepared by the project proponent before the IA actually begins and should be developed through discussions with the Agency, potentially-impacted Indigenous Nations, and other jurisdictions.

The objective of the IPD is to lay out the basic information on the proposed project to allow for Indigenous, government, and public review and comment. It must provide the following information:

- General information (project name, type, industry, key contacts etc.);
- Project information (including purpose and need for the project);
- Location information (site maps);
- Federal, provincial, territorial, indigenous and municipal involvement; and
- Project's possible effects.

The comment period on the IPD provides an important opportunity for Nations—before the IA formally commences—to consider and weigh in with questions and comments about the **location and main design features** of the project. **One of the key objectives for Indigenous Nations in reviewing the IPD is to determine whether a project is acceptable to your Nation as proposed and, if not, to suggest possible alternatives.**

If your Nation finds a project to be unacceptable as proposed, it is recommended that you request an **alternatives assessment** to assist in evaluating key issues such as project location, project design and/or technologies. In order to have an opportunity to have this request considered before the IA commences, this request will need to be made within **the first 30 days of the Planning Phase** when Indigenous Nations are provided an opportunity to comment on the IPD and to inform the Agency's preparation of a Summary of Issues.<sup>7</sup>

If your Nation finds a project to be unacceptable as proposed, it is recommended that your request an **alternatives assessment**. This request will need to be made within the **first 30 days of the Planning Phase**.



## WHAT IS AN ALTERNATIVES ASSESSMENT?

An alternatives assessment aims to minimize environmental harm by comparing multiple potential options in the context of a specific goal or opportunity. The “Purpose and need for,” “Alternatives to,” and “Alternative means” are all required factors for consideration under Section 22 of the *Impact Assessment Act*.

- **NEED FOR:** The opportunity that the project is intended to satisfy; or the fundamental justification or rationale for the project. For example, the project proponent wants to increase energy production in a region.
- **ALTERNATIVE TO:** Functionally different ways to meet the need for the project and achieve its purpose that are technically and economically feasible. For example, to increase energy production in a region a proponent could choose to build a wind farm or a hydroelectric project.
- **ALTERNATIVE MEANS:** The various technically and economically feasible ways, through the use of best available technologies, which would allow a designated project and its physical activities to be carried out. For example, the alternative routing of a proposed pipeline or electrical transmission line.

Best practice requires that Indigenous Nations are engaged in a meaningful assessment of the alternative means to undertake a project (e.g., routing, siting, chosen technology), and alternatives to the project, prior to the proponent concluding on its preferred alternative. Meaningful engagement includes:

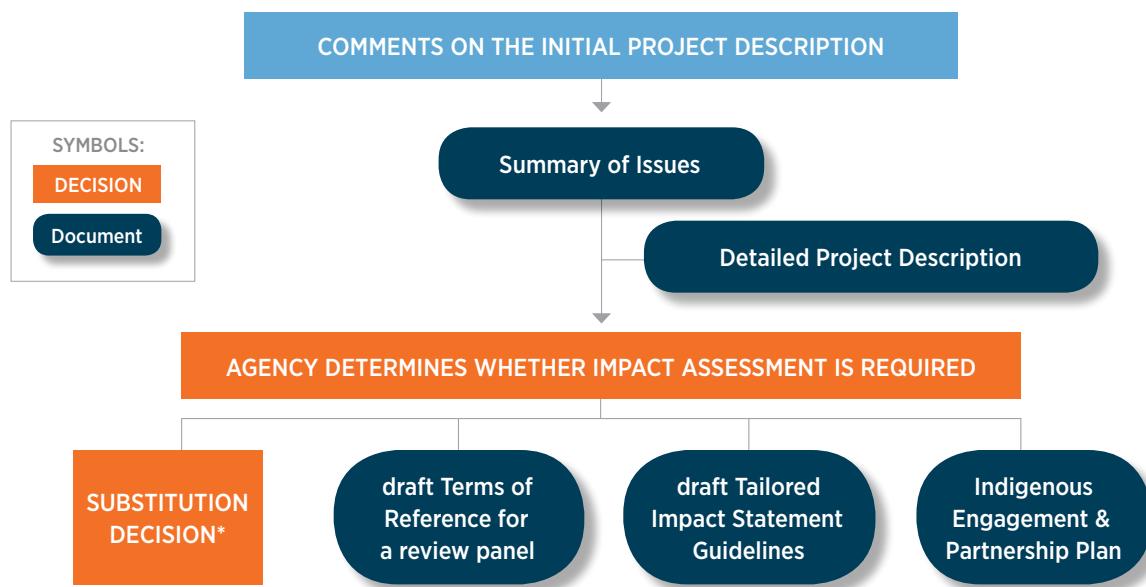
- Identification of both the proponent’s criteria and the Indigenous Nation’s criteria to assess alternatives;
- Criteria are weighted in a transparent fashion;
- Collection and review of adequate information to compare the benefits and risks of each alternative; and
- Joint review of alternatives.

An alternatives assessment aims to minimize environmental harm by comparing multiple potential options in the context of a specific goal or opportunity.

One of the key objectives for Indigenous Nations in reviewing the IPD is to determine whether a project is acceptable to your Nation as proposed and, if not, to suggest possible alternatives.

Figure 10 provides a breakdown of the documents and decisions that flow from the IPD. The figure highlights the importance of commenting on the IPD as it forms the basis for many subsequent decisions throughout the process.

**Figure 10: Decisions and Documents Informed by the Comments Made on an IPD**



*\*A substitution decision is not applicable in all circumstances.*

Even though the IPD provides only general information, by carefully reviewing it, your Nation can identify and document red flags as early in the IA as possible. Should any of these key concerns remain unaddressed, it will be helpful when engaging with the proponent and the Agency later in the process to be able to refer to a paper trail indicating that your Nation had raised these concerns in the early stages of the assessment.

For a guidance on how to review the IPD, see Appendix D.

## Detailed Project Description

The **Detailed Project Description** (DPD) is prepared by the project proponent by the end of the first 80 days and is the culmination of engagement with Indigenous Nations, the public, and government on the IPD. It must describe the following information:

- Updated general information (project name, type, industry, key contacts etc.);
- Detailed description of engagement with Indigenous groups during the Planning Phase;
- Detailed project information, including a description of all activities, infrastructure, permanent or temporary structures and physical works to be included in and associated with the construction, operation and decommissioning of the project;
- Alternative means and alternatives to the project;
- Location information (including site maps);
- Federal, provincial, territorial, indigenous and municipal involvement; and
- Detailed description of any potential effects from the project.

Table 2 compares the different content of the IPD and the DPD.

**Table 2: Comparison of Initial Project Description and Detailed Project Description**

INITIAL PROJECT DESCRIPTION (IPD)	DETAILED PROJECT DESCRIPTION (DPD)
<ul style="list-style-type: none"><li>■ Initiates the Planning Phase</li><li>■ Lists preliminary project information</li></ul>	<ul style="list-style-type: none"><li>■ Updates the information in the IPD</li><li>■ Lists detailed information about the project</li><li>■ Provides a response to Summary of Issues (Agency's summary of Indigenous community's concerns)</li></ul>
<b>ENGAGEMENT</b>	
<ul style="list-style-type: none"><li>■ Lists a summary of company's engagement undertaken</li></ul>	<ul style="list-style-type: none"><li>■ Lists summary of the results of company's engagement</li><li>■ Description of how the proponent intends to address issues raised in the Summary of Issues</li></ul>
<b>DESCRIPTION OF PROJECT'S POTENTIAL EFFECTS</b>	
<ul style="list-style-type: none"><li>■ Provides a list of potential effects</li></ul>	<ul style="list-style-type: none"><li>■ Provides a description of potential effects</li></ul>

*Source: Impact Assessment Agency of Canada*

To have your concerns heard about the Detailed Project Description, your Nation can:

- Contact the Agency with a list of concerns, recommendations, and next step suggestions to be considered before a formal decision is made on whether an IA is required.
- Contact the Agency with special reference to how your Nation wants your concerns and recommendations reflected in the draft Tailored Impact Statement Guidelines.
- Reach out to the proponent while they draft their DPD and list the areas of concern that your Nation wants reflected in the DPD and the recommendations on how to do so. In agreements your Nation drafts with the proponent, you may consider including a requirement that ensures your Nation has the opportunity to review draft versions of key documents such as the IPD, DPD, and Impact Statement.

The Agency decides whether the project will be rejected outright, be allowed to advance directly to permitting or entered into the IA process based on information submitted in relation to the DPD, so it is important for your Nation to comment on early drafts, meet with the proponent, and clearly express your Nation's concerns to the Agency and the proponent as early and as often as possible. **For guidance on how to review the DPD, see Appendix E.**

## Tailored Impact Statement Guidelines

The Tailored Impact Statement Guidelines (TISG) set out the information requirements for the IA, i.e., what questions must be addressed in the studies that inform the Impact Statement. They are developed by the Agency and are the result of input received from Indigenous Nations, relevant federal and provincial government departments and ministries, municipal governments and the public.



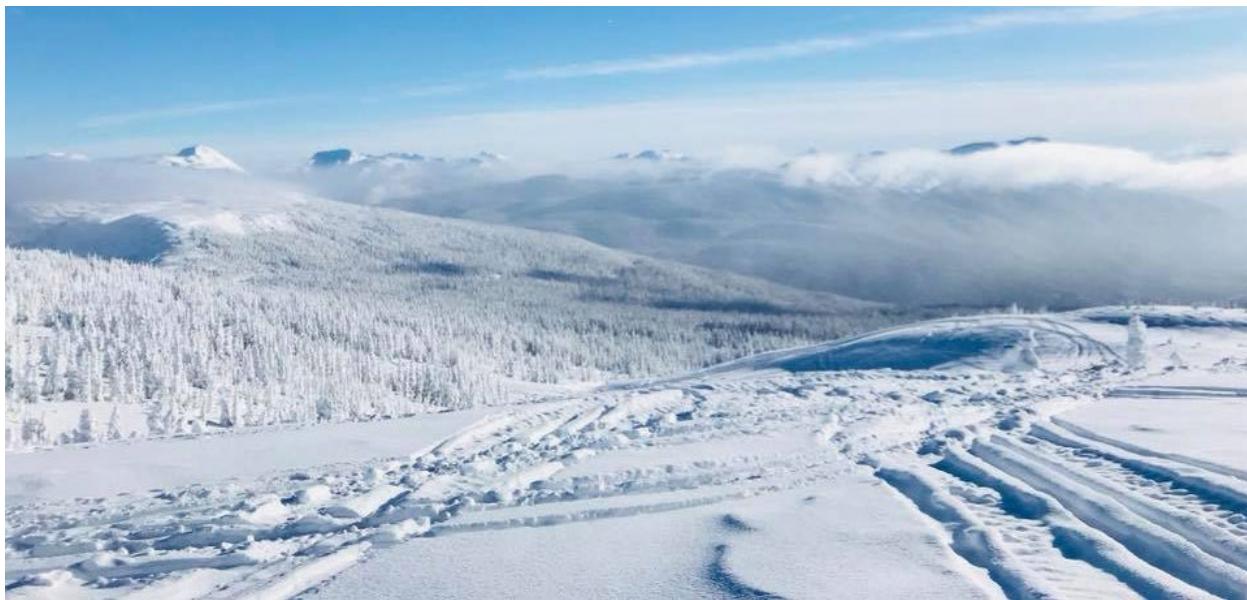
### WHAT INFORMATION AND STUDIES DO THE TAILORED IMPACT STATEMENT GUIDELINES REQUIRE?

- Health, social, and economic effects;
- Impacts to Indigenous peoples and their rights;
- Indigenous knowledge;
- Need for the project, and its alternatives;
- Project's contribution to sustainability;
- Project effects in the context of the federal government's environmental obligations and climate change commitments;
- Community knowledge;
- Gender based analysis plus (GBA+); and
- Factors raised by Indigenous peoples.

The TISG will also identify the *Valued Components (VCs)* relevant to the project.

Since the TISG sets the stage for the entire IR process, it is important for your Nation to be actively engaged in the development of this document. Your Nation can take an active role in the TISG through commenting on the draft Tailored Impact Statement Guidelines as well as meeting with the Agency.

Your Nation will have an opportunity in the second half of the Planning Phase to review a draft of the TISG, and weigh in on what requirements the TISG should include in respect to Indigenous Knowledge, the assessment of impacts to rights and related **Valued Components**, as well as studies to be undertaken by the proponent and by the Nation. Your Nation may also choose to draft sections of the TISG. **For guidance on how to review the TISG, see Appendix F.**



## WHAT WE LEARNED AND WHAT IS NEXT...

In the Planning Phase (Phase 1) of the Impact Assessment, timelines are tight and therefore your Nation must be prepared in order to provide its input into the key process documents that will set the stage for the remainder of the IA.

The formal assessment process does not account for the limited resources of Nations and does not always support a full and thorough review from Indigenous Nations. Due to this, it is important to build relationships with the Agency and the proponent to ensure adequate resources and certainty around timelines are achieved. The next subsection elaborates on the importance of these relationships and how to build them.

## Relationships with the Agency and the Proponent for Effective Involvement in the IA Process

### Engagement and Consultation: Ensuring your Nation is Actively Involved Throughout the Entire Impact Assessment Process

Impact assessment is a highly technical and resource-demanding process with rigid timelines and other procedural requirements that can pose serious challenges for Indigenous Nations to have their concerns heard and their voices represented. Effective participation in an IA requires an Indigenous Nation to have staff, technical consultants, and other resources in place to ensure it can meet the pressures to participate in each phase of the IA, such as commenting on documents, attending meetings, and drafting submissions, in a timely manner. This can put a lot of pressure on a Nation's resources and staff.

It is therefore important for Indigenous Nations, at the outset of the IA, to request the Agency and the proponent to provide the following supports and commitments necessary for building process certainty:

- Providing funding as early on in the process as possible. In fact, preliminary funding should be provided even before process agreements are signed to help the Nation negotiate the process agreements.
- Granting sufficient time to Nations to ensure meaningful consultation and engagement occurs. This means Indigenous Nations are given enough time to review documents, provide input, organize community meetings and provide community-informed feedback.
- Agreement to follow any protocols your Nation has in place—such as an IK protocol, rights impact assessment protocol or engagement policy.
- Agreeing to support your Nation's research requirements and providing the resources to do so.

All of these forms of support can and should be laid out in an agreement (collaboration agreement or MOU) with the Agency and the project proponent. A common problem faced by Indigenous Nations is the amount of time and effort required to “chase down” an agreement with a project proponent. To avoid this problem, Nations should develop and codify “advance engagement requirements”, such as a template MOU for prospective proponents seeking to carry out a project in the Nation's territory. It is recommended that these requirements be posted on the Nation's home website.

Before going into detail on what agreements between an Indigenous Nation and the proponent and/or the Agency may include, it's important to first take a look at the costs that Indigenous Nations can expect to incur for effective involvement in an IA.

It is important for Indigenous Nations, at the outset of the IA, to request the Agency and the proponent provide supports and commitments necessary for building process certainty.

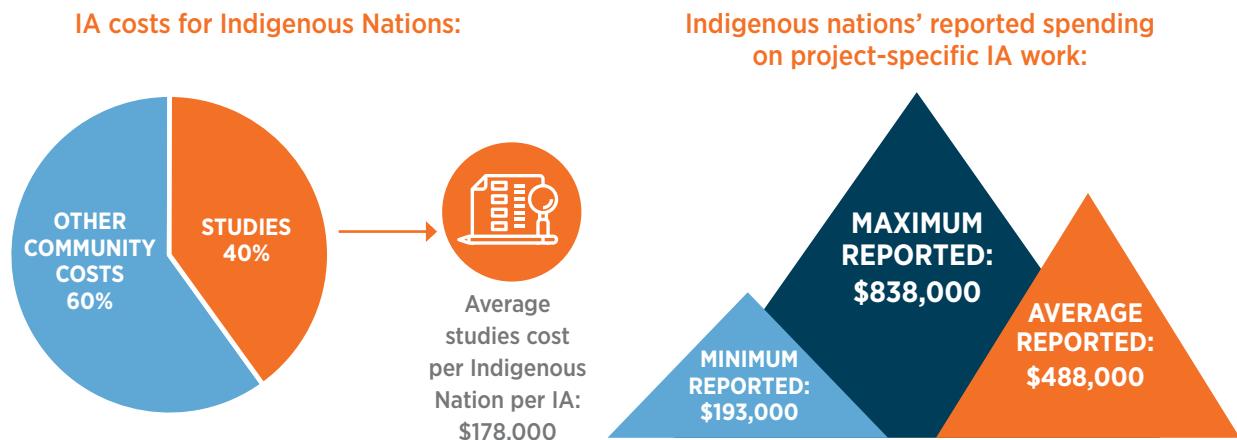
## What are the costs of impact assessments?

Costs associated with an IA range from general staff time to studies, community meetings, technical consultants, legal costs and more. Rough estimates suggest that proponents spend approximately 1 per cent of total capital costs of a major project on IA related activities. The FNMPc conducted a review of IA-related studies and engagement costs and identified a range of costs and suggested that the cost of (primarily baseline) studies is a significant portion of IA engagement costs. The FNMPc has also developed a “costing estimator” tool that will be available to download from the FNMPc website in 2021.

In our view, Indigenous Nations should not be responsible for covering the costs of a proponent’s assessment. In order to ensure your Nation is receiving proper supports, it is important to consider the various engagement tools available.

Figures 12 and 13 provide further insight on IA costs for individual Indigenous Nations and the types of tasks that are the source of these costs.<sup>8</sup>

**Figure 11: Estimated Costs for a Nation’s Effective Participation in a Formal IA Process**



**Figure 12: Key Cost Elements for a Nation’s Effective Participation in a Formal IA Process**



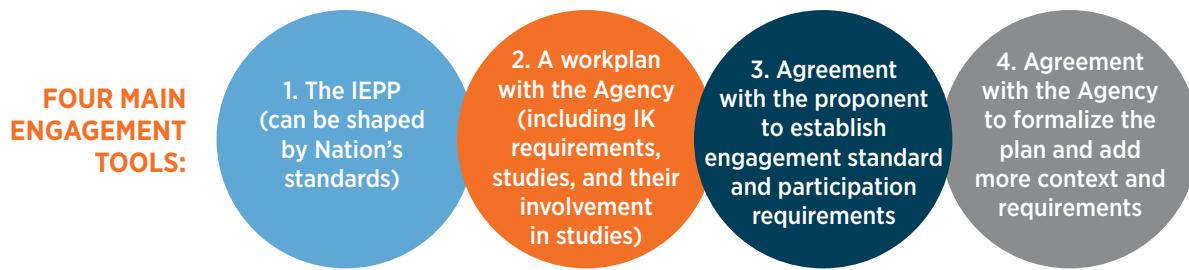
To deal with shortages it is expected that a Nation will need to receive the majority of IA-related funding from the project proponent.

For a Nation that is a priority rights holder, total capacity funding to cover effective involvement, including up to two studies, would normally range between \$500,000 and \$1,000,000 for the first four phases of the federal IA (i.e., up until the Nation makes a decision on the project, but not including post-decision monitoring and mitigations).

Although the federal government has stated that it will be increasing its contribution to its participation funding program (established under the previous federal EA process), it is anticipated that the amount provided through this program will not cover all of a Nation's involvement in an assessment. **To deal with shortages it is expected that a Nation will need to receive the majority of IA-related funding from the project proponent.**

## What options exist for consultation and engagement?

There are four main engagement and consultation tools that your Nation may consider and adapt to an IA.



### 1. Indigenous Engagement and Participation Plan (IEPP)

The IEPP is a standard document that the Agency develops at the start of the Planning Phase and may contain:

- Objectives of engagement and partnership.
- Indigenous communities identified by the Agency for Crown consultation and those communities that have expressed an interest in engaging.
- Information related to the methods and tools that may be used as well as preferences for specific engagement methods. It would also include information related to more collaborative approaches such as Indigenous-led studies to inform the IA or co-drafting parts of assessment reports.

- A table that describes the phases of the IA and the engagement opportunities during each phase.
- Roles and responsibilities of federal authorities that may be required to issue permits or authorizations in relation to the designated project.

