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Aligning EIA with Existing Regulatory and Management Frameworks to Improve EIA Quality

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Who we are (and where we're from)



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Canada's Environmental Regulatory Framework



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In Canada, jurisdiction for environmental regulation is shared among several levels of government, including federal, provincial, territorial, and sometimes municipal governments. In some parts of the country, particularly in western Canada and the North, jurisdiction for environmental regulation has also been transferred to Aboriginal governments through modern treaties.

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Canada's Environmental Regulatory Framework

- **Federal:** fisheries, migratory birds, navigable waters, pollution, species at risk
- **Provincial:** natural resources, wildlife, water, noise, workplace safety, species at risk
- **Municipal** (regions and cities): air quality, noise
- **Aboriginal governments:** similar to federal



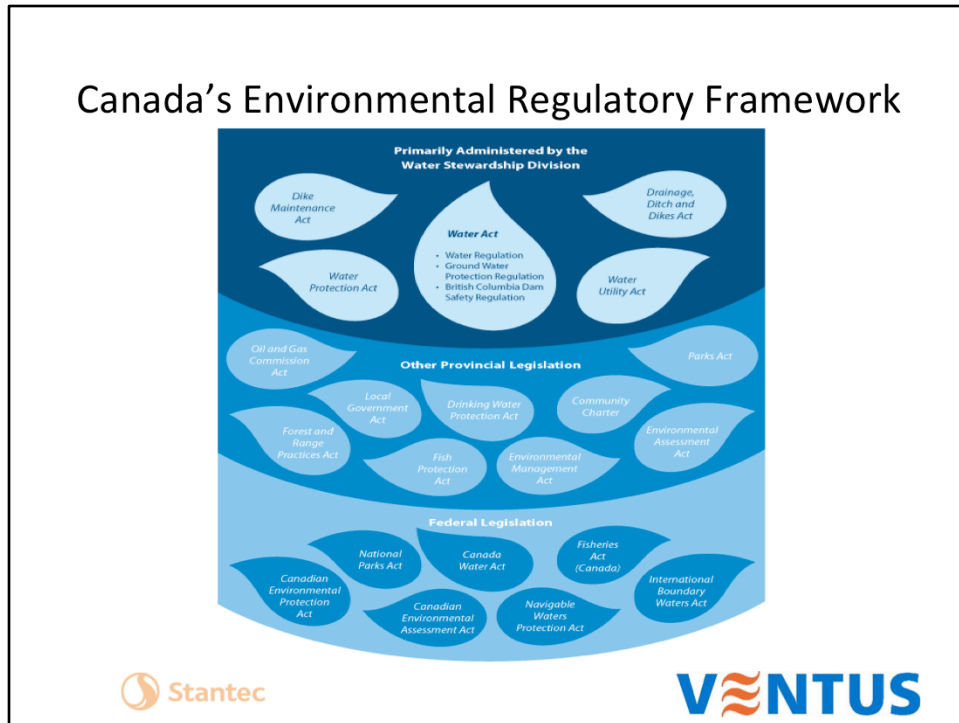
While some environmental aspects are clearly wholly within one jurisdiction or another, many aspects are shared among two or more jurisdictions.

For example, responsibility for fisheries rests with the federal government, but responsibility for water rests with the provincial government. Similarly, the federal government is responsible for migratory birds, but the provinces regulate most wildlife. Both the federal and provincial governments regulate species at risk.

All four of these levels of government have environmental assessment authorities.

Naturally, this has led to a considerable degree of overlap in environmental assessment and environmental regulation.

Canada's Environmental Regulatory Framework



By way of illustration, this diagram lists all of the laws at the federal and provincial levels (in this case, for British Columbia, our westernmost province) that deal with water. Missing from this are the laws that also give municipal governments various powers that deal with water and water quality.

You can get a sense from this how well regulated many aspects of the environment are in Canada. Any project that may be subject to environmental assessment – and some have to meet **both** federal and provincial EA requirements – ALSO has to satisfy the applicable environmental requirements of all these other laws and regulations.

In addition to legislation, many jurisdictions have established codes of practice, standards, and other mandatory requirements to govern activities that have an environmental impact.

IMAGE © COPYRIGHT THE GOVERNMENT OF BRITISH COLUMBIA, MINISTRY OF ENVIRONMENT. http://www.env.gov.bc.ca/wsd/water_rights/overview_legislation/

The regulatory framework protects the environment...

