Scoping of Impact Assessment in Canada – Are We Losing our Focus?

Earle Hickey, M. Sc. and Heather Giddens, MES
Stantec Consulting Ltd. Dartmouth, Nova Scotia Canada

Introduction

Scoping is a critical component of impact assessment (IA). When scoping is done well, proponents can deliver focused IA reports, addressing issues of greatest importance while excluding information extraneous to practical decision-making and environmental management. This approach of focusing an IA on environmental features that may be affected by a project and that have been identified to be of concern as identified by the proponent, government agencies, Aboriginal peoples or the public (also referred to as Valued Components [VCs]), is consistent with fundamental guidance (*e.g.*, Beanlands and Duinker 1984). Yet despite this understanding, it is evident that IA is losing its focus and trending toward a "kitchen sink" approach, spending time and resources on a long list of items that do not necessarily support an understanding of the predicted environmental effects or inform mitigation or follow-up programs.

This paper addresses the implications of broadly scoped assessments under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) from the perspective of IA practitioners and proposes recommendations to return to balanced and focussed IAs under the federal IA process in Canada.

Defining the Problem

In 2012, following a statutory review of the *Canadian Environmental Assessment Act*, recommendations intended to streamline and improve the IA process culminated in new federal IA legislation – the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

Critics of CEAA 2012 predicted the scope and content of federal IAs would be reduced compared to previous legislation. However, despite changes intended to focus on potential adverse environmental effects that are within federal jurisdiction, eliminate duplicative jurisdictional reviews and improve predictability of process, these changes have not necessarily had the intended effect. Ironically, these changes have contributed to many of the scoping problems we are facing today as IA practitioners in Canada.

Broad scoping can occur at various stages of an IA process and can affect the scope of the project, the assessment, or the approval. Broad scoping can be illustrated in IA documentation that is too generic or distracts attention and effort away from key project-environment interactions that may warrant more focused assessment and mitigation planning. Examples of poor scoping are most easily recognized at the early stages of assessment and can be seen in a proponent's Project Description or the federal government's preparation of scoping guidelines (referred to as Environmental Impact Statement [EIS] Guidelines in Canada).

Both of these documents are crucial components of the IA process. However, despite detailed guidance for project descriptions under CEAA 2012, proponents may not focus the scope of the project to be assessed on key interactions. Additionally, many scoping guidelines for project IAs have become broad and generic, while also becoming very prescriptive for some matters,

requiring proponents to consider factors that are not relevant to the project being assessed or require additional time and effort to justify why factors are not being addressed.

Broad scoping can also become apparent during the IA review and approval process where information requests to proponents or approval conditions expand the scope of the IA beyond the jurisdiction of federal authorities or become disproportionate to the predicted environmental risk. When unreasonable changes to the scope of IA are introduced during the IA review stage, this can introduce considerable costs and uncertainty regarding IA approval and project planning timelines.

Contributing Factors to Poorly Scoped IAs

Key regulatory changes associated with the implementation of CEAA 2012, including the narrowing of federal authority to conduct IAs and introduction of regulatory timelines, have contributed to the expansion of scope of federal IAs in Canada.

Under the previous IA legislation, numerous federal authorities were responsible for overseeing federal IAs. Under CEAA 2012 only three federal authorities were designated as Responsible Authorities under the Act: the Canadian Nuclear Safety Commission (CNSC), the National Energy Board (NEB), and the Canadian Environmental Assessment Agency (CEA Agency). While this change may have been intended to help make the regulatory system more predictable and timely, we believe this centralization of responsibilities has led to capacity issues, at least with respect to the CEA Agency, and in turn, contributed to the expansion of scope of IA in Canada. With the narrowing of Responsible Authorities to three federal departments under CEAA, 2012, expert federal departments which would have previously led certain IA processes, are now kept at arms-length and have no direct authority in the scoping or review process. An example of this is the offshore petroleum boards in Nova Scotia and Newfoundland and Labrador, which, as experts in offshore petroleum exploration and development activities were formerly Responsible Authorities leading IA processes for these types of projects subject to IA. These boards are now given no more authority than any other government department when it comes to IA under CEAA 2012; the level of involvement of an offshore petroleum board in these decisions is at the discretion of the CEA Agency staff.