Thus far, the IEPPs that have been developed for project-specific IAs are high-level summaries of the Agency's overall approach to consultation with all Indigenous Nations involved in an IA, and are not intended to act as bilateral nation-to-nation arrangements for consultation through the course of the IA. **It is highly recommended that Indigenous Nations supplement the IEPP by negotiating relationships through workplans or agreements with the Agency and the project proponent.**

## 2. Workplan Developed With the Agency

A workplan developed with the Agency can be attached to or separate from the IEPP and will add important context and details that the IEPP lacks. The way your Nation wants to be engaged will be based on the priorities, capacities, and experiences of your Nation. It is therefore important for your Nation to consider developing a plan for how it wishes to be engaged and how it wants to be involved in the IA. This includes deciding on:

- The Nation's preferred level of involvement in the IA;
- The types of studies and information the Nation would like considered, and how they want to be involved in conducting these studies;
- How the Nation's involvement will be funded;
- The involvement of the Nation in developing measures;
- The issues the Nation would like the assessment to focus on (including VCs, impacts to rights, impact thresholds);
- How the Nation would like IK considered; and
- Involvement in reviewing documents such as the DPD and the Impact Statement

## 3. Agreement With the Proponent

A process agreement (or MOU) with the proponent is critically important to building a more "collaborative" process with Indigenous-led components, and more effective involvement in the federal IA process (through all phases of the IA). Agreements with the proponent may cover:

- Funding for the Nation's involvement in the IA process, including costs for time of Nation's staff and technical advisory services for all technical IA and related consultation meetings;
- Funding for Nation's Indigenous-led studies;
- Travel costs for all technical IA meetings;
- Costs for hosting and coordination of internal community meetings related to the IA;
- Control over important Nation-specific studies in the development of the Impact Statement;
- Acceptable timelines and protocol for information exchanges and meaningful input into the process (i.e., how to address new timeline regulations) – this includes expectations of adequate

It is highly recommended that Nations supplement the IEPP by negotiating relationships through workplans or agreements with the Agency and the proponent.

notice and time windows for turning around comments on documents, or adequate time in advance in respect to provision of documents prior to a meeting;

- Support for Indigenous-led mitigations, conditions, and monitoring – this includes using a co-developed formal mitigation/benefits table;
- A communication protocol or plan that outlines how, and how often, the Nation expects to be consulted/engaged;
- Commitments for early engagement on project design, particularly siting and routing alternatives;
- Protocol around collaborative work related to the Nation's IK within the Impact Statement, and protection of IK based on the Nation's principles and protocols; and
- Opportunity for the Nation to review documents before they are submitted to the Agency or Review Panel.

#### 4. Collaboration Agreement With the Agency

Alternatively, or in conjunction with the agreement with proponent, an agreement with the Agency may be a critical component to effective participation in the IA. Agreements with the Agency should adequately account for:

- Support for review and comments on key documents throughout all phases;
- A commitment to not accepting the Impact Statement into Phase 3 until there has been best efforts applied to reach consensus with the Nation on the acceptability of the Impact Statement;
- Alternatives assessment, if required during the Planning Phase;
- Costs for hosting and coordination of internal community meetings related to the IA;
- Support for Rights Impact Assessment, including collaborative work with the Agency during the Impact Assessment Phase;
- Support for Indigenous-led assessment and/or studies;
- Support for Indigenous-led mitigations, conditions, and monitoring to be incorporated into the **Impact Assessment Report** and related enforceable **Conditions**;
- Support for a meaningful cumulative effects assessment;
- Consultation schedule reflective of the Nation's capacity and seasonal requirements; and
- Framework for how IK will be considered, including Nation review of the use of IK in documents such as the Impact Assessment Report.



## WHAT YOUR NATION NEEDS TO BEGIN NEGOTIATING AGREEMENTS...

To develop and sign strong agreements, your Nation will need two key ingredients to start off the negotiations:

- A legal or process advisor:** This can be an individual on the Nation's staff, or an external legal counsel or professional consultant with specialized expertise in impact assessment and Indigenous rights.
- Pilot funding or agreement from the proponent to provide capacity funding to cover costs of negotiating the process agreement:** The cost of negotiating an agreement is the responsibility of the proponent since it is their project that your Nation is required to invest time into reviewing and participating in the assessment process.

The contents of the agreements your Nation negotiates will depend on the priorities and concerns of your Nation. For example, your Nation may not desire or need to conduct its own Indigenous-led assessment and will therefore not include this in the agreement. However, your Nation may want to conduct part of the assessment or several important studies. Part III – Section 2, below, elaborates on how agreements can help bolster certain studies and assessments, including IK considerations, cumulative effects, socio-economic and health assessments, and RIAs.

### Indigenous-led Assessments

Under the new system, Indigenous Nations can sign agreements with the Agency to lead all or part of the assessment. Relevant sections of the Act include the following opportunities:

- Section 29 states that the Agency may delegate carrying out any part of the IA (including preparing the IA report) to an Indigenous Governing Body;
- Section 31 states that the Agency can substitute the responsibility to another governmental jurisdiction, such as an Indigenous Government, if the Minister is of the opinion that the jurisdiction's project assessment process would be an appropriate substitute; and
- Section 114 creates the opportunity for Indigenous governments to carry out any part of an assessment through government-to-government agreements negotiated with the Minister.

Indigenous Nations may choose to run part or all of an IA in order to ensure:

- A process that better reflects Indigenous values, perspectives and legal traditions;
- Meaningful consideration of Indigenous Knowledge, worldviews and perspectives in the effects assessment;

- A stronger focus on culture, rights, socio-economic balance, and connection to land and resources;
- Inter-generational equity;
- Nation members are more effectively involved in decision-making;
- Timelines and processes are more flexible; and
- More reflection on how the project fits in to the Nation's long-term visions and goals.

When organizing and planning an Indigenous-led IA, Indigenous Nations may wish to consider three main options:

1. **A co-managed IA involves one or more Indigenous groups assessing a proposed project alongside the Agency.** Co-managed assessments require an agreement between an Indigenous Nation and the Agency. Results from this model to date have been mixed relative to meeting goals and objectives of Indigenous groups. For example, Indigenous Nations in British Columbia report difficulties in integrating requested changes into the review process, as well as compelling proponents to comply with information requests. Indigenous Nations may also face challenges in ensuring that consent conditions are met within this framework.
2. **A co-developed model focuses on the relationship between the proponent and the Indigenous government, and requires a process agreement regarding the components of the assessment that will be authored by the Indigenous Nation.** Benefits of a co-developed IA for the proponent include avoiding uncertainty from the legislated IA process, gaining acceptance from the community and collaboration with the Indigenous Nation. Benefits of co-developed IA for Indigenous Nations include having a greater role in project planning, building a stronger two-way relationship with the proponent, providing better environmental protections, and often includes funding from the proponent to cover the full cost of the Nation's participation in IA. If applied correctly, this co-developed IA process can help to build a common approach between both parties in respect to minimizing impacts and maximizing benefits of the project.
3. **An independent Indigenous-led IA involves a discrete consent-based process that enables the Indigenous Nation to entirely control its own IA process, from process inception to the final decision.** This type of IA process may require substantially greater internal community financial and human resources compared to the two above options, and may only be advisable where the Nation has extremely high leverage, e.g., when a project poses significant potential impacts to rights (including title) within an area that is exclusively within the traditional territory of the Nation. In the right context, this type of IA can provide lasting support and empowerment for Nations in protecting their rights.

Indigenous-led assessments can be incredibly valuable; however, they are not always an option. When considering whether to conduct an Indigenous-led assessment, Figure 13 on the following page sets out the enabling factors that should be taken into consideration.

**Figure 13: Factors Shaping Indigenous-Led Assessments**



To summarize, the way your Nation will be involved in the assessment, and the level of control it will hold over the process will depend on the external context, the community context, and the relationship with the Crown and the proponent. Regardless of the extent and level of these factors, your Nation should be provided the support to be actively involved in the assessment by reviewing documents, contributing knowledge and input, and conducting your own studies and possibly your own assessment.

## WHAT WE LEARNED AND WHAT IS NEXT...

- The Planning Phase (and pre-planning phase) is incredibly important as it sets the infrastructure for the entire impact assessment process. It is critical for your Nation to be actively involved as early as possible in order to ensure your Nation's perspectives and values are included in the rest of the assessment process.
- Your Nation can ensure your input and perspective is included by carefully reviewing all key documents that are developed in the Planning Phase including the IPD, the Summary of Issues, the DPD, the TISG and the IEPP.
- Impact assessments are costly, time consuming and resource draining processes; because of this it is important to ensure the Agency is fulfilling its duty to consult and that the project proponent is properly engaging with your Nation.
- There are four main tools available to your Nation to ensure proper consultation and engagement including the IEPP, consultation plans with the Agency, agreements with the Agency and agreements with the project proponent.
- Indigenous Nations may also consider conducting their own Indigenous-led assessment. There are different kinds of options available to Indigenous Nations and what route the Nation takes depends on various factors related to the Nation context, the outside context and relationships with the Agency and the project proponent.

The next section goes further into the kinds of studies and assessments your Nation may want to consider undertaking and the tools and inputs your Nation may contribute to the assessment.

## PART III | SECTION 2

# KEY ELEMENTS OF IMPACT ASSESSMENT FOR INDIGENOUS COMMUNITIES

**T**

his section provides a more detailed examination of key pieces of the new federal IA process; namely, the main types of Indigenous-led studies and tools that can help your Nation advance its rights, values and interests while securing a greater degree of control during an IA.

Five key topics are explored in this section:

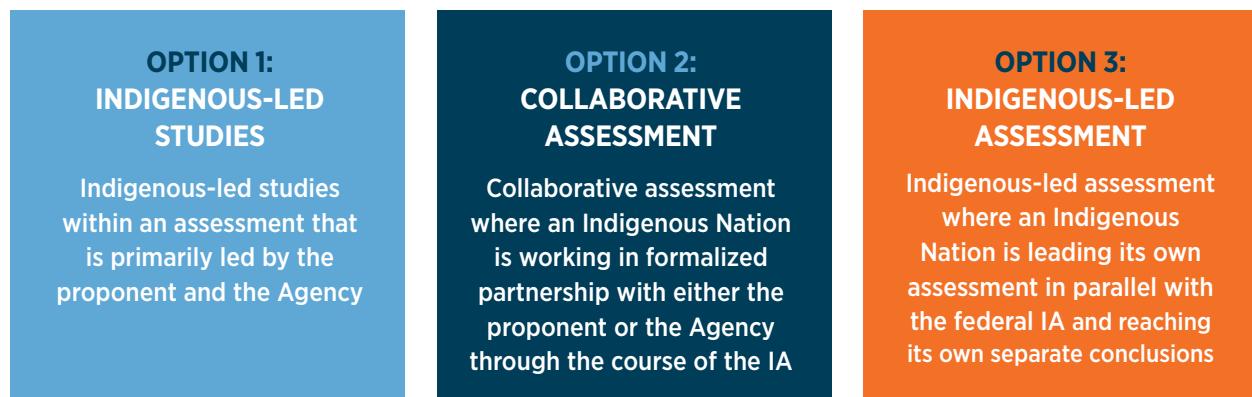
- **IMPACT ASSESSMENT STUDIES:** How can your Nation identify the best approach to take in an IA and the most valuable studies to undertake?
- **INDIGENOUS KNOWLEDGE:** How and when during an IA can your Nation ensure that IK—including community knowledge, Indigenous perspectives and values—is appropriately considered and protected throughout the Impact Assessment?
- **CUMULATIVE EFFECTS ASSESSMENTS:** How and when during an IA can your Nation ensure that cumulative effects are adequately considered during the Impact Assessment?
- **SOCIO-ECONOMIC AND HEALTH IMPACT ASSESSMENT:** How and when during an IA can your Nation ensure that Indigenous perspectives on effects on health, culture, social and economic conditions are adequately considered during the IA?
- **RIGHTS IMPACT ASSESSMENT:** How and when during an IA can your Nation ensure that a project's impacts to Indigenous Rights are adequately considered during the Impact Assessment?

This section provides a more detailed examination of key pieces of the new federal IA process; namely, the main types of Indigenous-led studies and tools that can help your Nation advance its rights, values and interests while securing a greater degree of control during an IA.

## Indigenous-led Assessment and Studies

Under the new Act, Indigenous Nations have the option to carry out or contribute to different kinds of IA studies, to conduct a collaborative assessment with the Agency and the proponent, or to conduct your own Indigenous-led assessment. Your Nation can decide the type and level of involvement in the IA depending on the specific circumstances of the proposed project, including the resources, needs, and capacities of your Nation.

**Figure 14: Options for an Indigenous-Led Role Within a Collaborative IA Framework**



For the purpose of this section, we will examine the first option, Indigenous-led studies, where there are opportunities for Indigenous Nations to:

- Request certain studies be undertaken;
- Request that certain information be considered;
- Collaborate on studies; and
- Conduct their own studies.

It is important for Indigenous Nations to be actively involved in identifying and carrying out studies, as it provides a greater degree of control over whether the Nation's knowledge is being collected and interpreted correctly. When left entirely in the hands of the proponent or the Agency it is possible that IK will be collected, applied, analyzed and considered incorrectly, or that IK will not be given the same level of consideration as western scientific knowledge.

While the opportunities for Indigenous involvement in, and control over, assessment-related studies has expanded under the new Act, it is still up to the Nation to identify how they want to stay actively involved throughout the assessment. Of course, there are barriers to Indigenous Nations making the most of these opportunities—namely, the time and resources to identify and follow through with their plans.

Factors to consider when determining which studies an Indigenous Nation will undertake include:

- The risks and impacts posed by the proposed project to the rights, health, socio-economic and cultural well-being of the Nation and deciding on how to manage these risks and impacts through the course of the assessment;
- The state of relevant information already in the possession of the Nation; and
- Information gaps that need to be addressed through supplementary studies, i.e., with knowledge holders who need to be interviewed and/or with technical experts that need to be hired to provide support.

The type of **Indigenous-led studies** that could be undertaken during an IA depends on what information is most important to understanding the potential impacts of the project on the Nation's rights, values and well-being.

Appendix M provides a list of types of Indigenous-led studies that a Nation may wish to undertake.

When determining the types of studies your Nation should undertake for the assessment, and how your Nation wants the study to be undertaken, it is important to consider what matters most for your Nation and what your capacity and needs are. For example, does the project pose a potential risk to a culturally important species? If so, your Nation may want to consider a Traditional Knowledge Study that applies to the species and the location of the project. In short, the type of study your Nation decides to take is project-specific and based on the needs of your community.



### TYPES OF INDIGENOUS-LED STUDIES

- Indigenous knowledge studies
- Indigenous land use studies
- Cultural impact assessment studies
- Cumulative effects assessment
- Rights impact assessments
- Socio-economic impact assessments
- Archaeological and heritage studies
- Health studies
- Harvest and food security studies
- Ecological studies

To help reflect on your Nation's needs and capacity consider the following questions:

1. What is the internal capacity of your Nation, especially the lands departments (strong to weak)? This can mean both your staff's experience, expertise and time to undertake a study; and alternatively, your staff's availability to oversee and coordinate studies being undertaken by external consultants hired by the Nation. The level of internal capacity will decide the number and depth of studies your Nation will want to conduct, and how it will conduct them.
2. How much funding do you have available to undergo the study(ies) (high to non-existent)? To estimate the funding that your Nation would need to undertake its own studies, refer to the "costing estimator" tool that will be available to download from the FNMP website in 2021.
3. How much time does your Nation have available? This connects to question 1 and 2, if you are understaffed and limited on time, the type of study and the depth of the analysis might be impacted. If your Nation is engaged properly and your Nation follows the time limits of the project from the outset, then the study timeline can match the assessment timeline.

4. What is your Nation's leverage in relation to the project (strong to weak)? This means, how strong is your position (e.g., through legal action) to stop the project by withholding your Nation's consent, and how open is the proponent to working with your Nation and supporting whatever involvement your Nation identifies as necessary? Is the proponent open and do you have the backing of the Agency? This will help identify the amount of resources and support available to your Nation to carry out the project.
5. What are the likely impacts (e.g., ecological, rights-based, food security-related, cultural, health)? This will help identify the type of research that will need to take place to identify the type and level of impacts.
6. How concerned is your Nation about the project (very concerned vs. slightly concerned)? The greater the potential severity of the project on your Nation's rights, community well-being and the environment, the greater the potential for concern—e.g., Is the project proposed in a cultural and ecologically important area? Are the possible project impacts reversible? How long will the project last?
7. What is your Nation's desired priority relationship (e.g., with the Agency, the proponent, or both)? This will help identify how your Nation wants the study undertaken—is it in collaboration with the Agency, the proponent, both, or independently with funding supports from proponent or Agency?

Once you have considered the possible impacts and general needs and capacities with respect to the IA, you can narrow down the type of study and the approach you wish to take.

**The next four subsections of this guide** go deeper into the main areas of study that most Indigenous Nations will likely be interested in undertaking during the IA. These include:

- Using IK to inform conclusions about potential impacts of the project on the environment, including people;
- Cumulative effects of the project;
- Effects of the project on social, economic and health of the Nation; and
- Effects of the project on Aboriginal and Treaty rights.

## WHAT WE LEARNED AND WHAT IS NEXT...

The new Act encourages different types of Indigenous participation in the IA, including Indigenous-led studies, co-led assessments and Indigenous-led assessments. With effective strategic planning during the early stages of the IA, Indigenous Nation reduce and overcome barriers to better take advantage of these new opportunities. To decide on the level and type of involvement that is best for your Nation, consider what matters most to your Nation and what your capacities and options are.

## Indigenous Knowledge

Under the previous federal assessment process, the consideration of Indigenous Knowledge in an assessment was optional. A proponent was not required to engage with the actual knowledge-holding members of Indigenous Nations. As a result, IK has previously been treated as more of a decorative feature to the assessment, rather than part of an in-depth process whereby Indigenous knowledge holders are able to collect, analyze, implement and protect knowledge throughout and after an IA.

Under the new Act, changes have been made that give Indigenous Nations more input on how IK is treated in the assessment. This includes:

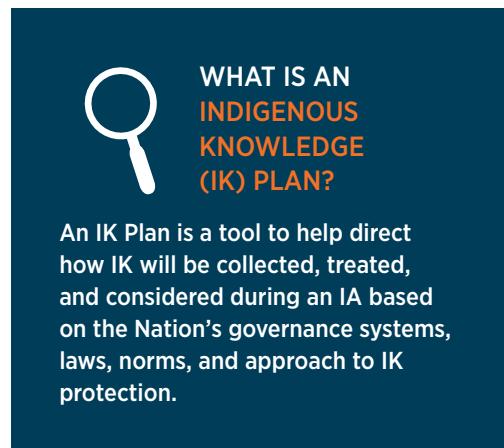
- It is now mandatory that an IA must consider Indigenous Knowledge that is made available to the proponent and/or the Agency by Indigenous Nations;
- Any Impact Assessment Report developed by the Agency or a Review Panel must describe how IK was considered; and
- There is now a legislative provision on confidentiality to ensure IK is protected.

With the new legislated requirement to include IK as a factor in the assessment of project impacts, your Nation's knowledge must be considered alongside western science in the determination of potential impacts of a project on the environment and people. However, the *actual process* for considering IK is not determined through legislation. The Act implies that it is up to Indigenous Nations to provide IK; therefore it will be up to your Nation to push for how you want IK considered and treated in the assessment.

### Project-specific Indigenous Knowledge Plan

To ensure that IK is not compartmentalized or treated as little more than a “check box” to be filled, your Nation may consider developing a project-specific IK plan. In developing a plan that works best for your community, some questions your Nation may consider are:

- What kind of knowledge would your Nation like included in the assessment?
- When should knowledge holders be engaged to ensure that they are able to both frame and help to answer questions related to the effects of a proposed project?
- For what parts of the IA should IK be considered?
- How should your Nation's IK be protected?
- How will your Nation's involvement be funded?
- What will your Nation's knowledge contribute to the IA? How will IK contribute to understandings of baseline conditions and cumulative effects?



**WHAT IS AN  
INDIGENOUS  
KNOWLEDGE  
(IK) PLAN?**

An IK Plan is a tool to help direct how IK will be collected, treated, and considered during an IA based on the Nation's governance systems, laws, norms, and approach to IK protection.

## **FNMPG GUIDANCE...**

FNMPC already has tools to help plan for how IK can be considered in an IA. Refer to the *FNMPC Major Project Coalition Guidance, Appendix 3: Indigenous Knowledge Integration into Major Project Assessment* (on the FNMPC website).

- How will IK be collected and how will the studies be conducted?
- When should this knowledge be collected and considered in an IA?
- How should this knowledge be collected, analyzed and used in decision-making?
- What resources are available to your Nation and how best can you use these resources to ensure IK collection and analysis is carried out to the same extent as Western knowledge collection and analysis?
- How will your Nation ensure that its IK is considered by the proponent and the Agency during each step of the IA?



As noted earlier in this guide, it is recommended to communicate your Nation's requirements to both the proponent and the Agency as early as possible in the process, i.e., during or before the Planning Phase. Table 3 presents the possible steps and actions your Nation may consider when developing a project-specific IK plan.