- Prohibitions
- Minimum standards
- Maximum discharges
- Quality controls
- Permit requirements



This robust environmental regulatory and management framework serves to protect the environment by:

- Prohibiting certain actions that could result in significant impact;
- Establishing minimum standards that must be met;
- Establishing maximum thresholds beyond which impacts would be considered undesirable or unacceptable;
- Establishing quality controls, like minimum qualifications for persons responsible for designing and implementing mitigation; and
- Requiring proponents to obtain permits and other approvals, through processes that involve detailed review of environmental impacts and stakeholder concerns.

These environmental regulatory and management frameworks, including standards and codes of practice, typically have been developed based on a wealth of information and knowledge about the activity and/or environmental component to which the frameworks apply. Furthermore, they are intended to prevent significant adverse effects.

Therefore, additional detailed analysis within the context of an EIA could largely be redundant. If a project component – say, a watercourse crossing, for example – is designed and implemented in such a way that it meets the applicable minimum and maximum standards, involves the appropriate qualified personnel, and secures the necessary permits, it is reasonable to assume that it will not result in a significant environmental impact on the environment. To re-assess that watercourse crossing in an EIA may not be necessary and could distract attention and resources from other components and impacts that are more important.

Of course, this applies only to those environmental components and projects and activities that are in fact well regulated.



The advantage of having a robust environmental regulatory and management framework is that it allows environmental assessment to focus on what really matters.

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When?

- Determining the need for an EIA
- Establishing the scope of an EIA
- Administering an EIA process



The existing environmental regulatory and management framework can help the EIA process administrator and the practitioner to focus when:

- Determining the need for an EIA
- Scoping the EIA
- Administering an EIA process, including figuring out what issues need to be dealt with during the EIA and what can be deferred to the permitting stage.

Unfortunately, what we have seen in many EIAs in Canada is that there is often little consideration of the protections afforded by the existing environmental and regulatory frameworks, and, as a consequence, time and resources are spent unnecessarily **during the EIA** on assessing project components, environmental effects, and mitigation measures that are already well regulated and managed through mandatory requirements.

Obviously there are times when EIA will be necessary to consider project- and site-specific considerations that may require modification of standard management practices. However, our recommendations are aimed at leveraging the existing regulatory and management framework to **focus** EIA, thereby improving the quality and efficiency of the process and its outcomes.

Our recommendations include actions that can be taken by practitioners, law-makers, and EIA process administrators.

What can the practitioner do?

- Describe the regulatory and management framework that applies to the project
- Describe how they will ensure compliance over the life of the project
- Consider whether candidate VCs are sufficiently protected by existing mandatory regulatory requirements



When preparing a Project Description or similar documentation to initiate an EIA process and enable EIA process administrators to determine the need for and scope of an EIA, practitioners should make every effort to describe the existing environmental regulatory and management framework that will apply to the project and, in particular, describe how they will ensure compliance with those frameworks over the life of the project.

When selecting VCs upon which to focus the assessment, the practitioner should consider whether any legally binding government requirement already exists for the purposes of protecting the candidate VC.

What can law-makers do?

- Extend timelines for screening to allow more consideration of the extent to which existing environmental regulatory and management frameworks could be relied upon
- Amend EIA legislation to enable EIA process administrators and statutory decision-makers to impose compliance conditions at the point of screening (pre-EIA)



At the beginning of the EIA process in Canada, there is typically a screening process to determine if an EIA is required, and in some jurisdictions there is a short mandatory timeline for this. The timelines for screening could be extended to allow more in-depth consideration of the extent to which existing environmental regulatory and management frameworks could be relied upon to either obviate the need for an EIA or to focus the scope of an EIA, if one is deemed to be required.

The screening decision is typically a yes/no decision: either an EIA is required or it isn't. At this time, EIA process administrators in Canada typically don't have authority to impose conditions on a project that is screened out of the EIA process. Having that ability would increase the willingness and ability of EIA process administrators to rely on existing environmental management frameworks, including those of other levels of government.

What can EIA process administrators do?

- When determining the **need** for an EIA, consider whether the project is likely to have significant adverse effects that cannot be adequately managed through existing environmental regulatory and management frameworks



EIA process administrators have perhaps the greatest opportunity to increase reliance on the existing environmental regulatory and management framework.

Beginning at the screening stage, when determining the need for an EIA, EIA process administrators should consider whether the proposed activities or potentially affected environmental components are adequately protected through existing environmental regulatory and management frameworks. If they are, perhaps there is no need for an EIA.

What can EIA process administrators do?

