



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale



Aboriginal Consultation in the Context of Environmental Assessments: The Federal Perspective

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Canada



Goals of the presentation

- Provide an overview of the federal consultation process during environmental assessments
- Provide information on how proponents (industry) can participate in the federal aboriginal consultation process
- Share challenges and lessons learned to date
- Provide a brief update on the proposed CEAA Act 2012



The Agency- WHAT

- Coordinates or manages the federal EA process for most major resource projects that fall under the Act
- Coordinates federal EA process with provincial EA process
- Hosts the Public Registry Internet Site that houses information on federal EAs
- Serves as the coordinator for consultation with Aboriginal groups during the environmental assessments for projects it manages
- Provides funding for public and Aboriginal group participation in EAs



When does a duty arise?

When the Federal Government contemplates conduct that may adversely affect Aboriginal or Treaty rights.

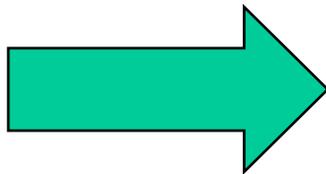
Three elements are required:

1. Contemplated Crown Conduct (i.e. land transactions, approvals, etc.)
2. Potential or established Aboriginal and Treaty Rights
3. Potential adverse impact (i.e. impacts to wildlife, etc.)



What is an Environmental Assessment process?

Process to predict the environmental effects of a proposed initiative and to minimize or avoid effects before they occur



For a federal EA, there is usually a duty to consult



What are the central components of Aboriginal Consultation and Environmental Assessment?

Environmental Assessment Process	Aboriginal Consultation Process
<ul style="list-style-type: none">• Identifies environmental effects	<ul style="list-style-type: none">• Identifies adverse impacts on potential or established Aboriginal or Treaty Rights
<ul style="list-style-type: none">• Proposes measures to mitigate environmental effects	<ul style="list-style-type: none">• Considers accommodation measures, where appropriate



What are the benefits of integrating Aboriginal Consultation into Environmental Assessments?



- Early opportunity to understand potential impacts of the project on potential or established Aboriginal or treaty rights
- Early opportunity to explore mitigation measures as a form of accommodation
- Information sharing that supports both the Aboriginal consultation and the Environmental Assessment process



The Agency's Roles in Aboriginal Consultation



- CCC for major resource projects
- Ensures Aboriginal consultation is integrated into environmental assessment to the extent possible
- Leads Aboriginal consultation
- Provides one window into the federal for aboriginal groups and for proponents



The Agency's Responsibilities as Crown Consultation Coordinator

- Identify Aboriginal groups whose potential or established Aboriginal or treaty rights may be adversely affected by the proposed project
- Provide Aboriginal groups with information about the proposed project and the EA process
- Invite identified Aboriginal groups to provide comments in relation to the EA
- Invite comments on potential adverse impacts to Aboriginal or Treaty rights



The Agency's Responsibilities as Crown Consultation Coordinator (cont.)

- Provide aboriginal groups with capacity funding through the Agency's Participant Funding Program
- Consider feedback provided by Aboriginal groups during the consultation process, including any concerns or issues raised,
- Help to identify mitigation and accommodation measures that may be required



What are the steps in federal consultation?



■ Pre-Consultation and Analysis:

- Identify potential project impacts on rights
- Identify Aboriginal groups for consultation
- Conduct background research on Aboriginal groups
- Draft a proposed consultation approach

■ Crown Consultation:

- Share proposed consultation approach and request input
- Implement consultation activities (ex: consultation on EIS)
- Gather information about potential impacts to Aboriginal rights
- Gather information on the current use of lands and resources for traditional purposes.



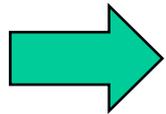
What is federal consultation?

- Prepare final consultation report
- Consult with aboriginal groups on sections pertaining to their group in consultation report
- **Accommodation**
 - Finalize mitigation and/or accommodation measures (after Panel report in the case of a Review Panel)
 - Identify outstanding consultation issues that will be carried into regulatory phase



How is it working on the ground in Alberta ?

- Alignment with the province:
 - cooperation on initial phases of consultation underway, working on other phases.
- Regular communication with proponents:
 - monthly meetings with proponents for major resource projects



Goal is to avoid duplication and to build on existing work wherever possible



What the Federal Government needs from a Proponent

- Summary of engagement activities that have occurred to date
- Information on potential adverse impacts
- Background on identified Aboriginal groups, including information on rights, interests and uses
- Proposals for mitigation measures to address potential adverse impacts, including alternative means proposals
- Studies relevant to project impacts and the current use of lands and resources for traditional purposes



What the Federal Government needs from a Proponent (cont.)

- Summaries of issues raised by Aboriginal groups during meetings
- Aboriginal groups responses to mitigation measures proposed by the proponent
- Rationale of why an issue raised by an Aboriginal group was not addressed
- Whether an agreement has been proposed by the proponent and or an Aboriginal group



Challenges

- Using procedural delegation :
➔ federal government has not done so in the past
- Avoiding duplication: ensuring that both levels of government and proponents aren't doing the same work
- Misalignment on key definitions: for the federal government, aboriginal includes Métis groups.



Challenges (continued)

- Aboriginal groups dislike the integration of aboriginal consultation with the environmental assessment process: they feel it narrows the scope of consultation
- Questions that fall outside of the realm of project specific EA : cumulative impacts to rights (particularly in the oilsands)
- Methodology to assess impacts to rights: standard EA methodology may not fully capture impacts to rights.



CEAA Act 2012

- New Act tabled April 26: undergoing parliamentary process
- If passed:
 - Shorter review periods: 365 days for standard EAs and 24 months for review panels
 - Project list will replace current federal « triggers »
 - 2 types of EAs: standard + review panels
 - Agency will issue an EA decision statement
 - Act will be enforceable (100-400 K penalties)
 - Substitution : replace with provincial process but retain decision-making
 - Equivalency : special arrangement to consider another process as equivalent, including decision.



CEAA Act 2012 (cont.)

- Aboriginal funding will be provided for participation in EAs
- Definition of « environmental effect » will still include:
 - Health and socio-economic conditions;
 - Physical and cultural heritage
 - The current use of lands and resources for traditional purposes by Aboriginal person; or
 - Any structure , site or thing that is of historical, archaeological, paleontological or architectural significance.



Resources

- Agency's website: www.ceaa-acee.gc.ca
- Aboriginal Consultation and Accommodation: Updated guidelines for federal employees to fulfill the Duty to Consult available on AANDC website :
www.aandc-aadnc.gc.ca
- Local contacts:

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Questions?