Table 3: Possible actions to ensure IK is considered in each Phase of the IA

PHASE 1 PLANNING PHASE	<ul style="list-style-type: none"><li>■ Consider your own Indigenous Knowledge Requirements (or plan) for Major Project Assessment (See “Appendix 3: Indigenous Knowledge Integration into Major Project Assessment” of the FNMPC Major Project Coalition Guidance).</li><li>■ Consider your own Indigenous Knowledge Research Protocols (see below).</li><li>■ Seek bilateral work plans/collaboration agreements between your Nation and the Agency, and your Nation and the proponent, including a set standard for how IK will be collected, considered, reviewed, and protected, as well as how IK collection and assessment will be funded. In addition to this, consider requesting to the Agency to reflect your Nation’s IK protocol in the Indigenous Engagement and Partnership Plan (IEPP) or/and in a bilateral workplan. The bilateral workplan is a Nation-specific detailed approach to how the Nation wishes to be engaged in the IA.</li><li>■ Check that completed or in-progress IK Protocols, Frameworks, IK studies, Land-use plans are referenced/included in the Detailed Project Description.</li><li>■ Seek agreement on a standard with the Agency (and proponent) that IK-based research must start at the same time or even before other studies and be adequately resourced so that IK is meaningfully interwoven throughout the assessment.</li><li>■ Submit requests to the Agency and the Proponent that the Tailored Impact Statement Guidelines (TISG) set out the standards for how IK will be collected, considered, reviewed, and protected during the Impact Assessment.</li></ul>
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<b>PHASE 2 IMPACT STATEMENT PHASE</b>	<ul style="list-style-type: none"> <li>■ Consider collaborating with the proponent on their assessment of IK. Have the proponent sit down with your Nation's technical staff and knowledge-holders throughout the different stages of preparing the Impact Statement to: <ul style="list-style-type: none"> <li>■ Identify key research questions and important Valued Components and environmental indicators;</li> <li>■ Provide a broad holistic context for understanding interconnections between environmental, social and cultural values;</li> <li>■ Identify trajectories of change for culturally significant environmental, social and cultural values;</li> <li>■ Identify impact pathways between the proposed project and environmental, social and cultural values; and</li> <li>■ Provide predictions of effects of the project resulting from these impact pathways on environmental, social and cultural values.</li> </ul> </li> <li>■ Review and comment on the draft Impact Statement (see FNMP's checklist on making sure IK was adequately included in the IA planning in "Appendix 3: Indigenous Knowledge Integration into Major Project Assessment" of the FNMP Major Project Coalition Guidance).</li> <li>■ Request to verify how IK was included in the Impact Statement.</li> </ul>
<b>PHASE 3 IMPACT ASSESSMENT REPORT PHASE</b>	<ul style="list-style-type: none"> <li>■ Review how IK was considered in the Impact Assessment Report and provide comment and additional information to address any potential gaps or misinterpretation of IK in the Impact Assessment Report.</li> <li>■ Provide follow-up input on effects, mitigation measures, and conditions</li> </ul>
<b>PHASE 4 DECISION MAKING PHASE</b>	<ul style="list-style-type: none"> <li>■ Write to the Minister directly when Impact Assessment reports or other recommendations have taken IK out of context, been poorly considered, or misinterpreted.</li> </ul>
<b>PHASE 5 POST DECISION PHASE</b>	<ul style="list-style-type: none"> <li>■ Contribute IK to monitoring activities and plans.</li> <li>■ If there are changes to the project, make sure any amendments include IK considerations.</li> </ul>

## Indigenous Knowledge Protocols

Your Nation may want to proactively develop an IK protocol that can be used to set the tone of any activities taking place in your territory. An IK protocol is a community-designed approach to defining, collecting, processing and protecting community knowledge. It ensures Nations are deciding the kinds of information that should be collected, who should be collecting the information, how it should be collected, who should maintain it and who should have access to it. In short, it is an important tool that Indigenous Nations can use to protect their IK more generally, as well as to set the approach to IK in a specific assessment.

When developing an IK protocol, Nations often turn to the expert knowledge holders, elders, community leaders, youth, and the community as a whole to collectively decide on the content of their protocol. Your Nation may consider the following principles that are often included in IK protocols:

- **NATION-SPECIFIC IK PRINCIPLES:** Protocols often outline the specific knowledge-based principles of the Nation to set the tone for the rest of the protocol. These principles are derived from the existing knowledge and stories of the knowledge holders, elders, leaders, etc.
- **OWNERSHIP, CONTROL, ACCESS AND POSSESSION (OCAP<sup>®</sup>):** Protocols often include or refer to the OCAP<sup>®</sup> model, developed in 1997 by the First Nations Information Governance Centre, which states that Indigenous Nations are: the owners of their knowledge and data; have control over how their knowledge is used and accessed; should always have access to their Knowledge and should define access to their knowledge based on their cultural principles; and are the stewards of their knowledge and are responsible for its protection.
- **CONSENT TO USE AND INTERPRET IK:** Protocols can lay out the expectation for proponents, researchers, consultants, the government, etc. to seek consent from the Indigenous Nation on the collection, use, and interpretation of their knowledge. This may include expectations for the co-development of methodologies and assessment prior to the collection and interpretation of knowledge.
- **COLLABORATION ON RESEARCH INVOLVING IK:** Protocols can define collaboration expectations that researchers, consultants, proponents, and governments should seek partnerships with Indigenous Nations when using, collecting, or analyzing IK.
- **TRANSPARENCY:** Protocols may set the expectation that proponents, researchers, and government are transparent about how they collected and analyzed the IK and that they will properly cite and give ownership to the Indigenous Nation.
- **COMMUNITY BENEFITS:** Protocols may lay out the expectation that any research or project that benefits from the use of IK should lay out how benefits will be distributed to the Nation.



### WHAT IS AN INDIGENOUS KNOWLEDGE (IK) PROTOCOL?

An IK Protocol is a way to protect a Nation's IK by establishing principles and approaches to IK based on the Nation's principles, laws, and customs. It covers principles of consent, protection, distribution, transparency, access, and anything else the Nation determines to be important.

- **PROTECTION:** Protocols define how the Nation expects IK to be handled and protected. This may include expectations for proponents, consultants, researchers, and the government to develop specific IK protection clauses, defined by the Nation, in agreements (discussed below).
- **DISPUTE RESOLUTION:** Dispute resolution mechanisms provide tools for resolving issues and concerns over the way that IK is collected and applied, such as if confidentiality is breached.

The FNMPc has developed IK Assessment Requirements (see Appendix 3 of the *Major Project Assessment Standard*, on the FNMPc website). These requirements can help shape your Nation's IK protocol.

## IK Considerations in Agreements with the Agency and the Proponent

To ensure that your Nation retains an acceptable degree of control over IK input and assessment, it is important to consider seeking agreements with the Agency (**Nation-to-Nation Agreements**) and proponents (**Process Agreements**). Agreements are required with respect to IK for the following purposes:

- (a) Indigenous Nations need to be able to negotiate the terms by which IK will be collected, considered, reviewed, assessed, protected, and used to develop conditions. The goal is to have IK completely in the control of the Nation so that it is not considered or incorporated incorrectly by the proponent or the Agency.
- (b) An equitable process for involving Indigenous Nations in the collection and interpretation of IK within an IA requires adequate funding. Agreements with the Agency and the proponent should include budgeting and financial agreements to ensure your Nation has the resources and capacity to effectively collaborate and conduct the studies that are required, including the collection and interpretation of the IK necessary for the assessment. Without funding, Indigenous communities are not in a position to show up as equals in discussions with proponents that hire specialists in western scientific knowledge.

### WHAT WE LEARNED AND WHAT IS NEXT...

Indigenous Knowledge is now a mandatory factor in federal Impact Assessment decisions. However, it is up to your Nation to bring forward its IK to ensure that it is considered during the IA process. To do so, your Nation can:

- Identify what IK you think is necessary to be included in the assessment to understand the depth of effects.
- Establish and implement an IK Plan to organize what IK is needed, how this IK should be collected, how it should be assessed, how it should be used in decision making, how it should be considered in condition-setting, and how it will be funded.
- Sign agreements with the proponent and the Agency to ensure your IK standards are followed throughout the assessment.

## Cumulative Effects Assessment

The assessment of **cumulative effects**—changes to environment, rights, culture, and/or society that are caused by the combined effects of past, present, and future actions—has been a federal requirement for all project assessments since 1995. However, the serious challenge of cumulative effects has become far more prominent in recent years as the importance of Indigenous perspectives within IA has become more broadly accepted by proponents and governments in Canada. Importantly, recent court decisions, such as *West Moberly, Tsilhqot'in Nation* and *Clyde River*, have underlined the importance of understanding cumulative effects in order to correctly assess the potential severity of a project's impacts on Aboriginal and Treaty rights.

In the new Act, cumulative effects are a central factor to be included in an IA, with special input and direction from Indigenous Nations. The Act states that IAs must consider cumulative effects that will likely result from the project in combination with other physical activities. The goal of a **cumulative effects assessment** is to understand how all past, present and future activities combine to impact an area or a specific value and how the project would add to this. For example, a cumulative effects assessment could consider how the moose population and the relationship of a Nation with moose has been impacted by past and current activities (such as industrial development, agricultural development, urban expansion, colonization, etc.), how the proposed project would add to this and how future activities would further amplify these impacts (i.e., further industrial development, climate change, further urban sprawl, etc.).

### FNMPC GUIDANCE...

For best practice guidance on cumulative effects see **Principle 8 of the First Nations Major Project Coalition's Major Project Assessment Standard (on the FNMPC website)**.

### How can your Nation determine whether it needs to undertake its own cumulative effects assessment within the context of a major project assessment?

Before undertaking a cumulative effects assessment, your Nation may want to consider the current environmental, social, economic and cultural context faced by your Nation within its territory, and whether this warrants the need for a Nation-led cumulative effects assessment. It is recommended that your Nation leads its own cumulative effects assessment if your Nation is already dealing with substantial adverse effects to the environment and community well-being caused by past and present industrial projects and activities, and especially if these effects already surpass the limits of what your Nation considers to be acceptable change.

To determine whether your Nation requires its own cumulative effects assessment, consider the following questions:

- **CURRENT CONDITIONS OF YOUR NATION'S VALUES** ("Values" refers to what matters most to your Nation): Are your environmental, cultural, social and economic Values already at risk or have been impacted beyond acceptable levels?
- **REASONING FOR CURRENT STATE OF VALUES:** What pressures are these Values under (e.g., oil and gas expansion, fragmentation, industrial infrastructure development, loss of traditional lands, etc.)? Are these activities likely to continue to put pressure on your Values?

- **PROJECT IMPACT:** How might the proposed project add to these pressures? How would these changes impact your Nation's rights and culture? Who would be impacted (i.e., any specific groups within your Nation)?
- **THE SEVERITY OF THE IMPACT:** How long would the impacts last? Are the impacts reversible? What (if at all) do you consider an acceptable change to each of these Values?

If your Nation reviews these questions and believes the project is likely to have cumulative effects, and the proponent has not committed to fully capturing these issues in the Impact Statement, it may be a good idea to conduct your own cumulative effects assessment. For guidance on how to conduct a cumulative effects assessment, refer to Appendices J and K, as well as Principle 8 of the *FNMP Major Project Assessment Standard*.

## An Opportunity to Define the Approach to Assessing Cumulative Effects in the IA

The new *Act* leaves the approach to cumulative effects assessment no less discretionary than was the case under the previous EA process (CEAA 2012). Unless the specific details of this requirement is clearly defined during the Planning Phase of the IA, it is easy for a cumulative effects assessment to overlook the ongoing effects of past and present activities and projects, i.e., the **historical context**. However, it is possible for your Nation to provide input during the Agency's development of the TISG during the Planning Phase so that there is a clear requirement about **how** the cumulative effects assessment should be conducted. In this regard, the Agency's provides guidance on cumulative effects in the "Tailored Impact Statement Guidelines Template for Designated Projects Subject to the Impact Assessment Act"<sup>9</sup> states that the proponent should:

- **CONSIDER CUMULATIVE EFFECTS TO RIGHTS OF INDIGENOUS PEOPLES AND CULTURES:** This means that the project assessment must consider the current state of Aboriginal and/or treaty rights, impacts of past activities, and how the project would add to these impacts. The Agency's Guidance states that the way this is considered should be decided by the Nation.<sup>10</sup>
- **COLLABORATE WITH INDIGENOUS NATIONS IN THE CUMULATIVE EFFECTS ASSESSMENT:** This means that the scope of any impact assessment (i.e., the TISG) should be developed jointly by a proponent and impacted Indigenous Nations to ensure that it includes clear requirements and standards related to assessing cumulative effect.
- **MAINTAIN A BROAD APPROACH TO EFFECTS ON ENVIRONMENTAL, HEALTH, SOCIAL OR ECONOMIC COMPONENTS:** This means any and all Values that are important to Indigenous Nations (even if they are only slightly affected by the project) can now be included in the cumulative effects assessment.
- **CONSIDER REGIONAL ASSESSMENTS:** This works when a Regional Assessment has been conducted (in many places they will not be), and it is also important for Indigenous Nations to confirm with the Agency that the findings of a Regional Assessment will not replace engagement with Indigenous Nations in the assessment of cumulative effects for the project-based Impact Statement. Regional assessments are not necessarily representative of the Values being assessed for the project cumulative effects assessment. Good cumulative effects assessment is grounded on extensive baseline data informed by multiple sources including Indigenous knowledge, therefore data from a Regional Assessment alone may not be adequate.

By working to ensure that the TISG includes specific details about how the cumulative effects assessments must be conducted, Indigenous Nations will gain greater certainty, as well as potential recourse in the event that cumulative effects are not adequately considered during the IA.

Table 4 presents steps and actions your Nation may consider with respect to cumulative effects assessment throughout an IA. The Planning Phase has several important steps to consider taking in order to ensure your Nation's approach to cumulative effects are considered throughout the entire IA. Therefore, it is important to have your Nation's approach to cumulative effects clearly written down and agreed upon by the Agency and/or the proponent during the Planning Phase of the IA. Appendix J identifies the components for undertaking a cumulative effects assessment. Appendix K provides a cumulative effects assessment checklist.

**Table 4: Actions to ensure cumulative effects are properly considered in each phase of the IA**

PHASE 1 PLANNING PHASE	<ul style="list-style-type: none"><li>■ Prior to Phase 1, develop an approach to cumulative effects for the assessment and consider how this approach can be included in the IA. FNMPC has developed guidelines on this in Principle 8 of the <i>FNMPC Major Project Assessment Standard</i>. This principle proposes some basic standards for cumulative effects assessments in an IA. This approach can be brought into discussions with the Agency and proponent as early as possible.</li><li>■ Consider negotiating detailed agreements and associated workplans with the Agency and project proponent. Agreements may:<ul style="list-style-type: none"><li>■ Use FNMPC's guidance and cumulative effects plan (Principle 8) as the standard approach;</li><li>■ Request that the proponent dedicates the same level of effort and resources to the cumulative effects assessment as the project-specific effects assessment; and</li><li>■ Include funding opportunities to ensure your Nation can conduct independently, or in conjunction with the proponent, cumulative effects assessments for Valued Components of importance to your Nation.</li></ul></li><li>■ Ensure that any completed cumulative effects assessments or land use plans relevant to geographic areas that may be affected by the proposed project (that are informed by recognition of cumulative effects and thresholds of acceptable change) are referenced/included in the Initial Project Description and/or Detailed Project Description.</li><li>■ Ensure that priority studies and information requirements are included in the Tailored Impact Statement Guidelines (TISG).</li></ul>
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<b>PHASE 2 IMPACT STATEMENT PHASE</b>	<ul style="list-style-type: none"> <li>■ Consider undertaking cumulative effects assessment with respect to rights, current use of area, and impacts to socio-economic, health and/or key biophysical Values.</li> <li>■ Request to verify how your Cumulative Effects Assessment was included in the Impact Statement.</li> <li>■ Lead a portion of the assessment or more.</li> </ul>
<b>PHASE 3 IMPACT ASSESSMENT REPORT PHASE</b>	<ul style="list-style-type: none"> <li>■ Determine significance of effects (Refer to IAAC Rights Impact Assessment Guidance for an example of how to determine significance of effects).</li> <li>■ Provide follow-up input on effects, mitigation measures, and conditions (it is important to request this in Phase 1).</li> </ul>
<b>PHASE 4 DECISION- MAKING PHASE</b>	<ul style="list-style-type: none"> <li>■ Write to the Minister directly when Impact Assessment reports or other recommendations have misinterpreted or misunderstood cumulative effects considerations.</li> </ul>
<b>PHASE 5 POST-DECISION PHASE</b>	<ul style="list-style-type: none"> <li>■ Contribute to monitoring activities and plans.</li> <li>■ If there are changes to the project description, make sure any amendments include cumulative effects considerations.</li> </ul>

## WHAT WE LEARNED AND WHAT IS NEXT...

The Act requires the consideration of cumulative effects in the IA. However, the Act leaves it up to the proponent and the Nation to determine how cumulative effects will be approached. Given the sometimes-flawed approach taken by proponents in the past, it is up to your Nation to concretely consider how you would like cumulative effects included in the IA. To do so, your Nation may consider:

- Requesting FNMPC's Principle 8 be used as a guiding approach to cumulative effects assessment in the IA.
- Identifying whether you need to conduct a cumulative effects assessment and how you would like cumulative effects to be undertaken and used in decision-making.
- Require Inclusion of your Cumulative Effects Plan in the Indigenous Engagement and Participation Plan.
- Signing agreements with the proponent and the Agency to ensure your approach to cumulative effects guides the process and to ensure you have funding to undertake any studies you require.

## Socio-economic and Health Impact Assessment

The new *Act* now requires the assessment of both *direct* and *indirect* effects of a project on health, social and economic factors. This means the focus has shifted from looking only at impacts to health, cultural heritage and socio-economic conditions that result from environmental changes, to now additionally considering impacts to health, cultural, social and economic conditions that may occur independently from changes to the environment. Indigenous Nations can now seek to have the IA consider all potential impacts from a project on Indigenous Nations' community health, culture, social and economic well-being.

The question is how and when can your Nation ensure that your perspectives on the project's effects on health, culture, social, and economic conditions are captured in the IA? There are several kinds of assessments you can use to do so:

- Socio-Economic Impact Assessment (SEIA);
- Cultural Impact Assessment; and
- Health Impact Assessment.

### FNMPC GUIDANCE...

For best practice guidance on socio-economic, health and cultural impact assessment, see FNMPC's Major Project Assessment Standards, Appendices 1, 2 and 4 (on the FNMPC website).

This guide focuses on good SEIA as one of FNMPC's identified priorities. SEIA is the process of identifying and managing potential impacts of new projects on society, economies, health and culture. It is intended to protect and contribute to the social, economic and cultural well-being of people who may be impacted by negative changes. SEIA is an excellent planning tool to make sure that a community is ready to respond to the potential impacts and opportunities related to a proposed project and to assess whether or not a proposed project can be designed and developed in a manner that would bring net benefits to the socio-economic context of a community and region.

The negative impacts often identified in a SEIA include:

- Reduced practice of the traditional economy and harvesting success as a result of increased wage economic development;
- Higher cost of living and housing shortages as a result of a booming economy that can impact community members who are not able to take advantage of new project-related employment;
- Pressures on social and physical infrastructure through in-migration;
- Other in-migration and out-migration effects, including impacts of long-distance commuting on families and increasing social issues brought by newcomers;
- Sustainable development vs. increased exposure to boom and bust economic cycles;
- Inadequate project-related opportunities due to lack of suitable education and training and job retention;
- Increased pace of change on vulnerable communities that don't have adequate resources to address pre-existing and new social issues; and
- Impacts to vulnerable sub-populations such as women, elders, and youth.

These are just some examples that may come up for your Nation. Appendix L provides a checklist for reviewing SEIA. Since SEIA is based on community needs, the list will be set by the community members themselves. To determine this list and develop mitigations, it is possible to approach SEIA as follows:

<b>STEP 1: SCOPING</b>	<ul style="list-style-type: none"><li>Identify “what matters most” with community members who are likely to be affected by a development. One way to do this is through community meetings, sessions and engagement with a broad section of the community, including social service providers.</li></ul>
<b>STEP 2: BACK CASTING</b>	<ul style="list-style-type: none"><li>“Back casting” or looking back to understand changes to key Values and rights over time. One way to understand this is by using existing information and dialogue with community members to identify current social, economic, and cultural conditions and how this has changed.</li></ul>
<b>STEP 3: FORECASTING</b>	<ul style="list-style-type: none"><li>Predict what type of changes (impacts) the project will bring to the community and the severity of these impacts.</li></ul>
<b>STEP 4: MANAGING</b>	<ul style="list-style-type: none"><li>Identify appropriate ways to avoid, minimize or compensate for those impacts (mitigation).</li></ul>
<b>STEP 5: ASSESSING</b>	<ul style="list-style-type: none"><li>Determine the likelihood and level of remaining impacts (significance) that cannot be avoided, and determine whether the development should proceed under these conditions.</li></ul>
<b>STEP 6: MONITORING</b>	<ul style="list-style-type: none"><li>Conduct a follow-up program and monitoring plan to ensure changes and impacts are monitored, avoided, and mitigated.</li></ul>



SEIA is the process of identifying and managing potential impacts of new projects on society, economies, health and culture.

Table 5 presents suggested steps and actions your Nation may consider taking in respect to how social and economic conditions are considered in an IA.