- When defining the **scope** of the EIA to be assessed, consider excluding components and effects that are already subject to established legislation, regulation, standards, and enforceable codes of practice that impose mandatory environmental performance



If an EIA is determined to be required, when defining the scope of that EIA, EIA process administrators should consider excluding those project components and/or effects that are already well protected through established legislation, regulation, standards, and enforceable codes of practice.

What can EIA process administrators do?

- Revise EIA scoping templates to acknowledge and integrate relevant environmental regulatory and management frameworks
- Amend EIA process guidance to acknowledge the value of complementary regulatory and management frameworks and allow both the practitioner and EIA process administrator to rely on those frameworks to focus EIA



Some jurisdictions in Canada have established templates for EIA scoping. Those templates should acknowledge and integrate relevant environmental regulatory and management frameworks, allowing practitioners to exclude from EIA documentation unnecessary information about aspects, effects, and mitigation that are already addressed by such frameworks, provided they describe how they will ensure compliance with those frameworks.

Similarly, EIA process guidance should acknowledge the value of complementary regulatory and management frameworks and allow both the practitioner and the EIA process administrator to rely on those frameworks to focus EIA both during scoping and as the assessment proceeds. As an example, **the British Columbia Environmental Assessment Office – the EIA process administrator in our westernmost province - recently incorporated such guidance into their new EIA methods guideline (http://www.eao.gov.bc.ca/VC_Guidelines.html).**

What can EIA process administrators do?

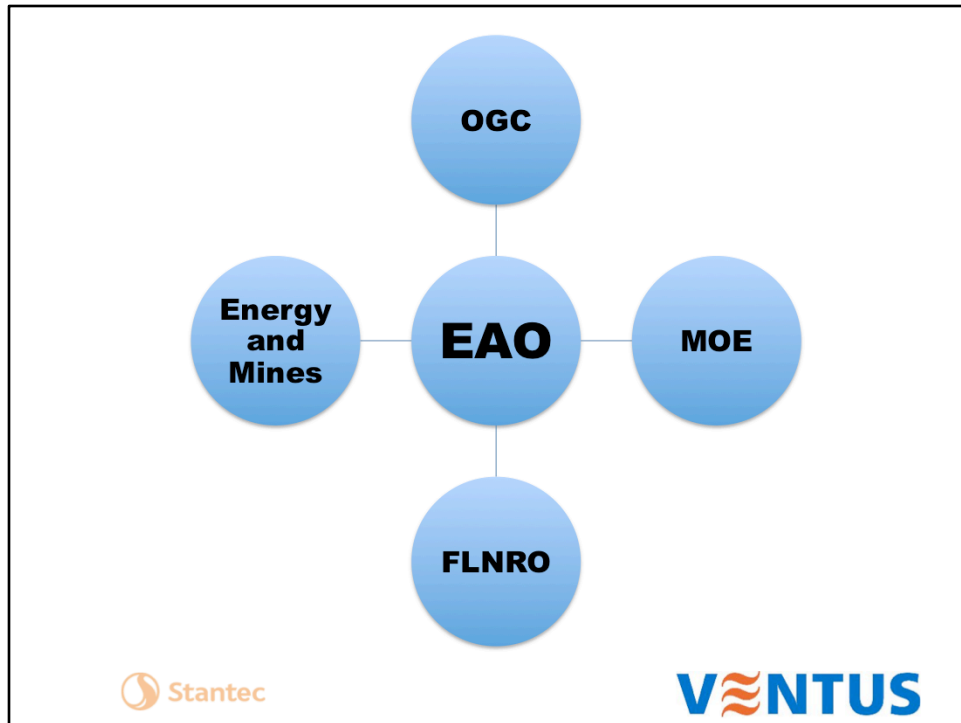
- Develop familiarity with existing regulatory frameworks for environmental management
- Apply more robust vetting of input received from process participants to ensure the scope of the EIA remains focused on EIA decision-making
- Avoid duplicative approval conditions