Capacity issues, which can include a lack of understanding from a Responsible Authority's perspective, are sometimes reflected in broad scoping documents, and also in IA compliance checks and requests for supplementary information following submission of the project IA where proponents have used professional judgement and attempted to scope out irrelevant information from the EIS guidelines.

Another compounding factor to capacity issues is the regulatory timeline established under CEAA 2012. Under the Act, Responsible Authorities are required to produce draft EIS guidelines within 45 days of a project description being filed. The nature of the project and familiarity of the Responsible Authority with the file can greatly influence the quality of the scoping effort undertaken to produce these draft guidelines.

Barnes et al. (2013) cites examples of generic EIS guidelines for all standard IA with sector-specific "inserts". This approach, which was developed to facilitate timely release of draft scoping guidelines within a specified window of time under the Act, produced, according to Barnes et al. (2013) "less than good" scoping. Generic guidelines issued by the CEA Agency

would sometimes result in the inclusion of VCs with little or no relevance to the Project and omission of other VCs which the proponent had identified as being key issues in its project description documents (Barnes et al. 2013).

One example of broad or irrelevant scoping in EIS guidelines include the requirement for a human health risk assessment requiring all exposure pathways for pollutants of concern to adequately characterize potential risks to human health for an all-weather road in remote northern Saskatchewan (CEA Agency 2016). Another example is the requirement for the EIS to consider changes to the terrestrial environment, including landscape disturbance for a deepwater exploration drilling project occurring 250 km offshore Nova Scotia (CEA Agency 2015).

It is acknowledged that EIS guidelines allow proponents to justify exclusion of matters it feels are not relevant or significant to the project in the EIS, but this requires additional effort to justify why matters should not be considered rather than focusing time and resources on those matters of relevance to a focused IA of the project. Furthermore, these EIS guidelines are the standard against which a proponent's IA is measured in the public forum, and with respect to a completeness review by the CEA Agency. A proponent therefore potentially introduces risk to the IA process when using their own judgement to justify exclusions.

Another key contributing factor to broadly scoped IAs is not necessarily tied to CEAA 2012 itself but more related to an unprecedented level of public and Aboriginal involvement in IA processes in Canada. In many cases, project IAs have become forums for unresolved or difficult public policy discussions, simply because there is no other mechanism available for discussing those issues outside of project-specific IAs. Proponents of single projects therefore face the burden of resolving public policy related criticism misdirected at individual projects. Attempting to validate Aboriginal and public stakeholder concerns related in any form to an undertaking, Responsible Authorities tend to err on the side of caution and expand the scope of the IA through EIS guideline development and/or supplementary information requests during IA review to address broad issues of concern thereby reducing risk of legal action from dissatisfied intervenors (Barnes et al. 2010). In the absence of other forums to address these concerns, proponents inherit the responsibility of educating the public, Aboriginal communities, affected stakeholders, and sometimes even regulatory agencies on broader issues which are disproportionate to specific project interactions and effects.

Recommendations for Improving our Focus

In 2016, the Government of Canada launched a review of CEAA 2012, establishing an Expert Panel with a mandate to engage with Canadians, Aboriginal communities and key stakeholders and develop recommendations for improving the federal IA process. In April 2017 the Expert Panel issued a report containing 48 recommendations (Minister of Environment and Climate Change 2017). In advance of the federal government's response to the Expert Panel's report and with specific focus on addressing the contributing factors identified in this paper, we offer recommendations to improve scoping of federal IAs in Canada, recognizing required participation from proponents, IA practitioners, and Responsible Authorities.

Expansion of Responsible Authority Capacity

During the review of CEAA 2012 some federal authorities have advocated for a return to Responsible Authority status, recognizing the value that their specific expertise can bring in making the IA process more effective. Examples of this can be seen in the official submissions to the Expert Panel from the offshore petroleum boards in Nova Scotia and Newfoundland and Labrador (CNSOPB 2016; C-NLOPB 2016). Expanding the list of Responsible Authorities for federal IA beyond the NEB, CNSC and CEA Agency to include, for example, the offshore petroleum boards, could improve capacity and performance issues.