**Table 5: Possible actions to help shape the SEIA process throughout each phase of the IA**

<b>PHASE 1 PLANNING PHASE</b>	<ul style="list-style-type: none"><li>■ Consider using the FNMPc SEIA Standard (<i>FNMPc Major Project Assessment Standard</i> Appendix 1: Indigenous Socio-Economic Assessment) to gather sample information for SEIA requirements and requesting to have these requirements used as the standard for SEIA in the IA. This approach can be brought into discussions with the Agency and the proponent early in Phase 1.</li><li>■ Consider negotiating detailed agreements and associated workplans with the Agency and proponent. When developing the agreements, consider the following:<ul style="list-style-type: none"><li>■ If FNMPc's SEIA Standard (Appendix 1: Indigenous Socio-Economic Assessment guidance) works for your Nation, consider requesting that this be the approach in the IA;</li><li>■ Requesting that the proponent dedicates the same level of effort and resources to the SEIA as other assessments;</li><li>■ Requesting funding opportunities to ensure your Nation can conduct an assessment;</li><li>■ Requesting to co-develop mitigation, monitoring and follow-up measures, and appropriate forms of mitigation measures; and</li><li>■ Requesting to review the SEIA findings and to review documents associated with proponent's SEIA.</li></ul></li><li>■ Consider how any completed SEIA-related studies should come up in the Initial Project Description and/or Detailed Project Description.</li><li>■ Check that priority studies and information requirements are included in the Tailored Impact Statement Guidelines (TISG).</li></ul>
<b>PHASE 2 IMPACT STATEMENT PHASE</b>	<ul style="list-style-type: none"><li>■ If requested in Phase 1, lead the SEIA the assessment.</li><li>■ Review and comment on the draft Impact Statement. See Appendix L for a checklist of questions for reviewing SEIA.</li><li>■ Request to verify how SEIA was included in the Impact Statement.</li></ul>

<b>PHASE 3 IMPACT REPORT PHASE</b>	<ul style="list-style-type: none"> <li>■ Provide follow-up input on effects, mitigation measures, and conditions (important to request this in Phase 1).</li> <li>■ Determine significance of effects (Refer to IAAC Rights Impact Assessment Guidance for information on how to determine significance of effects).</li> <li>■ Co-develop mitigation, monitoring and follow-up measures.</li> </ul>
<b>PHASE 4 DECISION- MAKING PHASE</b>	<ul style="list-style-type: none"> <li>■ Write to the Minister directly when Impact Assessment reports or other recommendations have misinterpreted or misunderstood SEIA considerations.</li> </ul>
<b>PHASE 5 POST- DECISION PHASE</b>	<ul style="list-style-type: none"> <li>■ Co-implement mitigation, monitoring and follow-up measure.</li> <li>■ If there are changes to the project description, make sure any amendments include SEIA considerations.</li> </ul>

## WHAT WE LEARNED AND WHAT IS NEXT...

The Act requires the consideration of both direct and indirect effects of a proposed project on social, economic and health conditions. It is up to your Nation to concretely inform the Agency and the proponent about how you would like Socio-economic Impact Assessment (SEIA) considered in the IA. To do so, your Nation may consider the following actions:

- Identifying how you would like SEIA undertaken and how this should shape mitigations
- Using FNMP's SEIA Standard (FNMP *Major Project Assessment Standard Appendix 1: Indigenous Socio-Economic Assessment*) to guide your approach to SEIA in the IA (if it is in line with your vision)
- Signing agreements with the proponent and the Agency to ensure:
  - Your approach to SEIA guides the process
  - Your Nation has a role in developing mitigation, monitoring and follow-up measures
  - You have funding to undertake any studies that you require.

## Rights Impact Assessment

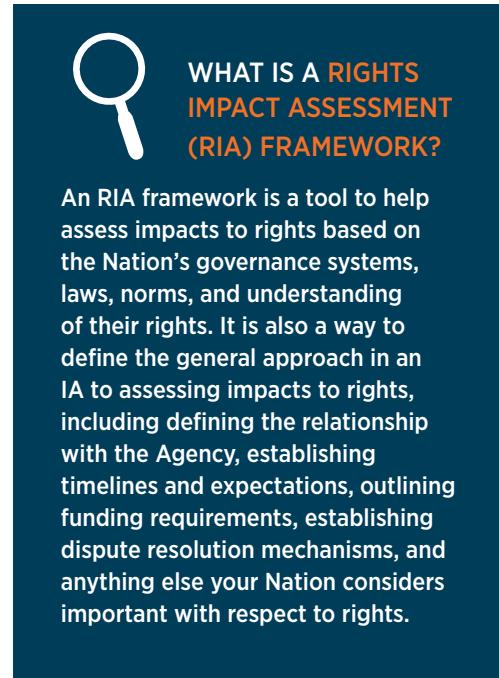
The Act now has a requirement that the potential impacts on the Aboriginal and Treaty rights of Indigenous peoples must be assessed as part of an IA.

The Agency's new guidance for Rights Impact Assessment (RIA) suggests that the best way to conduct an RIA is through cooperation and collaboration between the rights-holding Indigenous Nation, the proponent, the Agency, and any other relevant federal authorities or jurisdictions.<sup>11</sup> Further, a Nation can request to lead their own assessment in collaboration with the Agency.

One way to assess impacts to your Nation's rights in an IA is by developing and implementing an **RIA framework**. An RIA framework can provide a clear, transparent, and comprehensive methodology that is agreed upon by all parties for assessing project impacts on Indigenous rights. The Agency provides guidance on how to conduct RIA under the new system, which can be used as a starting point for developing your RIA framework and approach.

An effective RIA methodology includes the following steps:

<b>STEP 1: IDENTIFYING RIGHTS</b>	<ul style="list-style-type: none"><li>Identify and understand your Nation's view of its rights and the activities and resources that are necessary for your Nation to exercise these rights. Then consider how those activities and resources might be impacted by the project.</li><li>Review existing information and materials documenting your Nation's rights, for example, oral history recordings and/or transcripts, archival documentation related to historical occupation and use of lands and resources, documentation and analysis related to treaty and/or other Nation-to-Nation agreements, declarations of territorial rights or boundaries by your Nation.</li><li>Engage with knowledge holders and other community members to build an understanding of the nature, scope and content of each right, including how and where the community members exercise their rights and the purpose and importance of the right(s).</li></ul>
<b>STEP 2: UNDERSTANDING RIGHTS CONTEXT</b>	<ul style="list-style-type: none"><li>Identify the environmental and socio-economic conditions that support the meaningful exercise of your Nation's rights (such as the state of the land, sense of place, state of wildlife and vegetation, community health, etc.).</li><li>Next, understand how historic and current activities have (cumulatively) affected your Nation's ability to meaningful exercise your rights.</li><li>Identify the importance of specific areas or locations that are important to your Nation and may be impacted by the project (such as place names, preferred use areas, etc.).</li></ul>



**WHAT IS A RIGHTS  
IMPACT ASSESSMENT  
(RIA) FRAMEWORK?**

An RIA framework is a tool to help assess impacts to rights based on the Nation's governance systems, laws, norms, and understanding of their rights. It is also a way to define the general approach in an IA to assessing impacts to rights, including defining the relationship with the Agency, establishing timelines and expectations, outlining funding requirements, establishing dispute resolution mechanisms, and anything else your Nation considers important with respect to rights.

<b>STEP 3: IDENTIFYING VALUES</b>	<ul style="list-style-type: none"> <li>Through community interviews and related analysis, identify guiding Values (Value Components/ “VC”) and topics (what to assess) connected to your Nation’s well-being, cultural identity, sense of place and cultural transmission, and the preferred means of exercising your rights.</li> </ul>
<b>STEP 4: IDENTIFYING PATHWAYS</b>	<ul style="list-style-type: none"> <li>Through community interviews and related analysis, identify the “impact pathways” between the project, elements of the biophysical environment and people that support the exercise of rights. An “impact pathway” refers to a sequential series of impacts on people and the environment that can be linked back to the project and related activities. For example, a project may impact traditional plants, which could reduce a Nation’s ability to harvest medicinal plants, which in turn could impact the ability to pass on Knowledge related to traditional medicine and related ceremonies, which could also impact the future connection to and understanding of the land. Along with these direct impacts there can be a series of additional indirect impact pathways stemming from a project.</li> <li>Through community interviews and related analysis, identify other relationships between the project and the conditions needed to exercise rights, such as access, quality, and quantity of resources, or the quality of experience of exercising the rights.</li> <li>Through community interviews and related analysis, determine impacts to the exercise of a right in preferred locations, at preferred times, and by preferred means.</li> </ul>
<b>STEP 5: ASSESSING IMPACTS</b>	<ul style="list-style-type: none"> <li>Assess the magnitude of the impact by establishing clear criteria on what constitutes a low, moderate, or high level of impact. This should be agreed upon by Nation members for each impact identified.</li> <li>Consider the following: <ul style="list-style-type: none"> <li>How likely is the impact to occur?</li> <li>What is the possible geographical reach of the impact?</li> <li>How often is the impact to occur within a given period of time?</li> <li>For how long? Is the impact reversible?</li> <li>How vulnerable will the exercise of rights be considering other past effects, and interaction with, the baseline conditions?</li> <li>Will the project affect the ability for your community to practice self-governance and self-determination?</li> <li>What impacts to health will there be (physical, mental, emotional, and spiritual health)?</li> </ul> </li> </ul>
<b>STEP 6: IDENTIFYING IA-RELATED MITIGATION MEASURES TO AVOID, REDUCE AND/OR OFFSET ADVERSE EFFECTS</b>	<ul style="list-style-type: none"> <li>Identify IA-related mitigation measures to avoid, reduce and/or mitigate adverse effects (also sometimes referred to as IA-related accommodation measures).</li> <li>Avoidance or reduction of the severity of an impact may be achieved through changing the location or the design of the project.</li> <li>Mitigation of adverse effects can occur through additional environmental protection or management measures that help to reduce or eliminate a negative impact (of any type, not necessarily on rights). For example, a bubble curtain surrounding a marine construction site is an example of a mitigation measure to reduce noise effects on fish and marine mammals.</li> <li>Mitigation can also take the form of habitat offsets or compensation for the adverse effects of the project. For example, fish habitat offsetting may be relevant to compensating for impacts to fish populations if the benefits of habitat restoration are anticipated to occur within the territory of the impacted Nation.</li> </ul>

<b>STEP 7: DETERMINING RESIDUAL EFFECTS AFTER MITIGATION</b>	<ul style="list-style-type: none"> <li>■ Taking into consideration uncertainty of existing knowledge and information (i.e., level of confidence, degree of past success in application of a specific mitigation measure), assess the predicted effectiveness of proposed mitigation measures to avoid or reduce the severity of adverse impacts on the rights of the affected Indigenous Nation.</li> <li>■ Applying the precautionary principle where there is uncertainty regarding the likely effectiveness of proposed mitigation measures, identify <b>residual effects</b> of the project on rights after mitigation is considered.</li> <li>■ <b>Residual effects</b> identified during the IA are carried over into further dialogue between the impacted Indigenous Nation, the proponent and Canada to identify further non-IA-related accommodation measures, as may be appropriate.</li> <li>■ Determine the severity of adverse residual effects on rights, before non-IA accommodation measures are considered, using the criteria identified by your Nation in the RIA Framework for what constitutes a low, moderate or high degree of impact.</li> </ul>
<b>STEP 8: VALIDATING ASSESSMENT</b>	<ul style="list-style-type: none"> <li>■ Validate and follow-up on assessment outcomes with community. Revisit and analyze the steps above to check on their success.</li> </ul>

This is just one approach of many that can be taken. Each Indigenous Nation has the right to define its own methods and criteria for the RIA. Your Nation can do this on your own or in collaboration with the Agency, and based on your own governance systems, laws, norms, and understanding of rights. Technical support for Nations to undertake this work are also available from the FNMPc.

Again, it is important to reiterate that securing an agreement with the proponent and/or the Agency that provides the necessary funding and process certainty to ensure that your Nation is able to undertake an RIA may be more challenging than undertaking the RIA itself. In order to conduct an RIA, it is helpful to closely consider the costs and to consider funding options. RIAs can be costly and range anywhere from \$149,000 to \$373,000, depending on the approach. One way to ensure support is by including a requirement in your agreements with the Agency and the proponent for RIA discussions to start as early as possible (no later than the end of the Planning Phase).

Table 6 outlines a list of possible steps and actions your Nation may consider taking to ensure your approach to rights guides the IA. **More detailed guidance can also be obtained by contacting the FNMPc's Environmental Stewardship Technical Team directly.**

*“I don’t think that I’m overestimating when I say that it’s an entire new branch of the impact assessment. Anyone that thinks that under the new Federal Impact Assessment Act, Rights Impact Assessment is going to add two or three or four percent more work or effort required is fooling themselves. This is an entire new branch of the impact assessment. And if it’s going to be done right and in a defensible manner, we’re talking about a lot of time and effort, a lot of resources, and starting right at the beginning of the process, defining those rights [and] setting up the framework to assess them and their relationships through which they’ll be assessed.”*

— FNMPC Environmental Stewardship Technical Team

**Table 6: Possible actions to ensure your Nation’s approach to rights guides the IA**

PHASE 1 PLANNING PHASE	<ul style="list-style-type: none"><li>■ Develop and implement your RIA framework and bring it into discussions with the Agency as early as possible.</li><li>■ Pre-define and negotiate an approach to RIA through a collaboration/joint decision-making agreement with the Agency and the proponent for the Rights Assessment. This can be done during or in some cases even before the Planning Phase. Consider the following when development an agreement:<ul style="list-style-type: none"><li>■ Using your Nation’s RIA framework as the basis of the agreement (if your Nation decides to develop one)</li><li>■ Requesting that the proponent dedicates the same level of effort and resources to the RIA as the project-specific effects assessment.</li><li>■ Include the amount of funding required for your Nation to undertake the work, including staff, administration, technical consultants and legal advice.</li><li>■ Setting agreed upon timelines, duties, opportunities for your Nation to review documents prior to submission, and dispute resolution mechanisms.</li></ul></li><li>■ Develop a “master mitigation table” where the Agency and the Indigenous Nation identify mitigation, compensation/offset and other measures to deal with impacts on rights.</li><li>■ Define studies/information requirements to be conducted and or funded by the proponent to be included in the Tailored Impact Statement Guidelines so that adequate information is gathered to understand the potential for impacts on rights.</li></ul>
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<b>PHASE 2</b> <b>IMPACT</b> <b>STATEMENT</b> <b>PHASE</b>	<ul style="list-style-type: none"> <li>■ Conduct your own RIA (make sure to request this in Phase 1) and provide findings of RIA.</li> <li>■ Review and comment on the draft Impact Statement and ensure approach taken matches approach developed and assessment of results are accurate.</li> <li>■ Verify how your RIA was included in the Impact Statement (request the ability to verify in Phase 1). Ensure that all agreed-upon steps are carried out in the rights assessment.</li> </ul>
<b>PHASE 3</b> <b>IMPACT</b> <b>ASSESSMENT</b> <b>REPORT</b> <b>PHASE</b>	<ul style="list-style-type: none"> <li>■ Determine the severity of adverse residual effects on rights, before non-IA accommodation measures are considered, using the criteria identified by your Nation in the RIA Framework.</li> <li>■ Provide follow-up input on effects, mitigation measures, and conditions (important to request this in Phase 1).</li> </ul>
<b>PHASE 4</b> <b>DECISION-</b> <b>MAKING</b> <b>PHASE</b>	<ul style="list-style-type: none"> <li>■ Write to the Minister directly when Impact Assessment reports or other recommendations have misinterpreted or misunderstood RIA or cumulative effects considerations.</li> </ul>
<b>PHASE 5</b> <b>POST-</b> <b>DECISION</b> <b>PHASE</b>	<ul style="list-style-type: none"> <li>■ Contribute to monitoring activities and plans.</li> <li>■ If there are changes to the project, make sure any amendments include RIA considerations.</li> </ul>

## WHAT WE LEARNED AND WHAT IS NEXT...

The Act requires the consideration of impacts to Indigenous rights from the perspective of the rights-holding Nation. Your Nation can set out how it would like impacts to rights assessed in the Impact Assessment. To do so, your Nation can:

- Develop a Rights Impact Assessment framework and request that it guides IAs.
- Develop a master mitigations table and use this to guide suggestions on mitigations.
- Develop and sign agreements with the proponent and/or the Agency to ensure adequate funding is made available to your Nation to prepare and undertake the Rights Impact Assessment;
- Your approach to RIA guides the process;
- Your Nation can lead or co-lead the assessment; and
- You can review documents prior to them being submitted.

## PART IV

# FURTHER SUPPORT AND GUIDANCE

## PART IV | SECTION 1

# FNMPC ENVIRONMENTAL STEWARDSHIP TECHNICAL TEAM

**IN**

addition to this guide, the FNMPC provides a range of services to Indigenous Nations for gaining additional technical support in advance of, and during, a federal impact assessment.

The FNMPC's Environmental Stewardship Framework guides its support of Nations engaged in an Impact Assessment process. The framework is intended to:

*Support member First Nations to make their own decisions on Free, Prior and Informed Consent by providing a toolkit of policies, processes and implementation tools, and associated expert supports for the assessment of the environmental effects of major projects.*

**SIX CORE ELEMENTS** comprise the framework, including:

- **CAPACITY TRAINING:** Capacity training for member groups so they can engage in major project assessment and improve their stewardship capacity.
- **EXPERTISE ON-DEMAND:** Expertise, on-demand, to support member groups in major project assessment and other environmental stewardship processes.
- **TOOLS AND METHODS SUPPORT:** Tools and methodological supports for member groups to freely access and use in major projects assessment and stewardship initiatives.
- **SUPPORT FOR NATION-SPECIFIC ASSESSMENT PROCESS DEVELOPMENT:** On-demand support for the development of Nation-specific assessment processes.
- **SUPPORT COALITION LEVEL RESEARCH/COMMENTS:** Support for the members in reviews and revisions to federal and provincial EA and other environmental management research and policy review.
- **STANDARD DEVELOPMENT:** Development and implementation of principles, criteria and guidance to support major project assessments, as well as identification of thresholds of acceptable change for specific environmental values (e.g., lands, water, air, wildlife).

The following sections describe the *FNMPC Major Project Assessment Standard*, additional tools and resources available on the FNMPC's website and direct technical support that the FNMPC's Environmental Stewardship Technical Team can provide to member Nations.

## Major Project Assessment Standard and Guidance Appendices

The FNMPC *Major Project Assessment Standard* (“Assessment Standard”) identifies member-developed and agreed upon principles, criteria, and other guidance and expectations to guide major project IAs. The purpose of the Assessment Standard is to ensure that IAs are conducted in accordance with the stewardship and governance rights and responsibilities of First Nations. Appendix I identifies sections of the *Major Project Assessment Standard* that address IA topics addressed in this guide.

**NINE PRINCIPLES**, supported by specific criteria and expectations, are described in the Assessment Standard, including:

- First Nations Rights will be respected, maintained, and promoted.
- First Nations will be fully engaged in assessment and decision-making for major projects, integrating their laws, norms and values.
- First Nations stewardship and governance rights and responsibilities will be respected and adhered to throughout the major project life cycle.
- Ecological values and services will be maintained and if necessary, restored.
- Impacts to Indigenous culture, socio-economic conditions, health, rights, title and traditional use will be properly assessed and managed to the satisfaction of the affected First Nations.
- First Nations will have access to adequate resources, information, and time in order to inform their engagement and decision-making processes.
- The major project assessment scope and process will adhere to agreed upon high quality practices and reflect First Nations values.
- All projects will be assessed using a focus on total cumulative effects loading and best practice of cumulative effects assessment.
- Adequate information will be provided to inform consent decisions made through First Nations’ Worldviews.

The Guidance Appendices to the Assessment Standard provide detailed guidance on meaningful consideration of Indigenous Knowledge and the assessment of Indigenous socio-economic conditions, culture, health and land use during an IA.

First Nations can use the Assessment Standard to inform their engagement with project proponents and the Agency and ensure that assessment processes are appropriate for their communities. Specifically, First Nations can use the Assessment Standard to:

- Inform early engagement with the Agency and Proponents on the scope and conduct of a major project assessment;
- Develop a Nation’s own assessment standards, studies or terms of reference for projects in its territory; and
- Check the adequacy of work done in an ongoing EA.

The Assessment Standard and associated appendices are available on the FNMPC's website at the following link: <https://www.fnmpc.ca/core-documents-1>

## Additional FNMPC Tools and Templates

The FNMPC offers a range of other tools and templates in addition to the Assessment Standard.

The Community Readiness Assessment tool helps participating First Nations identify the gaps in their current ability to engage in major project assessment. The tool includes economic, environment and communications/outreach components. The FNMPC can support the Community Readiness Assessment and work with communities to develop an action plan to improve their capacity.

Tools to support the IA process are in development. These tools will relate to all six steps of the Impact Assessment process, including: scoping, baseline conditions, effects prediction, mitigation, significance assessment and follow-up. Once available, the FNMPC website will serve as a “one-stop shop” of IA information for interested First Nations.

## Direct Technical Support Through the FNMPC's Environmental Stewardship Technical Team

The FNMPC offers direct technical support to member Nations on demand. Recognizing that First Nation communities often do not have the capacity to engage fully in all aspects of an IA process, the FNMPC can make specific subject matter experts available when requested. These technical experts are able to provide rapid appraisals in specific technical areas and support First Nations in flagging, scoping, and identifying priorities in relation to major project assessments.

**SPECIFIC TECHNICAL SUPPORT** that can be provided by FNMPC technical experts includes:

- Description of the regulatory process for the project in the existing legislated process, and identification of options within that process (e.g., focus on Net Gains rather than significant adverse effects);
- Independent, third party review of proponent-led IAs (review of scoping of values and issues, baseline data collection to date, any preliminary effects characterization);
- Ongoing support during the Project Description and Application preparation, including review and preparation of draft materials; and
- Independent reporting back to the FNMPC on the environmental “score” for the project, during the Major Project support determination process.

## PART IV | SECTION 2

# LOOKING FORWARD

This section provides a brief overview of topics related to the new federal IA process that still lack sufficient definition to allow for them to be addressed through the guide at this moment in time. The guide will continue to evolve in the coming years. At the time of publication (October 2020), some of the steps of implementation of the federal IA process—including related federal regulations, policies and guidance materials—remain under construction. Below is a list of topics in terms of IA-related guidance, tools and supports for Indigenous Nations that the FNMPG expects to be developing over the new few years.