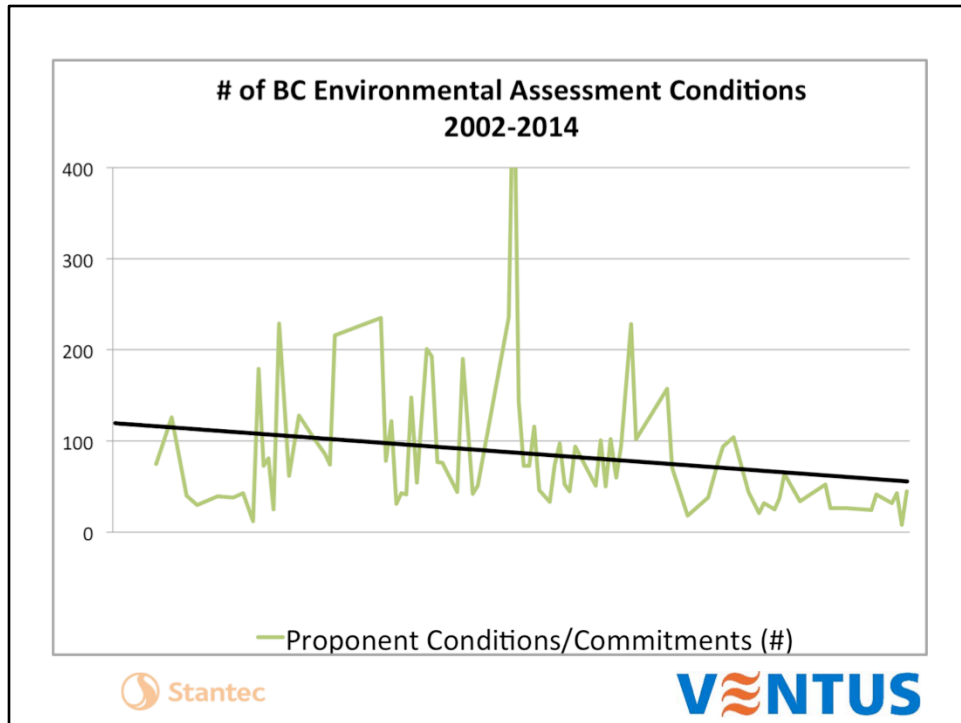
In order to leverage regulatory and management frameworks, EIA process administrators must understand them. Familiarity with both the scope and applicability of existing regulatory frameworks for environmental management should be an integral component of training and skills development for EIA process administrators at both the federal and provincial level. As Aboriginal groups continue to realize self-government through existing and modern treaties, and establish resource management policies and laws, familiarity with this additional level of environmental governance also will be necessary.

Drawing on that knowledge of applicable regulatory and management frameworks, particularly post-EIA permitting, EIA process administrators will then be better able to apply more robust vetting of input received from process participants to ensure the scope of the EIA remains focused on EIA decision-making, and not duplicate decision-making (*e.g.*, about specific mitigation requirements) that is properly undertaken later, during permitting, when project design is more advanced. That is, requests to address permitting requirements during the EIA can be deferred to the permitting process that will follow.

Finally, during decision-making at the end of an EIA, EIA process administrators should place greater reliance on existing regulatory and management frameworks to minimize duplication in EA approvals and focus on imposing enforceable approval conditions that address EIA issues and require compliance with existing frameworks.



In British Columbia, the EA process administrator – the BC Environmental Assessment Office (or EAO) – has in recent years been increasing collaboration with other provincial permitting authorities, including the Oil and Gas Commission (OGC), the Ministry of Environment (MOE), the Ministry of Forests, Lands and Natural Resource Operations (FLNRO), and the Ministry of Energy and Mines. This collaboration approach is part of a province-wide Natural Resources Permitting Project that aims to leverage technical expertise in different departments, improve compliance and enforcement, and improve efficiency. The EA process administrator has also set up regional and sector-specific inter-departmental committees to improve collaboration.



This collaboration has contributed to a marked decline in the typical number of conditions attached to Environmental Assessment Certificates, as conditions that previously were duplicative of permitting requirements are now omitted from EA approval documents, reflecting an EA process that is more focused on issues pertinent to the EA.

Another factor in this observed decline is the increased reliance on management plans to encompass and group mitigation requirements.

**CHART BASED ON DATA FROM THE GOVERNMENT OF BRITISH COLUMBIA,
ENVIRONMENTAL ASSESSMENT OFFICE, 2015.**

Outcomes

- Reduce redundant consideration of project effects and mitigation that are already adequately regulated and managed
- Focus attention on potential effects and mitigation requirements that are less understood, potentially of greater consequence, or otherwise under-regulated
- Improve EIA relevance, quality, and environmental management outcomes



We think the implementation of the recommendations I have outlined would reduce redundant consideration in EIA of project effects and mitigation that are already adequately addressed in existing regulatory and management frameworks.

For those EIAs that are deemed to be needed, this would allow greater attention to be paid by all EIA participants to potential effects and mitigation requirements that are less understood, potentially of greater consequence, or otherwise under-regulated.

Improved EIA relevance, quality, and environmental management outcomes are expected to result.

These recommendations likely apply to any jurisdiction that has a reasonably robust, well-established and enforceable regulatory and management framework for environmental management.



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