Reallocation of Scoping Time within Designated Timelines

Improvements in scoping will require more focus on scoping discussions at the beginning of an IA process. By allotting more time for the Responsible Authority review and public comment at the beginning of the IA process it will allow for improved understanding of how the project is being defined, the key issues of concern, and what to expect as the project progresses through the IA process. Without extending the overall timelines for federal IA review, this reallocation of effort to the early stages of an IA is likely to bring more certainty and transparency around the scope of the IA and the overall IA process.

Early Proponent-led Engagement and Education of Regulators

Proponents should be prepared to participate in the education of Responsible Authorities and should also be encouraged to unofficially engage other relevant and knowledgeable federal government departments and agencies to participate in draft reviews of project description and IA documents. Proponents should be encouraged to meet with the Responsible Authority during development of the draft project description to inform and initiate dialogue around key issues. This will help to improve capacity and preparedness of Responsible Authorities to respond effectively within established timelines once the project description is officially filed.

Use of Strategic Environmental Assessments

With respect to improving IA scoping and effectiveness in the public forum, strategic environmental assessments (SEAs) should be used more frequently as early planning tools. SEAs could be used to determine the acceptability of certain types of projects and activities in certain locations and identify key social and environmental concerns and ways of addressing these concerns prior to the advent of a specific project. Engagement with regulators, affected Aboriginal groups and interested stakeholders through mechanisms such as an SEA, allows for debate of public policy and determination of key issues and standards. The outcomes of these processes can then be incorporated into future project plans and project-specific IAs. Given this early forum for review and engagement, there is the expectation that there would be fewer surprises when specific projects are proposed and IAs for these projects can focus on key components to be addressed specific to the proposal.

Conclusion

Broad scoping, considering "everything under the sun", results in wasted time and resources on issues that do not effectively contribute to informed decision-making, increases regulatory uncertainty, and reduces proponents' abilities to effectively manage key environmental issues.

Focused scoping will require a more concerted effort on the part of proponents, IA practitioners and Responsible Authorities to communicate early and often with each other as well as with public stakeholders and Aboriginal peoples to produce IA documents which address key issues of greatest concern. Focused IAs will then, in turn, serve to facilitate more effective decision-making by federal authorities and project proponents.

References

Barnes, J.L., S. Webster, N. Cory, and M. Murdoch. 2013. Scoping under New Federal EA Regime in Canada. Presented at the 33rd Annual Meeting of the International Association for Impact Assessment, May 13-16, 2013, Calgary, Canada.

Barnes, J.L., L. Hardwick, and C. Chan. 2010. A Review of the Project Scope and Environmental Assessment Scope for Energy and Mining Projects Across Canada. Presented at the 30th Annual Meeting of the International Association for Impact Assessment, April 6-11, 2010, Geneva, Switzerland.

Beanlands, G.E. and P.N. Duinker. 1984. An ecological framework for environmental impact assessment. J. Environmental Management 18:267–277.

Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB). 2016. Written submission to Ms. Johanne Gélinas, Chair, Expert Panel, Review of Canadian Environmental Assessment Act, 2012. November 9, 2016.

Canada-Nova Scotia Offshore Petroleum Board (CNSOPB). 2016. Written submission to Ms. Johanne Gélinas, Chair, Expert Panel, Review of Canadian Environmental Assessment Act, 2012. December 23, 2016.

Canadian Environmental Assessment Agency (CEA Agency). 2015. Guidelines for the Preparation of an Environmental Impact Statement Pursuant to the Canadian Environmental Assessment Act, 2012. Scotian Basin Exploration Drilling Project. BP Canada Energy Group ULC. October 27, 2015.

Canadian Environmental Assessment Agency (CEA Agency). 2016. Final Guidelines for the Preparation of an Environmental Impact Statement Pursuant to the Canadian Environmental Assessment Act, 2012. Highway 905 – All Weather Roadway – Stony Rapids to Lake Athabasca near Fond-du-Lac. Saskatchewan Minister of Highways and Infrastructure. September 14, 2016.

Minister of Environment and Climate Change. 2017. Expert Panel Report. Building Common Ground: A New Vision for Impact Assessment in Canada. Available online: https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html