- Health impact assessment guidance update (beyond Human Health Risk Assessment)
- How to better manage and integrate the intersection of science and IK
- Guidance that addresses the new “the extent to which adverse effects are significant” test now adopted under the new Act
- Further health, social and economic impact assessment guidance
- Use of complementary measures in the IA mitigation, decision-making and Crown consultation processes
- Guidance in respect to new regulations and policy instruments currently under development by the Agency in respect to collaborative processes between Indigenous Nations and the federal government during an IA
- The availability and amounts of federal funding for Indigenous-led components of a federal IA
- The structure, format and function of the Technical Advisory Group during a federal IA
- How Gender-Based-Assessment-Plus (GBA+) will be considered in federal IA

# ENDNOTES

- 1 Such as *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>; *Taku River Tlingit First Nation v. British Columbia* (Project Assessment Director), [2004] 3 S.C.R. 550, 2004 SCC 74: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2190/index.do>; *Mikisew Cree First Nation v. Canada* (Minister of Canadian Heritage), [2005] 3 S.C.R. 388, 2005 SCC 69: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do>; *Carrier Sekani Tribal Council v. Rio Tinto Alcan Inc.*, [2010] 2 S.C.R. 650, 2010 SCC 43: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7885/index.do>; *Little Salmon/Carmacks First Nation v. Beckman*, [2010] 3 SCR 103, 2010 SCC 53: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7896/index.do>; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>; *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* [2017] 1 SCR 1069, 2017 SCC 40: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16743/index.do>; *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* [2017] 1 SCR 1099, 2017 SCC 41: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16744/index.do>
- 2 The mandate of the Agency is set out under subsections 6(2) and 6(3) of the Act.
- 3 *Haida Nation v. British Columbia* (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>; *Taku River Tlingit First Nation v. British Columbia* (Project Assessment Director), [2004] 3 S.C.R. 550, 2004 SCC 74: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2190/index.do>; *Mikisew Cree First Nation v. Canada* (Minister of Canadian Heritage), [2005] 3 S.C.R. 388, 2005 SCC 69: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do>; *Carrier Sekani Tribal Council v. Rio Tinto Alcan Inc.*, [2010] 2 S.C.R. 650, 2010 SCC 43: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7885/index.do>; *Little Salmon/Carmacks First Nation v. Beckman*, [2010] 3 SCR 103, 2010 SCC 53: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7896/index.do>; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>; *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* [2017] 1 SCR 1069, 2017 SCC 40: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16743/index.do>; *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* [2017] 1 SCR 1099, 2017 SCC 41: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16744/index.do>
- 4 Fontain, T. "Canada officially adopts UN declaration on rights of Indigenous Peoples." CBC. [cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272](http://cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272)

- 5 Expert Panel for the Review of Environmental Assessment Processes in Canada (Expert Panel). 2017. *Building Common Ground: A New Vision for Impact Assessment in Canada*. [canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf](http://canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf)
- 6 Note: At the time of publication the new Act is still in early stage of implementation. Hence, it is currently unclear what the Agency's requirements will be for proponents to actively collaborate with Indigenous Nations will be during this phase of the IA. Early engagement with the Agency and proponents on this question is strongly encouraged.
- 7 Note that the Summary of Issues is supposed to reflect the comments provided by the public on the IPD and will be used during the second half of the Planning Phase by the project proponent to prepare the DPD and by the Agency to prepare the TISG.
- 8 These costs do not include administrative costs, training/education costs for staff, leadership decision-making, negotiation costs for any proponent funding, post-certificate monitoring and follow-up (including permitting).
- 9 Tailored Impact Statement Guidelines Template for Designated Projects Subject to the Impact Assessment Act. Available at: [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-act.html#\\_Toc15652153](http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-act.html#_Toc15652153)
- 10 See IAAC. 2019. Interim Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-rights-indigenous-peoples.html](http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-rights-indigenous-peoples.html)
- 11 See IAAC. 2019. Interim Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-rights-indigenous-peoples.html](http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-rights-indigenous-peoples.html)



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## APPENDIX A

# SOURCES OF FURTHER INFORMATION ON THE NEW IAA SYSTEM

The **diagram below** provides an overview of key federal IA reference material that applies for each phase of the impact assessment process. Under each phase, you will find reference to guidance material that can help your Nation prepare for involvement in each respective phase. All of this guidance materials is available on Government of Canada websites. Web links to the guidance documents identified in this diagram are listed in the tables below.

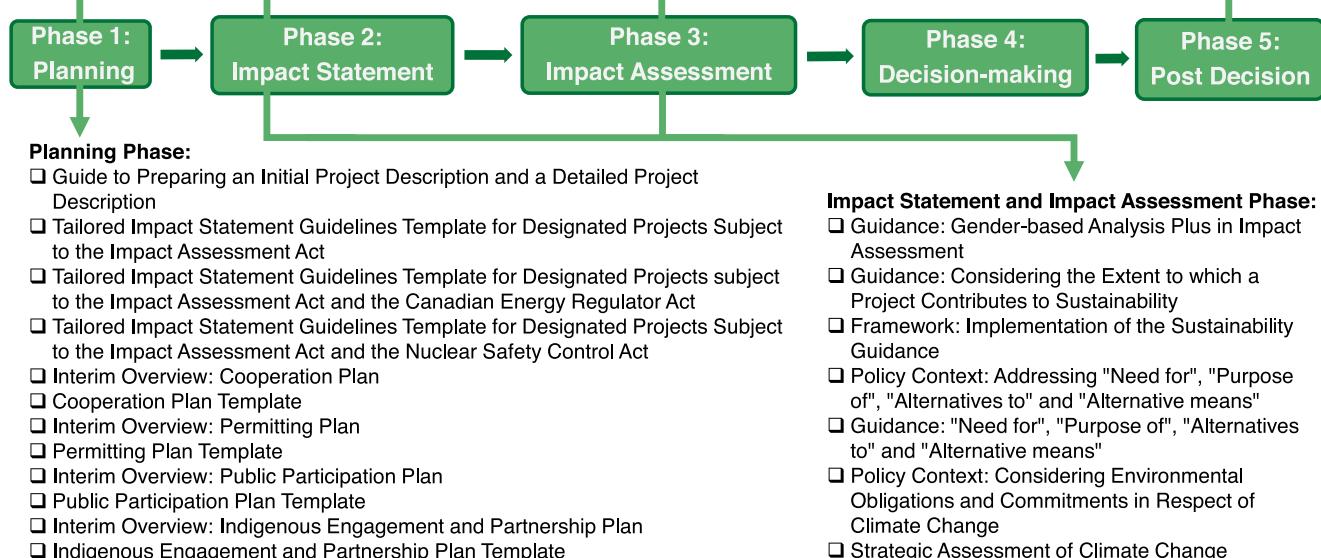
### Impact Assessment Act Resources

#### **Indigenous Participation and Engagement:**

- Policy Context: Indigenous Participation in Impact Assessment
- Guidance: Indigenous Participation in Impact Assessment
- Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples
- Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples
- Guidance: Collaboration with Indigenous Peoples in Impact Assessment
- Guidance: Consideration of Indigenous Knowledge in Impact Assessment
- Guidance: Practices for Protecting Confidential Indigenous Knowledge Impact Assessment

#### **Miscellaneous:**

- Funding Programs
- Impact Assessment Roster established
- Cooperative Impact Assessments (Infographic)
- Impact Assessment Cooperation Agreement Between Canada and British Columbia
- MOU on Integrated Impact Assessments Under the Impact Assessment Act Between The Impact Assessment Agency of Canada and The Canadian Nuclear Safety Commission
- MOU concerning Integrated Impact Assessments under the Impact Assessment Act Between the Impact Assessment Agency of Canada and the Canadian Energy Regulator



Phase: All – Funding		
Name	Short Name	Federal Government Website Link
Funding Programs	Funding Programs	<a href="http://canada.ca/en/impact-assessment-agency/services/public-participation/participant-funding-application-environmental-assessment.html">canada.ca/en/impact-assessment-agency/services/public-participation/participant-funding-application-environmental-assessment.html</a>
Phase 1: Planning		
Guide to Preparing an Initial Project Description and a Detailed Project Description	Initial and Detailed Project Descriptions	<a href="http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guide-preparing-project-description-detailed-project-description.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guide-preparing-project-description-detailed-project-description.html</a>
Tailored Impact Statement Guidelines Template for Designated Projects Subject to the Impact Assessment Act	TIS Guidelines Template (IAA)	<a href="http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-act.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-act.html</a>
Tailored Impact Statement Guidelines Template for Designated Projects subject to the Impact Assessment Act and the Canadian Energy Regulator Act	TIS Guidelines Template (IAA and CERA)	<a href="http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-template-impact-assessment-canadian-energy-regulator-act.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-template-impact-assessment-canadian-energy-regulator-act.html</a>
Tailored Impact Statement Guidelines Template for Designated Projects Subject to the Impact Assessment Act and the Nuclear Safety Control Act	TIS Guidelines Template (IAA and NSCA)	<a href="http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-nuclear-safety-act.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-nuclear-safety-act.html</a>
Interim Overview: Cooperation Plan	Cooperation Plan	<a href="http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-cooperation-plan.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-cooperation-plan.html</a>
Cooperation Plan Template	Cooperation Plan Template	<a href="http://canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/cooperation_plan_external_template_final_en.pdf">canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/cooperation_plan_external_template_final_en.pdf</a>
Interim Overview: Permitting Plan	Permitting Plan	<a href="http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-impact-assessment-permitting-plan.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-impact-assessment-permitting-plan.html</a>
Permitting Plan Template	Permitting Plan Template	<a href="http://canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/permitting-plan-external-template-en.pdf">canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/permitting-plan-external-template-en.pdf</a>
Interim Overview: Public Participation Plan	Public Participation Plan	<a href="http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-public-participation-plan.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-public-participation-plan.html</a>

NAME	SHORT NAME	FEDERAL GOVERNMENT WEBSITE LINK
Public Participation Plan Template	Public Participation Plan Template	<a href="https://canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/permitting-plan-external-template-inal-eng.pdf">canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/permitting-plan-external-template-inal-eng.pdf</a>
Interim Overview: Indigenous Engagement and Partnership Plan	IEPP	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-indigenous-engagement-partnership-plan.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-indigenous-engagement-partnership-plan.html</a>
Indigenous Engagement and Partnership Plan Template	IEPP Template	<a href="https://canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/indigenous-engagement-partnership-plan-external-template-en.pdf">canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/indigenous-engagement-partnership-plan-external-template-en.pdf</a>
Guidance: Gender-based Analysis Plus in Impact Assessment	GBA+	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/gender-based-analysis.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/gender-based-analysis.html</a>
Guidance: Considering the Extent to which a Project Contributes to Sustainability	Project Contributions to Sustainability	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-considering.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-considering.html</a>
Framework: Implementation of the Sustainability Guidance	Sustainability Guidance Implementation	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance.html</a>
Policy Context: Addressing “Need for”, “Purpose of”, “Alternatives to” and “Alternative means”	Policy Context: Addressing “Need for”, “Purpose of”, “Alternatives to” and “Alternative means”	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/need-for-purpose-of-alternatives-to-and-alternative-means.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/need-for-purpose-of-alternatives-to-and-alternative-means.html</a>
Guidance: “Need for”, “Purpose of”, “Alternatives to” and “Alternative means”	Guidance: “Need for”, “Purpose of”, “Alternatives to” and “Alternative means”	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-need-for-purpose-of-alternatives-to-and-alternative-means.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-need-for-purpose-of-alternatives-to-and-alternative-means.html</a>
Policy Context: Considering Environmental Obligations and Commitments in Respect of Climate Change	Environmental Obligations and Commitments in Respect of Climate Change	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/considering-environmental-obligations.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/considering-environmental-obligations.html</a>
Strategic Assessment of Climate Change	Strategic Assessment of Climate Change	<a href="https://www.strategicassessmentclimatechange.ca/">https://www.strategicassessmentclimatechange.ca/</a>

ALL PHASES: INDIGENOUS PARTICIPATION AND ENGAGEMENT		
NAME	SHORT NAME	FEDERAL GOVERNMENT WEBSITE LINK
Policy Context: Indigenous Participation in Impact Assessment	Policy Context: Indigenous Participation in IA	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-policy-indigenous-participation-ia.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-policy-indigenous-participation-ia.html</a>
Guidance: Indigenous Participation in Impact Assessment	Guidance: Indigenous Participation in IA	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html</a>
Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples	Policy Context: Assessment of Potential Impacts on the Rights of Indigenous Peoples	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/assessment-potential-impacts-rights-indigenous-peoples.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/assessment-potential-impacts-rights-indigenous-peoples.html</a>
Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples	Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-rights-indigenous-peoples.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-rights-indigenous-peoples.html</a>
Guidance: Collaboration with Indigenous Peoples in Impact Assessment	Guidance: Collaboration with Indigenous Peoples in IA	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/collaboration-indigenous-peoples-ia.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/collaboration-indigenous-peoples-ia.html</a>
Guidance: Consideration of Indigenous Knowledge in Impact Assessment	Guidance: Consideration of Indigenous Knowledge in IA	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/indigenous-knowledge-under-the-impact-assessment-act.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/indigenous-knowledge-under-the-impact-assessment-act.html</a>
Guidance: Practices for Protecting Confidential Indigenous Knowledge Impact Assessment	Guidance: Practices for Protecting Confidential Indigenous Knowledge IA	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/protecting-confidential-indigenous-knowledge-under-the-impact-assessment-act.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/protecting-confidential-indigenous-knowledge-under-the-impact-assessment-act.html</a>
ALL PHASES: PUBLIC PARTICIPATION		
Policy Context: Public Participation in Impact Assessment	Policy Context: Public Participation in IA	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/framework-public-participation.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/framework-public-participation.html</a>
Guidance: Public Participation in Impact Assessment	Guidance: Public Participation in IA	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-public-participation-impact.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-public-participation-impact.html</a>

ALL PHASES: MISCELLANEOUS		
NAME	SHORT NAME	FEDERAL GOVERNMENT WEBSITE LINK
Impact Assessment Roster established	Impact Assessment Roster established	<a href="https://canada.ca/en/impact-assessment-agency/news/media-room-2020/impact-assessment-roster-established.html">canada.ca/en/impact-assessment-agency/news/media-room-2020/impact-assessment-roster-established.html</a>
Cooperative Impact Assessments (Infographic)	None	<a href="https://canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/cooperative-impact-assessments.html">canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/cooperative-impact-assessments.html</a>
Impact Assessment Cooperation Agreement Between Canada and British Columbia	None	<a href="https://canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/canada-british-columbia-impact-assessment-cooperation/canada-bc-cooperation-agreement.html">canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/canada-british-columbia-impact-assessment-cooperation/canada-bc-cooperation-agreement.html</a>
Memorandum of Understanding on Integrated Impact Assessments Under the Impact Assessment Act Between The Impact Assessment Agency of Canada – and – The Canadian Nuclear Safety Commission (together, “the Participants”)	None	<a href="https://canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/memorandum-understanding-iaac-cnsc.html">canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/memorandum-understanding-iaac-cnsc.html</a>
Memorandum of Understanding concerning Integrated Impact Assessments under the Impact Assessment Act Between the Impact Assessment Agency of Canada- and – the Canadian Energy Regulator (together, “the parties”)	None	<a href="https://canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/memorandum-understanding-iaac-cer.html">canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/memorandum-understanding-iaac-cer.html</a>
PHASE 4: DECISION-MAKING		
Policy Context: Public Interest Determination under the Impact Assessment Act	Public Interest Determination	<a href="https://canada.ca/en/impact-assessment-agency/services/policy-guidance/public-interest-determination-under-impact-assessment-act.html">canada.ca/en/impact-assessment-agency/services/policy-guidance/public-interest-determination-under-impact-assessment-act.html</a>
PHASE 5: POST-DECISION		
No federal guidance documents currently available for Phase 5	None	None

## APPENDIX B

# REGIONAL AND STRATEGIC ASSESSMENTS

## Regional Assessments

### What is a Regional Assessment?

A regional assessment is a study that is conducted to inform the planning around, and the management of, cumulative effects. They help understand current and anticipated future development, and its implications, within a geographic region. They allow the assessment process to go beyond project-based impacts to consider regional contexts. Regional assessments may focus on multiple activities and projects or on a specific economic sector.

Section 92 of the *Impact Assessment Act* states that the Minister of Environment and Climate Change (the Minister) can establish a committee or authorize the Agency to conduct a regional assessment for regions located entirely on federal lands. If the region is partially located on federal lands or located entirely off federal lands, the Minister can enter into an agreement or arrangement with a jurisdiction (including an Indigenous jurisdiction) to establish a joint committee to undertake the regional assessment, or authorize the Agency to conduct the assessment (section 93 of the Act).

### What is the benefit of a regional assessment?

Regional assessments can help identify and understand the following in the project context and region:

- Potential impacts on rights and interests of Indigenous peoples
- A baseline against which to assess the incremental impact of a discrete project
- Thresholds to support future project decisions
- Standard mitigation measures for future projects
- Land-use and marine-use planning and other initiatives for managing cumulative effects that may be undertaken by various jurisdictions

### EXAMPLE

An offshore oil and gas exploratory drilling project east of Newfoundland and Labrador recently underwent a regional assessment. The purpose of this regional assessment was to focus on the effects of existing and anticipated offshore oil and gas exploratory drilling in order to improve the efficiency of the environmental assessment process as it applies to oil and gas exploration drilling.

For more information on this regional assessment see “Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador – Federal Crown Consultation Approach for the Regional Assessment”: <https://iaac-aeic.gc.ca/050/evaluations/document/133769>

## How to request a regional assessment?

When deciding to make a request to the Minister to conduct a regional assessment, your Nation may consider:

- The nature and extent of current and anticipated future development in your Nation's territory, and the associated cumulative impacts
- The need to set standards and thresholds for anticipated future impact assessments in your Nation's territory
- The extent to which effects from current and anticipated future development fall within federal jurisdiction
- The extent to which current and anticipated future development may impact Indigenous rights
- The ability to use regional assessment as a platform to advance the Indigenous nation's land use planning priorities
- The ability to use regional assessment as a platform to advance recognition of Indigenous rights and title.

Requests for a regional assessment must be sent to the Minister at [minister-ministre.ec@canada.ca](mailto:minister-ministre.ec@canada.ca) (a copy of the request should be sent to the Agency at [iaac.information.aeic@canada.ca](mailto:iaac.information.aeic@canada.ca)).

Requests must include the following:

- Information Description: Your full name, address, email address and telephone number and organization
- Statement: A statement explaining that you are making a request for the Minister to conduct a regional assessment.
- Description of the Region: Include a description of the region that is the subject of the request, including the general name of the region (if applicable), geographic coordinates (if available), descriptive information about the region and the current and potential development activities within it, and links to any relevant documentation, to the extent that this information is available.
- Reason for a regional assessment: Provide an explanation of why you think a regional assessment should be conducted in the region, including your views about the main issues and activities to be considered in the regional assessment, what the regional assessment would accomplish and how it would be useful in informing future impact assessments and decisions.

# Strategic Assessment

## What is a strategic assessment?

A strategic assessment is a study that informs guidance on how existing environmental frameworks (policies, plans and programs) should be considered in impact assessments. Strategic assessments may also be undertaken for an issue or a class of projects in order to inform a project's impact assessment within that class about likely impacts.

Section 95 of the Act states that the Minister may establish a committee or authorize the Agency to conduct a strategic assessment. The Agency's strategic assessment of climate change is the first strategic assessment conducted under the Act (Impact Assessment Agency of Canada 2019a). The assessment provides guidance on how impact assessments must consider the project's greenhouse gas emissions and its resilience to climate change impacts. This includes methods to quantify greenhouse gas emissions, the scope of information that will be required in Tailored Impact Statement Guidelines, and how the information will be reviewed.

## What is the benefit of a strategic assessment?

Strategic assessments help to inform and streamline project impact assessments by setting out required data, methodologies and frameworks that align with broader environmental frameworks and knowledge about an issue or class of projects.

## How do you request a strategic assessment?

When deciding to make a request to the Minister to conduct a strategic assessment, your Nation may want to consider:

- How a federal policy, plan or program could influence and inform the project impact assessments in your territories.

Your request should be sent to Minister at [minister-ministre.ec@canada.ca](mailto:minister-ministre.ec@canada.ca) (a copy of the request should be sent to the Agency at [iaac.information.aeic@canada.ca](mailto:iaac.information.aeic@canada.ca)).

Requests should include the following:

- **INFORMATION DESCRIPTION:** Your full name, address, email address and telephone number and organization
- **STATEMENT:** A statement explaining that you are making a request for the Minister to conduct a strategic assessment.

- **DESCRIPTION OF THE POLICY, PLAN, OR PROGRAM:** Include a description of the policy, plan, program or issue that is the subject of the request, including the federal department or agency that is responsible (if applicable), descriptive information about the policy, plan, program or issue and its potential intersection with resource and/or infrastructure development, and links to any relevant documentation, to the extent that this information is available
- **REASON FOR A STRATEGIC ASSESSMENT:** Provide an explanation of why you think a strategic assessment should be conducted, including your views about the main issues and themes to be considered in the strategic assessment, what the strategic assessment would accomplish and how it would be useful in informing future impact assessments and decisions.

## APPENDIX C

# HOW A REVIEW PANEL WORKS AND HOW ARE THEY DIFFERENT FROM AN AGENCY-RUN IA

A project can be sent to a review panel if (1) the project has components that are regulated by lifecycle regulators – Canadian Energy Regulator (CER) or the Canadian Nuclear Safety Commission (CNSC); or (2) the minister deems it is in the public interest to send the project to a review panel.

In the second scenario, the Minister decides whether to send the project to a review panel based on the following factors:

- (a) the extent to which the effects within federal jurisdiction or the direct or incidental effects that the carrying out of the designated project may cause are adverse;
- (b) public concerns related to those effects;
- (c) opportunities for cooperation with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project or any part of it; and
- (d) any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.

### Examples

- Site C: Joint review panel (BC)
- Jackpine Mine Expansion Project: Joint review panel (Alberta)
- Lower Churchill Hydroelectric Generation Project (sometimes call Muskrat Falls): Joint review panel (Labrador, Newfoundland)
- Roberts Bank Terminal 2: (ongoing, BC)

Indigenous groups can request a review panel be undertaken if they believe the project will impact their Section 35 rights.

Some of the benefits of a review panel for Indigenous Nations include:

- It allows for first-hand accounts from elders and knowledge holders in hearings
- It supports more in-depth consideration of Indigenous Knowledge since it supports alternative forms of submitting information (such as in hearings)
- It allows for more time for the process
- There may be more funding opportunities
- There is more opportunity for collaboration on reviewing impacts by experts and knowledge holders

To request a project be referred to a review panel, send a request to the Minister at: [ec.minister-ministre.ec@canada.ca](mailto:ec.minister-ministre.ec@canada.ca) AND to the Agency at [ceaa.information.acee@canada.ca](mailto:ceaa.information.acee@canada.ca)

If the project goes to a review panel, the following occurs:

### Phase 1: Planning Phase

- Minister refers the impact assessment to review panel within 45 days of the project's Notice of Commencement

### Phase 2: Impact Statement

- Proponent submits Impact Statement and supplements it, as needed
- Minister issues Panel Terms of Reference and Agency appoints review panel members (no later than 45 days from accepting Impact Statement). The review panel is appointed based on an online roster. Indigenous groups can request who to have on the review panel based on this list. The review panel should include people who are objective, and must have knowledge or experience related to the project's possible effects or have knowledge of the interests and concerns of the Indigenous peoples that are relevant to the assessment.
- In cases where the project involves activities that are regulated by a life-cycle regulator, the review panel is appointed by the Agency and the specific Energy Regulator — either the Canadian Energy Regulator (CER) or the Canadian Nuclear Safety Commission (CNSC).
- Agency posts a notice on the Registry when all required studies and information have been provided
- Agency or review panel implements the Public Participation Plan and/or Indigenous Engagement and Partnership Plan, Permitting Plan and/or Cooperation Plan

### Phase 3: Impact Assessment

(Regular Review Panel assessment can last 600 days, an Integrated Review Panel can last up to 300 days)

- Review panel conducts impact assessment and holds hearing. Review panels have the power to call witnesses and to ensure the protection of sensitive information, knowledge, and people. Hearings are expected to be informal and flexible and provide opportunities for Elders and other knowledge holders to present directly to those preparing the Impact Assessment Report.
- Review panel develops an Impact Assessment Report and any potential conditions and provides them to the Minister
- Agency or review panel implements the Public Participation Plan and/or Indigenous Engagement and Partnership Plan, Permitting Plan and/or Cooperation Plan

#### Phase 4: Decision-Making Phase

(Decision-making under a Minister may last up to 30 days, while decision-making under a Governor in Council may last 90 days)

- Minister decides whether the project's adverse effects are in the public interest, or refers to Governor in Council
- Minister issues Decision Statement with detailed reasons and any conditions

#### Phase 5 Post Decision Phase (Ongoing)

- Proponent implements conditions in Decision Statement, an Agency or lifecycle regulator verifies compliance
- Indigenous and community monitoring committees

## APPENDIX D

# CHECKLIST FOR REVIEWING THE INITIAL PROJECT DESCRIPTION

When reviewing an IPD, Indigenous Groups may wish to consider the following:

QUESTION/CONSIDERATION	
<input type="checkbox"/>	Was your Indigenous Nation listed/included in the IPD?
<input type="checkbox"/>	Is the project located in or near critical/highly valued areas?
<input type="checkbox"/>	In describing engagement was a summary provided of the number of meetings and the nature and substance of those meetings with your Indigenous Nation?
<input type="checkbox"/>	Were all issues raised by your Indigenous Nation in early engagement included and appropriately characterized in the IPD?
<input type="checkbox"/>	Did the proponent list any likely studies (i.e., traditional use, culture and rights, and Nation-specific socio-economic impact assessments) to be conducted with or by Indigenous groups?
<input type="checkbox"/>	Was a timeline provided for future engagement?
<input type="checkbox"/>	Did the proponent consider any relevant studies and or land use plans completed or in progress by your Indigenous Nation in the IPD?
<input type="checkbox"/>	Have any positive benefits specific to your Indigenous Nation been identified?
<input type="checkbox"/>	Was the proponent clear on whether this was part of a larger project or if other activities are dependent on this project?
<input type="checkbox"/>	Has the proponent provided enough information about the physical works and activities proposed (and their location) to inform two-way dialogue on the project?
<input type="checkbox"/>	Was a full timeline provided for the project from impact assessment to decommissioning?

<input type="checkbox"/>	<p>In considering alternatives to the project did the proponent provide either:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> A commitment to work with affected Indigenous groups to look at technically and economically feasible alternatives prior to filing a Detailed Project Description or the Environmental Impact Statement?</li> </ul> <p>AND/OR</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> More detail on any alternative means to undertake the project that are likely to graduate to a detailed comparison of alternatives, versus options considered that are not technically and economically feasible?</li> </ul>
<input type="checkbox"/>	<p>Did engagement with your Indigenous group inform the identification of impacts to the environment in the IPD?</p>
<input type="checkbox"/>	<p>Did engagement with your Indigenous Nation inform the description of impacts on the human environment (cultural, health, economic, social, well-being etc.) identified in the IPD?</p>
<input type="checkbox"/>	<p>Are all of your priority values captured by the impact pathways described by the proponent?</p>
<input type="checkbox"/>	<p>Does the proponent include a commitment to confirm all of the impacts identified in IPD with you prior to developing the Detailed Project Description?</p>
<input type="checkbox"/>	<p>Were all wastes and emissions of concern to your Indigenous Nation identified in the IPD?</p>

## APPENDIX E

# CHECKLIST FOR REVIEWING THE DETAILED PROJECT DESCRIPTION (DPD)

To effectively review the DPD, consider the following:

QUESTION/CONSIDERATION	
<input type="checkbox"/>	Was your Indigenous group listed/included in the DPD?
<input type="checkbox"/>	Did the company engage with your Indigenous group following the Summary of Issues?
<input type="checkbox"/>	In describing engagement history so far, was a summary provided of the number of meetings and the nature and substance of those meetings with your Indigenous group?
<input type="checkbox"/>	Were all issues raised by your Indigenous Nation in the Summary of Issues and engagement included and appropriately characterized in the DPD?
<input type="checkbox"/>	Did the company clearly identify the changes between the IPD and the DPD that were made in response to issues your Nation/group raised in the Summary of Issues?
<input type="checkbox"/>	Did the company leave out any important issues raised by your Nation in the Summary of Issues? And <input type="checkbox"/> Did the company explain why the issue was left out?
<input type="checkbox"/>	Did the company list any likely studies (i.e., traditional use, culture and rights, and Nation-specific socio-economic impact assessments) to be conducted with or by Indigenous groups?
<input type="checkbox"/>	Was a timeline provided for future engagement?
<input type="checkbox"/>	Did the company consider any relevant studies and or land use plans completed or in progress by your Indigenous Nation in the DPD?
<input type="checkbox"/>	Have any positive benefits specific to your Indigenous Nation been identified?
<input type="checkbox"/>	Was the company clear on whether this was part of a larger project or if other activities are dependent on this project?

<input type="checkbox"/>	Has the company provided enough information about the physical works and activities proposed (and their location) to inform two-way dialogue on the project (e.g., land clearing, excavating, grading, de-watering, directional drilling, dredging and disposal of dredged sediments, infilling, and installing structures)?
<input type="checkbox"/>	Was a full timeline provided for the project from impact assessment to decommissioning?
<input type="checkbox"/>	<p>In considering alternatives to the project did the company provide either:</p> <ul style="list-style-type: none"> <li>■ A commitment to work with affected Indigenous groups to look at technically and economically feasible alternatives prior to filing the Environmental Impact Statement?</li> </ul> <p>AND/OR</p> <ul style="list-style-type: none"> <li>■ More detail on any alternative means to undertake the project that are likely to graduate to a detailed comparison of alternatives, versus options considered that are not technically and economically feasible?</li> </ul>
<input type="checkbox"/>	Did the company list the proper coordinates of the project plans?
<input type="checkbox"/>	Does any of the project fall near critical/highly valued areas?
<input type="checkbox"/>	<p>Does the company list its proximity to:</p> <ul style="list-style-type: none"> <li>■ Land used for traditional purposes by Indigenous peoples of Canada</li> <li>■ Land in a reserve as defined in subsection 2(1) of the <i>Indian Act</i>,</li> <li>■ First Nation land as defined in subsection 2(1) of the <i>First Nations Land Management Act</i></li> <li>■ Land that is subject to a comprehensive land claim agreement or a self-government agreement</li> <li>■ Any other land set aside for the use and benefit of Indigenous peoples of Canada.</li> </ul>
<input type="checkbox"/>	Did engagement with your Indigenous group inform the identification of impacts to the environment in the DPD?
<input type="checkbox"/>	Did engagement with your Indigenous group inform the description of impacts on the human environment (cultural, health, economic, social, well-being etc.) identified in the DPD?
<input type="checkbox"/>	Are all of your priority values captured by the impact pathways described by the company?
<input type="checkbox"/>	<p>Did the company explain the changes to:</p> <ul style="list-style-type: none"> <li>■ Fish and fish habitat</li> <li>■ Aquatic species</li> <li>■ Migratory birds</li> </ul>

<input type="checkbox"/>	Did the company include an acceptable description of possible impacts to your Nation's: <ul style="list-style-type: none"> <li>■ Physical and cultural heritage</li> <li>■ The current use of lands and resources for traditional purposes</li> <li>■ Any structure, site or thing that is of historical, archaeological, paleontological or architectural significance</li> </ul>
<input type="checkbox"/>	Did the company include an acceptable description of any change that may occur to the health, social or economic conditions to your Nation/community
<input type="checkbox"/>	Were all wastes and emissions of concern to your Indigenous Nation identified in the IPD?

## APPENDIX F

# CHECKLIST FOR REVIEWING A TAILORED IMPACT STATEMENT GUIDELINES

The checklist below is a starter list to help your Nation identify what input you may wish to request be incorporated into the Tailored Impact Statement Guidelines (TISG). Your Nation may want to add to this list based on your own priority issues.

	TISG SECTION	DOES THE TISG...
<input type="checkbox"/>	general	...Identify studies that your Nation has asked to be conducted or conduct, and provide instructions to the proponent on how to do so?
<input type="checkbox"/>	general	...Require primary data collection where there are gaps in existing and trend-over-time data available on the public record, for all Value Components?
<input type="checkbox"/>	general	...Require that all assessment work done gathering data from human subjects be grounded in ethical principles and subject to ethical or community protocol approvals, with evidence provided that standards have been met?
<input type="checkbox"/>	2.3	...Clearly instruct the proponent that it needs to work with Indigenous groups to identify culturally important landscape features?
<input type="checkbox"/>	2.5	...Require the proponent confirm with affected Indigenous groups the adequacy of expertise of any experts used in the conduct of data collection and effects estimation on “Indigenous” factors?
<input type="checkbox"/>	3.2	...Require separate baselines and effects assessments for each individual Indigenous Nation/community?
<input type="checkbox"/>	4.4	...Require the proponent to work with other parties to identify criteria and weighting that should be used in the assessment of alternative means to undertake the project?
<input type="checkbox"/>	6	...Actively discourage or prohibit the proponent from conducting sole assessment of cultural, socio-economic, traditional use and rights impact assessment in relation to Indigenous peoples?

	TISG SECTION	DOES THE TISG...
<input type="checkbox"/>	6.2	...Require verification by Indigenous groups of the accuracy of the proponent's record of engagement in the impact Statement?
<input type="checkbox"/>	6.3	...Require explicit validation by Indigenous groups of how the proponent used all Indigenous knowledge included in the Impact Statement?
<input type="checkbox"/>	6.3	...Require the proponent to indicate what role Indigenous groups sought and were given in using Indigenous knowledge to develop the Impact Statement?
<input type="checkbox"/>	6.3; 13; 14	...Require the proponent to engage Indigenous groups on their perspectives on impacts, including their significance, as part of the impact assessment?
<input type="checkbox"/>	7; 22	...Require the proponent to establish the degree of cumulative effects to date that have occurred in a baseline and trend-over-time conditions profile for each VC?
<input type="checkbox"/>	7.3	...Require all direct and ancillary physical works and activities related to the project to be included within the geographic scope of the assessment, including transportation routes into and out of the project area?
<input type="checkbox"/>	7.4	...Require the proponent to deeply engage Indigenous groups in the establishment of VCs, spatial boundaries, and temporal boundaries?
<input type="checkbox"/>	8; 13; 14	...Include specific Indigenous observational parameters and preferences as required elements of baseline conditions profiling and impact assessment of the environment (e.g., for noise, viewscape, water, fish, vegetation, wildlife)?
<input type="checkbox"/>	8	...Require for each biophysical VC, that Indigenous "past, present and desired future use" of that resource be established in the IS?
<input type="checkbox"/>	8.9; 8.10; 8.11	...Require the description of, with Indigenous input and verification, the degree of reliance on, factors influencing harvesting activities from, and changes over time to date, of preferred places where fish, game and birds are harvested from in the project-affected area?

	TISG SECTION	DOES THE TISG...
<input type="checkbox"/>	8.9; 8.10; 8.11	...Requirements to identify areas that Indigenous peoples have identified as sensitive, high production, or otherwise important, for wildlife, birds and fish, including within sensitive life stages, critical seasonal habitat, refuge areas, etc.?
<input type="checkbox"/>	9	...Require, for each relevant sub-population, identification (with verification by that group) of the determinants of health that are most relevant to their particular well-being and quality of life?
<input type="checkbox"/>	10	...Identify specific information requirements related to Indigenous cultural impact assessment, including semi-tangible and intangible elements of culture?
<input type="checkbox"/>	11; 18	...Require the proponent to fully characterize differential capacities of Indigenous communities, workers, citizens, and businesses, as against non-Indigenous sub-populations, to take advantage of potential project benefits?
<input type="checkbox"/>	12	...Require the proponent to provide an opportunity for Indigenous groups to review any information relevant to baseline profiling and effects characterization relevant to that group prior to it being filed in the IS?
<input type="checkbox"/>	12.2	...Require identification of changes over time in the practicability of Indigenous harvesting/land use and factors contributing to these changes?
<input type="checkbox"/>	12.2	...Require the proponent to be responsive to - and flag for the Agency - any requests by Indigenous groups for additional project-specific Indigenous land use studies?
<input type="checkbox"/>	12.4	...Require evidence that the proponent sought to engage the Indigenous group on any thresholds identified by the community re: meaningful exercise of Aboriginal or Treaty rights?
<input type="checkbox"/>	12.4	...Require that any IS information on rights developed by the proponent needs to demonstrably have been vetted with and verified by the Indigenous group(s) in question?
<input type="checkbox"/>	13.1	...Require that for any impacts on Indigenous peoples, the proponent has at minimum vetted and verified its draft effects estimations with those affected Indigenous groups, and where there is any disagreement, this is also reported in the IS?

TISG SECTION	DOES THE TISG...
<input type="checkbox"/>	15.3
	<p>...Require not only consideration of population level impacts on wildlife, but also focus on regional or local sub-populations of wildlife important to Indigenous peoples?</p>
<input type="checkbox"/>	15.3
	<p>...Require the proponent to show how it engaged affected Indigenous groups in the identification and verification of valid impact pathways from the project on different VCs?</p>
<input type="checkbox"/>	17
	<p>...Include assessment requirements for each of the following social realms: 1. On the land; 2. In the community; 3. At home; and 4. In the workplace?</p>

## APPENDIX G

# WHAT IS A “SUSTAINABILITY ASSESSMENT” UNDER THE NEW FEDERAL IA PROCESS?

## What is sustainability assessment?

One of the main factors that must be considered in an impact assessment is “the extent to which a designated project contributes to sustainability”<sup>1</sup>. Sustainability under the new Act is defined as “... the ability to protect the environment, contribute to the social and economic well-being of the people of Canada, and preserve their health in a manner that benefits present and future generations.”<sup>2</sup> The FNMPc defines sustainability as “Development that meets the needs of the present, but will still allow future generations to be able to meet their own needs.”<sup>3</sup>

To understand a project’s contribution to sustainability, proponents must undertake a sustainability assessment. This involves considering the balance of good and bad changes across many different impact realms, such as:

- **ECONOMIC**—meeting long-term economic goals and equitable distribution of economic benefits, without adversely affecting other economic opportunities.
- **ENVIRONMENTAL**—maintaining a necessary level of renewable resources, avoidance of excessive pollution, and having impacts that do not exceed ecological thresholds.
- **SOCIAL**—promoting the wellbeing of organizations, communities, and society as a whole, by understanding what people need from the places they live and work.
- **HEALTH**—maintaining an appropriate health status without exhausting resources or causing damage.

When project’s fall near or on Indigenous lands, the insertion of a fifth pillar should be added:

- **ABORIGINAL AND TREATY RIGHTS**—protecting the meaningful practice of aboriginal and treaty rights, based on the interpretation of these rights by the rights holders themselves.

1 IAAC. 2019. Interim Framework: Implementation of the Sustainability Guidance. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance.html)

2 Ibid.

3 FNMPc. 2019. *Major Project Assessment Standard*. <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5cdc93e2fa0d6007b00b5a2d/1557959669570/FNMPc+MPAS+FINAL.pdf>

## How is a sustainability assessment conducted under the Act?

The Act lays out four key principles when undergoing a sustainability assessment. They include:

- **PRINCIPLE 1:** Consider the interconnectedness and interdependence of human-ecological systems. This principle encourages proponents to include a detailed description of the connections and interactions between people and the environment in the project area. The framework recommends that all interactions, pathways and connections among effects to the environment, and to health, economic and social conditions are part of this system description.
- **PRINCIPLE 2:** Consider the well-being of present and future generations. This principle recommends the consideration of long-term effects on the well-being of present and future generations. In-depth data collection will be important to assessing effects on future generations. Proponents are also encouraged to engage Indigenous groups in defining well-being.
- **PRINCIPLE 3:** Maximize overall positive benefits and minimize adverse effects of a designated project. Proponents are now required to include measures in the Impact Statement to maximize the positive benefits of a project in addition to the already required measures for avoiding, reducing, or compensating for any adverse effect. The Framework asks proponents to consider who will receive benefits, and who will be adversely impacted and how this relates to the overall well-being of the affected groups, including across future generations.
- **PRINCIPLE 4:** Apply the precautionary principle and consider uncertainty and risk of irreversible harm. Proponents need to include evidence that they have applied the precautionary principle in the Impact Statement. The definition of the Precautionary Principle is provided in the United Nations Rio Declaration on Environment and Development (1992), which states, “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>4</sup> The Precautionary principle means that measures need to be in place where there is risk of serious harm to a value. Predictions made in the Impact Assessment also have to be backed up with evidence with any uncertainty discussed.

A fifth principle that promotes Indigenous involvement should be added:

- **PRINCIPLE 5:** Consider whether the project represents a positive contribution towards reconciliation.

To identify a project's sustainability, IAAC suggests the following steps. Guidance for Indigenous Nations is added here as they were not considered in the IAAC guidance.

<sup>4</sup> Report of the United Nations Conference on Environment and Development Rio de Janeiro—Annex I Rio Declaration on Environment and Development, 3-14 June 1992. [un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](http://un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf)

## Phase 1 - Planning Phase

**PROPOSER:** Identify key issues and value components during early engagement with Indigenous peoples and the public to inform the project's contribution to sustainability. When identifying VCs to be assessed, practitioners should also consider VCs that:

- Could experience long-term effects;
- May interact with other VCs;
- May interact with potential effects of the designated project; or
- May interact with project activities.

In order to assess a project's contribution to sustainability, consideration needs to be given to the long-term effects VCs, how those effects could change over time and how these effects could affect future generations.

**AGENCY:** Outline the information and analysis required to assess the project's contribution to sustainability in the proponent's Impact Statement in the Tailored Impact Statement Guidelines (TISG).

**INDIGENOUS NATIONS:** Contribute to identifying VCs based on your Nation's principles and views of the future. While a clear role has not been outlined in current IAAC guidance, true sustainability assessment cannot be conducted without Indigenous groups; therefore, Indigenous groups should identify their values, perspectives, indicators, and desired role in sustainability assessment, as early in the Planning Phase as possible. Review the TISG and ensure your approach to sustainability is included. Your Nation may even want to pre-define the criteria they will expect to see built into sustainability assessment even before an IA begins.

## Phase 2 - Impact Statement Phase

**PROPOSER:** Continue engagement on sustainability related topics and analysis on the extent to which the designated project contributes to sustainability included in the Impact Statement.

**AGENCY:** Further engagement on sustainability-related topics will be facilitated, as required.

**INDIGENOUS NATIONS:** Contribute to the analysis of the impacts to the VCs identified in Phase 1, including the studies identified in the TISG. Review the draft Impact Statement (see the checklist below for how to approach your review of the draft Impact Statement).

## Phase 3 - Impact Assessment Phase

**AGENCY/REVIEW PANEL:** Consultation and analysis will be undertaken in order to describe the project's contribution to sustainability in the Impact Assessment Report.

## Phase 4 - Decision-Making Phase

**MINISTER OR GOVERNOR IN COUNCIL:** In considering the Impact Assessment Report and determining public interest, the extent of which the designated project contributes to sustainability will also be considered.<sup>5</sup>

5 See IAAC. 2019. Interim Guidance: Considering the Extent to which a Project Contributes to Sustainability. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-considering.html](http://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-considering.html)

## APPENDIX H

# CHECKLIST FOR REVIEWING THE IMPACT STATEMENT

Questions to consider when reviewing the draft Impact Statement in Phase 2

QUESTIONS TO CONSIDER WHEN ASSESSING THE IMPACT STATEMENT	
<input type="checkbox"/>	Did the Impact Statement include a description of system-level interactions?
<input type="checkbox"/>	Were environmental, health, social and economic components important to you included in the system described?
<input type="checkbox"/>	Did the system described include both direct interactions and indirect interactions?
<input type="checkbox"/>	Did Indigenous Knowledge inform the identification of values, connections, interactions, and effects?
<input type="checkbox"/>	Was a detailed cumulative effects context provided for the system described?
<input type="checkbox"/>	Did the description of system-level interactions include a discussion of the resilience/vulnerability of values and the system as a whole?
<input type="checkbox"/>	Did the Impact Statement include a definition of well-being supported by you?
<input type="checkbox"/>	Was the temporal scope (time period assessed) appropriate?
<input type="checkbox"/>	Were effects on future generations assessed?
<input type="checkbox"/>	Were how effects might change over time discussed?
<input type="checkbox"/>	Were Indigenous Knowledge studies part of the baseline data collection?
<input type="checkbox"/>	Were your Indigenous group's preferred future values/uses of the project area included in the assessment?
<input type="checkbox"/>	Were measures included in the Impact Statement informed by engagement with your Indigenous Group? Were they co-developed?

<input type="checkbox"/>	Does the Impact Statement include a description of who will receive benefits now and in the future?
<input type="checkbox"/>	Does the Impact Statement include a description of who will be most negatively affected now and in the future?
<input type="checkbox"/>	Does the Impact Statement assess potential impacts from the project on your Indigenous group's overall well-being? Does it assess the well-being of vulnerable groups within your community?
<input type="checkbox"/>	Does the Impact Statement include measures to increase benefits for your Indigenous group?
<input type="checkbox"/>	Are all likely risks from the project accounted for and mitigated? / Have all project costs been identified and internalized?
<input type="checkbox"/>	Has the ability of vulnerable populations to access or take advantage of proposed measures been considered?
<input type="checkbox"/>	Does the Impact Statement include evidence that measures will be successful in what they are going to achieve? (i.e., examples of past success)
<input type="checkbox"/>	Was the level of harm assigned to effects on values appropriate? Were risks of serious harm or irreversible harm reported as lower than they should be?
<input type="checkbox"/>	Does the Impact Statement include a discussion on uncertainty?
<input type="checkbox"/>	Does the Impact Statement include enough evidence to support the predictions provided?
<input type="checkbox"/>	If the Impact Statement includes "Professional Judgement" as evidence for the accuracy of a prediction is it justified by written examples of past experience?

## APPENDIX I

# TABLE OF COMMON TOPICS CROSS-REFERENCED TO THE FIRST NATIONS MAJOR PROJECTS ASSESSMENT GUIDANCE

IMPACT ASSESSMENT TOPIC COVERED IN THIS GUIDE	FIRST NATIONS MAJOR PROJECT GUIDANCE
Cumulative Effects Assessment	Principle 8 of the <i>FNMPC Major Project Assessment Standard</i>
Socio-economic Assessment	Appendix 1 “Indigenous Socio-Economic Assessment”, <i>FNMPC Major Project Assessment Standard</i>
Cultural Impact Assessment	Appendix 2 “Indigenous Cultural Impact Assessment”, <i>FNMPC Major Project Assessment Standard</i>
Indigenous Knowledge Integration	Appendix 3 Indigenous Knowledge Integration, <i>FNMPC Major Project Assessment Standard</i>
Health Impact Assessment	Appendix 4 “Indigenous Health Impact Assessment”, <i>FNMPC Major Project Assessment Standard</i>
Indigenous Land Use Assessment	Appendix 5, “Indigenous Land Use Assessment”, <i>FNMPC Major Project Assessment Standard</i>
General best practice in environmental assessment	<i>FNMPC Major Project Assessment Standard</i>

## APPENDIX J

# FOUR KEY COMPONENTS TO UNDERTAKING A NATION-LED CUMULATIVE EFFECTS ASSESSMENT

When conducting your own Nation-led cumulative effects assessment, consider the following key steps:

<b>Step 1 Visioning</b>	Identify environmental, cultural, social and economic values (“Values” are what matters most to the Nation and Nation members”) and clarify their importance to your Nation and specific groups in your Nation. In the past, this has been a gap in the IA process, so it is important to spend time on properly identifying and understanding the key Values of your Nation.
<b>Step 2 Back casting</b>	Consider what the state of each value was as far back in time as you are able to go, and evaluate how the value has changed over time. This means reviewing documents, stories, and knowledge to understand what the Value was like before colonization (or early colonization) and developments occurred in your Nation’s territory.
<b>Step 3 Forecasting</b>	Consider how the Value may be impacted by future changes and what the implication of these changes means for your Nation. This can include reviewing long term impact scenarios, such as long-term developments and changes that are likely to take place in the territory and how they will impact the Value. It could also include focusing just on “reasonably foreseeable” impacts, which are impacts tied to impacts that are identified or tied to proposed activities. This approach is limited and is not considered best practice for cumulative effects; however, currently only “reasonably foreseeable” future developments are required by the Agency in most project-specific impact assessments. In 2007, the Agency temporarily implemented a policy that promoted a scenario analysis for future projects that included hypothetical future projects as well as “reasonable foreseeable.”
<b>Step 4 Determination</b>	Estimate the level of industrial disturbance already within the territory, combined with potential future industrial disturbance, and whether that exceeds your Nations own standards (or thresholds) of acceptable change. This means understanding what is considered too much change (“thresholds of acceptable change”) and whether the changes that your Nation identified will exceed this threshold.

## APPENDIX K

# CUMULATIVE EFFECTS ASSESSMENT CHECKLIST

When reviewing the adequacy of a cumulative effects assessment(s) in an Impact Statement, consider the following questions:

KEY QUESTIONS TO ASK WHEN REVIEWING A PROJECT CUMULATIVE EFFECTS ASSESSMENT (CEA)	
<input type="checkbox"/>	Did the company dedicate the same level of effort and resources to the cumulative effects assessment as the project-specific effects assessment?
<input type="checkbox"/>	Did the assessment methods used focus on the project's contribution to cumulative effects or instead focus on the current state of values and their vulnerability to impacts?
<input type="checkbox"/>	Was a pre-industrial baseline adopted to measure change for all values?
<input type="checkbox"/>	Were multiple sources of information considered including Indigenous Knowledge?
<input type="checkbox"/>	Was an in-depth cumulative effects context section included as part of the Assessment?
<input type="checkbox"/>	Was the cumulative effects context an accurate representation of the current state of values?
<input type="checkbox"/>	Did the company provide funds to your Nation to collect, organize, and interpret your own baseline and historical stressors for the Impact Statement?
<input type="checkbox"/>	Were non-industrial stressors and changes over-time included (e.g., climate change or colonial institutions such as residential schools)?
<input type="checkbox"/>	Did the geographic area examined for the assessment take into consideration the mobility of values (i.e., where do herds of wildlife or fish stocks move?)
<input type="checkbox"/>	Did the geographic area examined take into consideration the full extent of your Nation's territory?
<input type="checkbox"/>	Did the CEA include an assessment of trends over time (the extent of and how things have changed) and pace of change (how quickly things have changed) for each value?
<input type="checkbox"/>	Did the CEA integrate realistic scenarios of future development and climate change or did it only include likely future projects?
<input type="checkbox"/>	Were cumulative effects from upstream and downstream linked projects included in the assessment? (e.g., upstream gas effects tied to a pipeline).
<input type="checkbox"/>	Was your Nation engaged in reviewing the cumulative effects assessment prior to the company submitting the Impact Statement to the Agency?

## APPENDIX L

# REVIEWING SOCIO-ECONOMIC IMPACT ASSESSMENTS – A STARTER CHECKLIST

In reviewing Socio-economic Impact Assessments (SEIA), Indigenous Nations may wish to consider the following:

KEY QUESTION/CONSIDERATION	
ROLE OF INDIGENOUS NATION	
<input type="checkbox"/>	Has the SEIA methodology been collaboratively developed with your Nation? Has your Nation had the opportunity to be meaningfully involved in each step of the SEIA?
<input type="checkbox"/>	Has your Nation had the option to conduct a project-specific SEIA on their community first?
<input type="checkbox"/>	Have there been training and employment opportunities for Nation members to be part of the SEIA team?
<input type="checkbox"/>	Have the draft SEIA findings been vetted by your Nation according to relevant protocols before the SEIA has been submitted?
<input type="checkbox"/>	Has adequate funding been provided to cover all costs of Indigenous involvement in the SEIA?
DATA DISAGGREGATION	
<input type="checkbox"/>	Are Indigenous peoples presented separately from the non-Indigenous population at the local and regional level?
<input type="checkbox"/>	If your Nation determined that current data is inadequate, has sufficient funding been provided for collecting new data from the source?
TIES TO YOUR NATION'S GOALS, VALUES AND ASPIRATIONS	
<input type="checkbox"/>	Does the SEIA incorporate the appropriate Valued Components, criteria, indicators and their corresponding priorities, issues and concerns for your Nation?
<input type="checkbox"/>	Has primary data been collected (e.g., through community meetings, focus groups, interviews and gray literature) to help capture “what matters most” to your Nation?

<input type="checkbox"/>	Were the community meetings, focus groups and interviews successful and productive (e.g., a sufficient number of participants, participants from various segments of the community, productive meetings with a lot of community input and dialogue)?
<input type="checkbox"/>	Has your Nation verified possible Valued Components and indicators before baseline data collection began?
<b>CONSIDERATION OF CUMULATIVE AND PROJECT EFFECTS</b>	
<input type="checkbox"/>	Does the SEIA include estimates of the extent and cost of impacts (both good and bad) on your Nation from both cumulative and project-related impacts?
<input type="checkbox"/>	Has the value of losses in the local study area and nearby areas in your Nation's territory been considered?
<input type="checkbox"/>	Have induced effects (both good and bad) of economic development related to the project been considered?
<b>INDIGENOUS LAWS AND NORMS</b>	
<input type="checkbox"/>	Have study methods been conducted respectfully within the protocols and at an appropriate pace for your Nation?
<input type="checkbox"/>	Does the SEIA include questions like: "Will the development impact on peoples' ability to adhere to Indigenous laws, norms, and Values (e.g., sharing, respect for elders)?"
<b>DISTRIBUTION OF EFFECTS</b>	
<input type="checkbox"/>	Does the SEIA consider vulnerabilities and the distribution of impacts and benefits between Indigenous and non-Indigenous communities as well as within Indigenous communities?
<input type="checkbox"/>	Have vulnerable sub-groups in your Nation been identified and focused on during the study?
<input type="checkbox"/>	In situations where there is likely to be high in-migration, increased incomes in the community or disruptions to accessing usual areas, has an emphasis been placed on identifying impacts on people who have few financial resources (e.g., unemployed, single parents, Elders, women, children)?
<input type="checkbox"/>	Have efforts been made to promote the well-being of people who have few financial resources?
<input type="checkbox"/>	Does the SEIA consider impacts on women and youth's well-being?
<b>INDIGENOUS SUBSISTENCE AND MIXED ECONOMIES</b>	
<input type="checkbox"/>	Does the SEIA address safety, adequacy, accessibility, current use and barriers to use of traditional food, water safety/security?

<input type="checkbox"/>	Does the SEIA assess effects on income-related food security?
<b>SOCIAL COMPONENT</b>	
<input type="checkbox"/>	Have community service providers and staff in social and economic spheres for your Nation been part of the data collection and analysis program?
<input type="checkbox"/>	Does the SEIA assess potential psycho-social effects of the development?
<input type="checkbox"/>	Does the SEIA identify Indigenous Nation's "vulnerability" and "resilience" elements?
<input type="checkbox"/>	Does the SEIA focus on promoting resilience while also not increasing negative effects that increase vulnerability?
<b>HEALTH COMPONENT</b>	
<input type="checkbox"/>	Does the SEIA align with Health Canada's Determinants of Health Model?
<b>MITIGATION OF SOCIO-ECONOMIC EFFECTS</b>	
<input type="checkbox"/>	Does the SEIA show project contributions to net gains, reconciliation and avoidance of increased social impacts as defined by your Nation?
<input type="checkbox"/>	During the application review phase has the Agency proactively identified any mitigation, compensation and monitoring measures it will require or implement itself?
<b>ABILITY TO TAKE ADVANTAGE OF BENEFITS</b>	
<input type="checkbox"/>	Does the SEIA use a "Net Gains" approach?
<input type="checkbox"/>	Does the SEIA highlight barriers to Indigenous workers and businesses taking advantage of project-related employment and business opportunities?
<b>RECRUITMENT, RETENTION AND ADVANCEMENT</b>	
<input type="checkbox"/>	Has the proponent provided information to support an understanding of project-related barriers for your Nation members to obtain jobs, stay with jobs, progress in employment status and develop career paths?
<input type="checkbox"/>	Has the proponent made any commitments to increasing benefits to Indigenous workers related to recruitment, retention and advancement issues?
<input type="checkbox"/>	Does the SEIA consider impacts on Indigenous workers and their families and communities at home, at work and in the community?
<input type="checkbox"/>	Unless your Nation prefers otherwise, has the proponent shown that they have appropriately funded Indigenous training and career development with the primary goal of long-lasting, meaningful Indigenous employment?

## MONITORING AND ADAPTIVE MANAGEMENT

<input type="checkbox"/>	Has the proponent provided evidence to your Nation showing that proposed mitigations have worked before and will work in this instance?
<input type="checkbox"/>	Have your Nation and proponent met to identify and agree on mitigation and monitoring plans before the plans have been finalized?
<input type="checkbox"/>	For major projects, has a robust Human Environmental Monitoring Plan been developed with involvement of your Nation?
<input type="checkbox"/>	Have agreed-upon thresholds been identified for triggering adaptive management action as well as related management plan action?
<input type="checkbox"/>	Have discussions about mitigations with your Nation occurred?
<input type="checkbox"/>	Will the proponent avoid using 'mitigations' that are merely issues of prior notice before beginning construction or operations activities?
<input type="checkbox"/>	Is there adequate funding and support in place to cover the costs of full implementation of mitigation and monitoring? To ensure the participation of your Nation in mitigation, monitoring and follow-up?

## APPENDIX M

# EXAMPLES OF TYPES OF INDIGENOUS-LED STUDIES

## INDIGENOUS KNOWLEDGE STUDIES

### Use:

- Documents Indigenous Knowledge related to land use, environmental knowledge, project and cumulative impact pathways, ecosystem relationships, including human-environment

### Benefits:

- Enhances impact assessment by contributing to understanding of environmental phenomena and ecological links
- May identify impact pathways western science does not
- Facilitates intergenerational knowledge transfer to protect cultural identities, Values and practices

### Risks:

- Pre-existing Indigenous Knowledge may be publicly accessible and used by others as a proxy
- What is considered “Indigenous Knowledge” by others may not be correct
- Indigenous Knowledge often subject to inappropriate “re-interpretation”

### Methods:

- Interviews and focus groups with elders and other land users
- Mapping exercises
- On-the-land visits
- Community verification meetings
- Community ownership, control, access and possession should be ensured

## INDIGENOUS LAND USE STUDIES

### Use:

- Describe important places for Indigenous community members
- Establish spatial interactions and impact pathways between community Values and proposed project
- Community members can share perspectives on project-specific mitigation

### Benefits:

- Illustrate Indigenous community's overall patterns of land use and occupancy, especially as they relate to the project
- The words of community members about Values and concerns are equal to or greater in value to the maps
- Preserve information of Indigenous Knowledge holders

### Risks:

- Project-specific Indigenous land use studies are still not mandatory and must be negotiated
- Proxy studies (old information) is still sometimes used and “interpreted” by non-Indigenous peoples

### Methods:

- Involves individual mapping interviews (paper or increasingly digital maps)
- Points, lines and areas used or otherwise valued by community members identified
- Narratives of use, Value, project-related and cumulative effects concerns captured
- Participant and/or community verification required

## CULTURAL IMPACT ASSESSMENT STUDIES

### Use:

- Establish cultural baseline, including Values, laws and norms and change over time to date
- Assess possible impacts of a proposed development on the culture of Indigenous people

### Benefits:

- Identify, predict and minimize any adverse cultural impacts of developments on people and places
- Support community readiness for a proposed development
- Creates a useful baseline and trend-over-time portrait of cultural Values, loss and renewal

### Risks:

- Not always required by impact assessment agencies; minimal Agency guidance
- Cannot be effectively run without intense Indigenous involvement

### Methods:

- Establish cultural Values and indicators that should be part of assessment through community engagement and historical review
- Interviews, focus groups, community meetings, archival review
- Work with community to identify impact pathways on culture from a project
- May or may not include a formal impact characterization process, on Indigenous terms
- Community verification process at end

## CUMULATIVE EFFECTS ASSESSMENT

### Use:

- Evaluate total impacts from all causes on your Values over time, to set context against which to assess project-specific change
- If pre-existing impacts are already significant, this can be a very powerful tool

### Benefits:

- Cumulative context very important for Rights assessment under new IAA
- Picture is worth 1000 words (“holy cow” factor)
- May establish that “tipping point” of significant change has already passed or is nearing, before the project is added to the mix

### Risks:

- Can take time and expertise the community may not have in the context of a single project assessment

### Methods:

- Mapping using historical data on land use
- Community input on changes over time
- Ecological data on wildlife numbers/health
- Future Scenarios analysis

## RIGHTS IMPACT ASSESSMENTS

### Use:

- Assess potential adverse impacts of proposed development projects on the rights of Indigenous peoples
- Inform required rights impact assessment consideration under IAA

### Benefits:

- Protection of Indigenous rights through the impact assessment process
- Greater involvement of Indigenous peoples in this realm of assessment
- Accommodation requirements for rights infringements can be established.

### Risks:

- Still a new area of impact assessment, with few experienced practitioner
- Not previously funded in impact assessment, time and funding critical
- Proponent role in rights impact assessment must be controlled; primary relationship is meant to be between Indigenous Nation and the Agency.

### Methods:

- Multiple methods are possible; should always be guided by Indigenous community
- Indigenous communities should identify their Aboriginal and/or Treaty rights
- May involve gathering information available from other studies by proponent, Indigenous Nations and the Agency
- Indigenous Nation agreed to assessment framework should then look at cumulative and project-specific effects on rights and report back to community and Agency

## SOCIO-ECONOMIC IMPACT STUDIES

### Use:

- Establish socio-economic baseline for factors such as health and well-being, wildlife harvesting and employment opportunities
- Identify and evaluate the potential socio-economic and cultural impacts of a proposed development on the lives and circumstances of people, their families and their communities

### Benefits:

- Bolster abilities of developer and impact assessment participants to minimize, avoid, or prevent adverse socio-economic impacts of proposed developments
- Support planning for maximizing beneficial impacts of a proposed development
- May address impacts on traditional economic activities such as hunting, fishing and trapping

### Risks:

- Some of these study processes are best suited to evaluating impacts of large physical developments, and may not be applicable to smaller developments (e.g., a road) or intangible entities (e.g., a policy)
- Can be biased as a result of narrowly-scoped issues and perspectives
- Standard tools for analyzing an economic baseline may fail to capture crucial components of Indigenous economies (e.g., wildlife harvesting)
- May be difficult to derive socio-economic thresholds due to the dynamic nature of global socio-economic systems

### Methods:

- Information about baseline conditions can be collected via interviews, surveys, community meetings, focus groups, or review of existing literature
- Impact prediction methods may include map overlays, surveys, workshops, scenario analysis, and qualitative or quantitative modeling
- Monitoring may be used to evaluate the progress of a development

## ARCHAEOLOGICAL AND HERITAGE STUDIES

### Use:

- Document key archaeological resources for posterity
- Address conflicts between archaeological resources and proposed developments

### Benefits:

- Provide inventory and evaluation of archaeological resources
- Evaluate project impacts on archaeological resources
- Manage unavoidable adverse impacts as well as unanticipated impacts on archaeological resources

### Risks:

- The location and nature of archaeological and heritage sites may be shared with individuals or groups outside of the community
- Archaeological and heritage sites may be disturbed in the process of conducting the study
- Materials from archaeological and heritage sites may be removed and tested or catalogued for the purpose of the study
- Findings from tests may link discrete time periods to site materials, which could enable misinterpretations of historic use and occupancy of territory

### Methods:

- May involve site surveys, which can include use of transects as well as subsurface testing and sampling.
- Can include mapping, measuring, recording, excavation, storage and cataloguing of materials from archaeological and heritage sites
- An archaeological professional is required for these studies

## HEALTH STUDIES

### Use:

- Determine baseline health conditions and identify important health issues for a community.
- Strategically evaluate and assess the potential health effects of a proposed development

### Benefits:

- Provide information which can help decision-makers and affected individuals and groups about the intended and unintended consequences arising from an activity
- Support decision-makers and affected individuals and groups in making recommendations to maximize positive and mitigate negative health impacts for affected populations
- Reduce negative health impacts and economic costs of a proposed project

### Risks:

- Western scientific methods may fail to identify health issues and determinants that are evident from Indigenous and local knowledge
- May involve transfer and storage of private health information
- Can require significant time and resources

### Methods:

- Can utilize quantitative or qualitative methods
- May involve review of existing literature or previously-collected data
- Can also include primary data collection such as surveys, interviews, focus groups, community meetings, or workshops
- May involve public health professionals at various stages over the study

## HARVEST AND FOOD SECURITY STUDIES

### Use:

- Count or estimate the number of animals by category taken by a specific group of Indigenous people during a specific time period
- Document harvesting patterns and techniques for future generations
- Identify food security challenges for a community

### Benefits:

- Can provide harvest estimates that are more reliable than administrative harvest data
- Help assess risks and vulnerabilities of environmental components such as wildlife population

### Risks:

- Harvest surveys may require community members to share sensitive information about their harvesting practices
- May be difficult to define food security and assign community-wide threshold values related to a development due to the complex intersection of Indigenous and non-Indigenous economies and traditions surrounding food and harvesting

### Methods:

- Harvest studies often involve surveys which request that harvesters communicate a record of their harvesting
- Harvest surveys may also incorporate commercial or governmental administrative data
- Nutrition studies may be used to characterize community members' diets
- Food security studies may utilize surveys, interviews or focus groups

## ECOLOGY STUDIES

### Use:

- Identify ecological baseline and changes or declines in important animals, plants or other valued ecological entities
- Determine potential impacts of proposed development on key ecosystems

### Benefits:

- Provide habitat and biodiversity information about important ecosystems
- Determine vulnerability and sensitivity estimates for key ecological areas
- Facilitate use of quantifiable indicator variables which reflect ecosystem composition and structure
- Support protection of ecological populations, genetic variability and species in relation to potential impacts of proposed developments

### Risks:

- May require substantial time and resources
- Depending on the application of the study, the study lead must have a certain professional designation or expertise for the study to be considered valid
- Western scientific methods may fail to identify ecological patterns and phenomena that are documented by Indigenous Knowledge

### Methods:

- Can involve desktop analyses of existing ecological data such as literature reviews, statistical analyses, and habitat and wildlife distribution mapping
- May involve primary data collection which can include discrete sampling like ground-based surveys (e.g., moose pellet surveys)
- Can also incorporate continuous ecological sampling programs via installation and use of monitoring equipment such as wildlife cameras, water level sensors or wildlife telemetry collars

- Samples from field surveys and monitoring programs may be sent to a laboratory to be tested (e.g., water quality testing)
- Results from field sampling and laboratory tests are often analyzed with use of statistics (e.g., to compare plant species abundance)
- An ecological professional is required for these studies

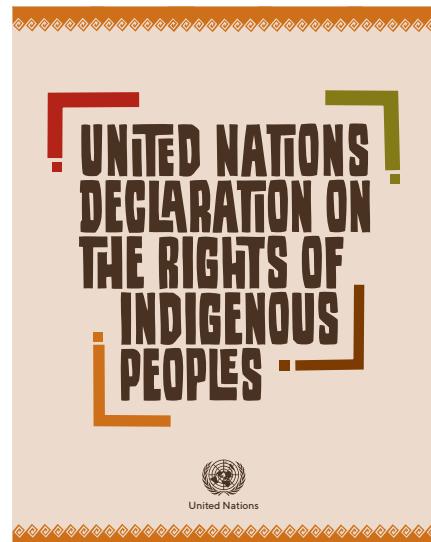
## APPENDIX N

# UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE AND THE IMPACT ASSESSMENT ACT

The Government of Canada has committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and describes aspects of the new Impact Assessment Act (the Act) as fulfilling this commitment. Some of the guidance documents prepared by the Impact Assessment Agency of Canada (the Agency) highlights this, such as the Agency's guidance on collaboration<sup>6</sup>, Indigenous participation<sup>7</sup>, and policy<sup>8</sup>. The preamble to the Act identifies the Government of Canada's commitment to implementing UNDRIP; the Act itself contains no provisions referencing articles of UNDRIP, including articles pertaining to Free, Prior, and Informed Consent (FPIC). However, the Agency's guidance documents for the Act mention commitments to UNDRIP as well as FPIC (see list below).

In Canada, the rights of Indigenous Peoples, referred to as "Aboriginal and Treaty Rights" and Section 35 Rights, vary from Nation to Nation, but in general include: the right to the land (Aboriginal title), the right to subsistence resources and activities, the right to practice culture and customs including language and religion, the right to self-determination and self-government, and the right to treaties. The Act supports a more collaborative approach to rights impact assessment.<sup>9</sup> There is now a greater opportunity for Indigenous Nations to lead or collaboratively conduct their own Indigenous Rights Impact Assessment with the Crown.

This appendix lists key themes from UNDRIP that apply to new federal IA process.



Download the Declaration at [un.org](http://un.org)

- 6 Impact Assessment Agency of Canada (IAAC). 2020. Interim Guidance: Collaboration with Indigenous Peoples in Impact Assessments. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/collaboration-indigenous-peoples-ia.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/collaboration-indigenous-peoples-ia.html)
- 7 Impact Assessment Agency of Canada (IAAC). 2019. Interim Guidance: Indigenous Participation in Impact Assessment. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html#\\_Toc17459484](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html#_Toc17459484)
- 8 Impact Assessment Agency of Canada (IAAC). 2019. Interim Policy Context: Indigenous Participation in Impact Assessment. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-policy-indigenous-participation-ia.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-policy-indigenous-participation-ia.html)
- 9 IAAC. 2020. Interim Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-indigenous-peoples.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-assessment-potential-impacts-indigenous-peoples.html)

## ASSERTING INDIGENOUS INHERENT AUTHORITY AND JURISDICTION WITHIN FEDERAL IMPACT ASSESSMENTS

### Discussion in the Guide

The government of Canada recognizes the rights of Indigenous people to self-determination and self-governance. Section 22(c) of the Act states that projects must consider impacts to rights, which includes the right to self-determination.

In general, the Act provides more space for Indigenous authority over, and engagement in, aspects of the assessment process. This includes Indigenous-led assessment, delegation of parts of the Impact Assessment process to Indigenous governments and substitution of the Impact Assessment process for Indigenous Governing Bodies' processes. The Act doesn't explicitly require Indigenous-led studies to be funded or to occur, so there are barriers to Indigenous Nations accessing this option. Also, even though the Act may support Indigenous participation, the decision-making powers still reside in the hands of the Minister of Environment and Climate Change.

See Part III, Section 1 of this guide for information on Indigenous opportunities in the assessment process.

### Related UNDRIP Article

#### Article 3

*Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

#### Article 4

*Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to*

*their internal and local affairs, as well as ways and means for financing their autonomous functions.*

#### Article 18

*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*

## INDIGENOUS CULTURE AND INDIGENOUS RIGHTS

### Discussion in the Guide

With respect to the Act, and federal and provincial legislation more generally, culture and Indigenous rights go hand-in-hand.

Section 22[1] factors state that Indigenous culture must be considered in an IA and there is more emphasis on all elements of culture (tangible and intangible). This factor may support or complement the requirement to assess effects to cultural heritage. Previously, cultural heritage was only required to be assessed in terms of indirect effects resulting from changes to the environment.

See Part III, Section 2 of this guide for more information on how to ensure your Nation's culture is properly considered in the assessment and refer to Part III, Section 2(e) for information on how to prepare and conduct a rights impact assessment.

### Related UNDRIP Article

#### Article 11

*1. Indigenous peoples have the right to practise and revitalize their cultural traditions and*

*customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*

*2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.*

## Article 12

*1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.*

*2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.*

## Article 13

*1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.*

*2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and*

*administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.*

## FREE, PRIOR, AND INFORMED CONSENT

### Discussion in the Guide

Free, Prior, and Informed Consent (FPIC) entails that a Nation consents to a decision or plan without coercion, in an advance of the decision being made, based on all the information related to the decision, and inclusive of all people effected by the decision.

The Act does not expressly integrate FPIC into the Act. The federal government generally highlights its support for collaborative processes as evidence of their support for FPIC; however, Indigenous Nations do not have decision-making powers with respect to project approval. In the words of the Agency: collaboration, “supports the Government of Canada’s aims to secure free, prior, and informed consent for decisions that affect Indigenous peoples’ rights and interests.”<sup>1</sup>

See Part III, Section 2, for information on how to ensure your Nation is properly engaged and consulted throughout an assessment; including Section 2(a) on how to influence the review process and project design during the Planning Phase to avoid unacceptable impacts to your Nation’s rights and interest; and (b) on why and how building relationships with the Agency and the project proponent are important to ensure your Nation’s effective involvement in an impact assessment.

<sup>1</sup> Impact Assessment Agency of Canada (IAAC). 2020. Interim Guidance: Collaboration with Indigenous Peoples in Impact Assessments: [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-collaboration-indigenous-peoples-ia.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-collaboration-indigenous-peoples-ia.html)

## Related UNDRIP Article

### Article 10

*Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.*

### Article 19

*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

### Article 28

*1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.*

*2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.*

### Article 32

*1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*

*2. States shall consult and cooperate in good faith with the indigenous peoples concerned*

*through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*

*3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

## INDIGENOUS KNOWLEDGE

### Discussion in the Guide

Pursuant to section 22[g] of the Act, Indigenous Knowledge (IK) is a mandatory consideration in decision-making. The Act now includes a clause on confidentiality (Section 199) to ensure Indigenous Knowledge is protected; however, there are exceptions, including that the Agency determines that (a) the IK is publicly available, (b) the disclosure is necessary for the purposes of procedural fairness, and (c) the disclosure is authorized in the prescribed circumstances.

The Agency has prepared guidance on how to protect Indigenous Knowledge.<sup>2</sup>

See Part III, Section 2 of this guide for information on how to ensure your Nation's IK is adequately considered and protected in the assessment process. We suggest preparing an IK protocol.

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<sup>2</sup> Impact Assessment Agency of Canada (IAAC). 2020. Protecting Confidential Indigenous Knowledge under the Impact Assessment Act: [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/protecting-confidential-indigenous-knowledge-under-the-impact-assessment-act.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/protecting-confidential-indigenous-knowledge-under-the-impact-assessment-act.html)

## Related UNDRIP Article

### Article 31

*1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*

## PROTECTING LANDS, RESOURCES, SOCIETY, ECONOMY AND CULTURE

### Discussion in the Guide

The government of Canada recognizes the rights of Indigenous people to their lands (Aboriginal title), to subsistence resources and activities, and to practice their culture and customs including language and religion. Section 22(c) of the Act states that projects must consider impacts to rights, which covers lands, resources, activities, and cultures.

Pursuant to Section 22[a] of the Act, an impact assessment must consider impacts to the environment or to health, social or economic conditions of Indigenous communities. This includes both negative and positive direct impacts to Indigenous health, social and economic conditions, including beneficial effects.

Refer to Part III, Section 2 of this guide for information on how to conduct a cumulative effects assessment, and for information on

conducting a socio-economic and health impact assessment or information on conducting a socio-economic and health impact assessment

## Related UNDRIP Article

### Article 24

*1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.*

*2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.*

### Article 20

*1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.*

*2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.*

### Article 25

*Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*

## Article 26

- 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
- 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*
- 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*

## Article 27

*States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.*

## Article 29

- 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.*
- 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.*
- 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.*

## APPENDIX 0

# NEW FACTORS FOR CONSIDERATION UNDER THE IMPACT ASSESSMENT ACT

**DIRECT CHANGES TO HEALTH, SOCIAL OR ECONOMIC CONDITIONS MUST NOW BE CONSIDERED.** The Act now considers both negative and positive *direct impacts* to Indigenous health, social and economic conditions, including beneficial effects.

**HOW THIS DIFFERS FROM CEAA 2012:** CEAA 2012 focused on minimizing negative *environmental* effects only. CEAA 2012 considered indirect effects on Indigenous health, social and economic conditions that resulted from changes to the natural environment (e.g., fish, caribou, water quality) caused by a project. Direct impacts of a project to health, social and economic, separate from the environment, were not considered. Positive impacts were also not considered.

**WHY IT MATTERS FOR YOUR NATION:** This means the assessment now considers impacts to health, social, and economic conditions separately from impacts to the environment. For example, the project now considers a project's effect on mental health and wellness.

The assessment will also consider the benefits of a project – like employment. The new focus on positive effects creates the opportunity for a Nation to press for the impact assessment to seek out measures that result in a net benefit to the Nation's membership, rather than simply minimizing negative effects of the project on the environment, people and/or rights.

**ASSESSING IMPACTS ON INDIGENOUS RIGHTS** is now a statutory requirement that must be fully considered within the context of each IA.

**HOW THIS DIFFERS FROM CEAA 2012:** CEAA 2012 did not refer to Aboriginal and Treaty Rights (i.e., Indigenous rights) and did not require rights to be assessed as part of an EA. The requirement to consider potential impacts to rights was added at the discretion of the former Canadian Environmental Assessment Agency, with an *ad hoc* methodology and approach taken for each project assessment.

**WHY IT MATTERS FOR YOUR NATION:** A more collaborative approach to rights-impact assessment is now supported in the Agency's February 2020 interim guidance on the *Assessment of Potential Impacts on the Rights of Indigenous Peoples*. There is now a greater opportunity for Indigenous Nations to lead or collaboratively conduct their own Indigenous Rights Impact Assessment with the Crown. See Part III, Section 2 of this guide for more information on options for approaching a rights impact assessment.

## **A PROJECT'S CONTRIBUTION TO SUSTAINABILITY** must be considered.

**HOW THIS DIFFERS FROM CEAA 2012:** There was no consideration of contribution to sustainability in CEAA 2012. The focus was on minimizing impacts to the environment only.

**WHY IT MATTERS FOR YOUR NATION:** An assessment must now consider how the project may contribute to sustainability. Indigenous Nations will need to monitor how sustainability is presented by the project proponent and provide input on their definition of, and approach to, sustainability.

Nations may leverage this new requirement to support ecologically and culturally appropriate restoration and reconciliation.

See Appendix G for discussion on sustainability assessments.

**INDIGENOUS KNOWLEDGE (IK)** must now be considered when provided.

**HOW THIS DIFFERS FROM CEAA 2012:** Indigenous Knowledge was not required to be considered under CEAA 2012.

**WHY IT MATTERS FOR YOUR NATION:** Indigenous Nations can now ensure Indigenous Knowledge is being considered and that it is being considered appropriately. This includes conducting your own studies and assessments. See Part III, Section 2 for more information on IK in impact assessments.

**CONSIDERATIONS RELATED TO INDIGENOUS CULTURES** must be considered in an IA and there is more emphasis on all elements of culture (tangible to intangible).

**HOW THIS DIFFERS FROM CEAA 2012:** This factor is new and may support or complement the requirement to assess effects to cultural heritage. Under CEAA 2012, cultural heritage was assessed only indirectly. In other words, cultural heritage impacts could only be assessed if caused by changes to the environment, such as impacts to a culturally important species.

**WHY IT MATTERS FOR YOUR NATION:** The way the factor will be implemented is yet to be determined. That said, we recommended that Nations evaluate cultural impacts broadly - meaning looking at both direct and indirect impacts on both tangible and intangible culture.

Nations can interpret this factor based on Article 11 of UNDRIP, "Right to Cultural Practices", which states that Indigenous peoples have the right to practice and revitalize their cultural traditions and customs and that states shall provide redress when their cultural, intellectual, religious and spiritual property is taken without their consent or in violation of their laws, traditions and customs.

See Part III, Section 2 for more information on Indigenous culture in IA.

**COMMUNITY KNOWLEDGE:** IAs must now consider community knowledge along the same lines as IK is considered.

#### HOW THIS DIFFERS FROM CEAA

**2012:** Consideration of community knowledge was not required in CEAA 2012.

#### WHY IT MATTERS FOR YOUR NATION

**NATION:** Community knowledge or studies may inform guidelines, impact statement and the impact assessment and decision-making phase. Not all information that an Indigenous community may wish to contribute to an IA may fall within the Nation's the criteria of Indigenous knowledge. Community-based knowledge relevant to a project, even if it is not necessarily inherited or bestowed knowledge rooted in a Nation's traditions, must still be considered during an IA.

**REGIONAL ASSESSMENTS:** There is a bigger role for regional assessments

**HOW THIS DIFFERS FROM CEAA 2012:** There was less support for regional assessments in CEAA 2012. Indigenous governments were also not able to conduct parts of a regional assessment under CEAA 2012.

#### WHY IT MATTERS FOR YOUR NATION

**NATION:** Indigenous governments can enter into agreements with the Crown to conduct parts of a regional assessment. See the structural changes list below for further discussion on regional assessments

**INDIGENOUS-LED STUDIES AND PLANS:** IAs must consider Indigenous-led studies or plans relating to the project or the region in which the project is located.

**HOW THIS DIFFERS FROM CEAA 2012:** No formal requirement for relevant Indigenous-led studies or plans is provided in CEAA 2012.

**WHY IT MATTERS FOR YOUR NATION:** The Act requires consideration of Indigenous studies related to a project and regional studies or plans conducted by a jurisdiction, including Indigenous governing bodies, but doesn't explicitly require them to be undertaken or to be funded. See Part III, Section I on studies that Indigenous Nations can consider in an IA.

**CONSIDERATION OF HOW A PROJECT EFFECTS DIFFERENT VULNERABLE GROUPS** is now required under the factor for *intersection of sex and gender with other identify factors* (Gender-based assessment plus, or GBA+):

**HOW THIS DIFFERS FROM CEAA 2012:** GBA+ not considered in CEAA 2012.

**WHY IT MATTERS FOR YOUR NATION:** The Agency views GBA+ as a way to ask important questions about how designated projects may differently affect diverse or potentially vulnerable population subgroups. The project proponent should apply a GBA+ lens to the effects analysis to describe unequal effects for diverse subgroups and the Agency or Review Panel will also use GBA+ in the preparation of the Impact Assessment Report.

## APPENDIX P

# FURTHER READING ON IMPACT ASSESSMENT

## FURTHER READING ON INDIGENOUS-LED ASSESSMENT

- Impact Assessment Agency of Canada. 2020. *Interim Guidance: Collaboration with Indigenous Peoples in Impact Assessments*. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/collaboration-indigenous-peoples-ia.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/collaboration-indigenous-peoples-ia.html)
- Impact Assessment Agency of Canada. 2019. *Interim Guidance: Gender-based Analysis Plus in Impact Assessment*. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/gender-based-analysis.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/gender-based-analysis.html)
- Impact Assessment Agency of Canada. 2019. *Interim Guidance: Indigenous Participation in Impact Assessment*. [canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html#\\_Toc17459484](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html#_Toc17459484)
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## FURTHER READING ON INDIGENOUS KNOWLEDGE

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- Eckert, LE, Claxton NX, Owens C, Johnston A, Ban NC, Moola F, and Darimont CT. 2020. “Indigenous knowledge and federal environmental assessments in Canada: applying past lessons to the 2019 impact assessment act.” *FACETS* 5: 67–90.
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- First Nations Major Project Coalition (MPC). 2019. *Major Project Assessment Standard*. Appendix 3: Indigenous Knowledge Integration. <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5e4488a999bb612af7ede943/1581549740224/FNMPG+MPAS+Guidance+appendices+-+FINAL+January+2020.pdf>
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## FURTHER READING ON CUMULATIVE EFFECTS ASSESSMENT:

- First Nations Major Project Coalition. 2019. *Major Project Assessment Standard*. <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5cdc93e2fa0d6007b00b5a2d/1557959669570/FNMPG+MPAS+FINAL.pdf>
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## FURTHER READING ON SOCIO-ECONOMIC IMPACT ASSESSMENT:

- First Nations Major Project Coalition. 2019. *Major Project Assessment Standard*: Appendix 1, 2, and 4: <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5e4488a999bb612af7ede943/1581549740224/FNMP+MPAS+Guidance+appendices+-+FINAL+January+2020.pdf>
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- Mackenzie Valley Review Board. 2007. *Socio-economic Assessment Guidelines*: <http://reviewboard.ca/file/1024/download?token=1DDLP3jP>
- Treaty 8 First Nations Community Assessment Team. 2012. *Telling a Story of Change the Dane-zaa Way*. [ceaa-acee.gc.ca/050/documents\\_staticpost/63919/85328/Vol3\\_Appendix\\_B-Treaty\\_8.pdf](https://ceaa-acee.gc.ca/050/documents_staticpost/63919/85328/Vol3_Appendix_B-Treaty_8.pdf)
- Tsimshian Environmental Stewardship Authority. (2018). *A Guideline for Conducting Health Impact Assessment for First Nations in British Columbia*. Released in draft form in July 2018 (TESA 2018). Contact the Tsimshian Environmental Stewardship Authority for more information.

## FURTHER READING ON RIGHTS IMPACT ASSESSMENT

- First Nations Major Project Coalition (MPC). 2019. *Major Project Assessment Standard*. <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5cdc93e2fa0d6007b00b5a2d/1557959669570/FNMP+MPAS+FINAL.pdf>
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