

Comments on the Regional Assessment of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia: Draft Terms of Reference and Draft Agreements¹

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The following comments include general and specific points about the strengths and limitations of the draft documents, and recommendations for adjustments. The focus is on the suitability of the terms of reference and agreements for the case at hand. However, the comments are also made in light of this regional assessment's importance as a contributor to the early precedents and experience that will help to establish the federal government's approach to regional assessments under the *Impact Assessment Act* (IAAct).

The author is a long-time student of and participant in the evolution of impact assessment in Canada. I have had experience with regimes and cases under federal, provincial, territorial, Indigenous and municipal authority and have particular expertise in sustainability-based assessment and associated requirements for next generation assessment law and practice. In the continuing law and process reform initiatives that led to the IAAct, I was a member of the Minister's Multi-Interest Advisory Committee, and have contributed in many of the consultations and reviews of the new law and various aspects of its implementation.

The comments below are limited to observations and suggestions about specific contents of the draft terms of reference and the draft agreement between with Nova Scotia (which is sufficiently similar to the agreement with Newfoundland and Labrador represent views on both draft agreements). However, the comments reflect conclusions from a larger assessment of how regional assessments under the IAAct ought to be undertaken, and consequently how they should be guided in forthcoming federal policy framework for regional assessments. A copy of the current version of that assessment, "Briefing notes on the essential components of a useful policy framework for guidance on regional assessments under the *Impact Assessment Act*" is included as an appendix to these comments.

Summary

The Draft Terms of Reference and Draft Agreements would benefit from extensive revisions to address many openings for improvement. Perhaps most important are revisions to the Terms of Reference document to align the weak and incomplete expectations for the assessment work with the considerably more suitable expectations for the contents of the committee report. Key areas of deficiency in the earlier portions include

- inconsistent versions of cumulative effects that often do not include the reasonable range of regional contributing factors and neglect interactive effects,
- weak and incomplete guidance on social, economic and health matters, including inattention to distributional effects and economic viability; and

¹ <https://iaac-aeic.gc.ca/050/evaluations/proj/83514/participation>

- frequent neglect of needs and options for regional-scale responses to identified cumulative problems or opportunities.

Improvements needed throughout the documents include revisions

- to recognize Indigenous authority and Indigenous rights to processes that support free, prior and informed consent;
- to identify knowledge gaps and the implications of these gaps for regional and project level initiatives (including emphasis on precautionary approaches in light of uncertainties);
- to include attention to climate change effects in cumulative effects analyses; and
- to enable the assessment to develop a reasonable working understanding of regional cumulative effects opportunities and perils, describe plausible desirable and undesirable future scenarios, identify options for regional scale responses (e.g., plans, areas of exclusion, means of expanding distribution of benefits, ...) and select among these options to make suitable recommendations for regional actions and for guiding project-level deliberations and decisions.

The final point above is clearly the most important, most demanding, and most central to what effective regional assessment should deliver.

The Terms of Reference document seems to reflect the beginnings of a transition from the old focus on project-level mitigation of significant adverse environmental effects to the current (since 2019) sustainability-centred Act, which enables regional assessments that can identify regional needs and responses that promise positive contributions to lasting economic, social, environmental and health gains.

The Agreements are also limited, but seem to be drafted loosely enough to permit revisions to the Term of Reference that would begin to meet the purposes, mandate and principles of the current law.

Background

The IAAct's provisions for regional assessments [largely in s.92-94] are minimal. Mostly they concern the initiating regional assessments, assigning responsibility for carrying them out to the Agency or a committee, ensuring opportunity for public participation, and requiring a report from the Agency or committee. Clarification of other key matters is left to reliance on the general provision of the Act and to elaboration in policy guidance that has not yet been released (though a draft policy framework is anticipated shortly).

The relevant general provisions of the Act include those in s.6(1)-(3), which establish the purposes, mandate obligations and principles, to which adherence is expected in all deliberations and decisions under the Act. Given the usual expectations for regional assessments to provide direction for project-level assessments, one would also expect the regional assessments would also consider to the full suite of "factors" set out for attention in assessments at the project level. For now, however, the extent to which those expectations are recognized and met will depend initially on the contents of terms of reference and agreements, such as those under review here.

Specific comments on the draft Terms of Reference

- re A1.6, provision (b) for Indigenous participation (page A-2):

These provisions for engagement with Indigenous peoples, governments and organizations include no explicit recognition of Indigenous authority or Indigenous rights to give or withhold free, prior and informed consent. The provisions also appear to fall short of commitment to government-to-government relationships. These oversights should be repaired through adjustments to the draft.

- re A1.6, provision (h) for advisory groups (p.A-3):

The scope of topics for the advisory groups includes current conditions in the region, effects of offshore wind development activities, and regulatory measures and mitigation measures related to these effects. But there is no mention of regional trends (e.g., re social and/or ecological stresses), other anticipated activities (of changes in existing activities) and no mention of how wind developments in the region would interact with other existing and anticipated stresses, opportunities and other considerations. There is consequently no adequate basis for understanding current or anticipated regional cumulative effects (positive or adverse), for describing plausible desirable and undesirable future scenarios, for identifying options for regional scale response (e.g., plans, areas of exclusion, means of expanding distribution of benefits, ...) or for selecting among these options as a basis for making suitable recommendations for regional actions and for guiding project level deliberations and decisions. These gaps need to be closed to facilitate preparation of a usefully informed report, including attention to planning, which is promised in the broader text below about contents of the expected report.

- re A1.6, provisions (m)&(n) for the advisory group on scientific and technical analysis (p.A-3):

The scope here covers environmental, health, social and economic components and issues. It also mentions analyses. Given the needs of the regional assessment, including attention to cumulative effects, the presentation of this initially broad scope should be clarified by inclusion of explicit attention to interactions among the components, cumulative effects of all past, current and reasonably anticipated future activities and other stressors, and the other items noted above related to future scenarios, response options, and implications for regional and project level initiatives. Again, that would be consistent with the somewhat broader agenda below.

- re A1.6, provision (o) for the advisory group on fisheries (p.A-4):

(i) The potential interactions mentioned here could be conceived narrowly to focus only potential wind project effects on fisheries. It would be useful to state that the interactions to be considered include cumulative stresses of fishing and wind development and other current and reasonably anticipated activities in the study area (and beyond if relevant).

(ii) The reference to positive effects is good as an indication of a sustainability agenda. That needs to be consistently evident throughout.

- re A1.6, provision (r) for the identification of information and knowledge gaps (p.A-4):

Expectations for recommendations are welcome. However, these ones could be taken to be merely about more studies. They should include attention to the implications of uncertainties due

to the knowledge gaps. The recommendations should, for example, identify precautions to be taken in the absence of the needed information. That should be explicit.

- re A1.6, provision (s) for the analysis of effects, mitigation and follow-up (pp.A-4-5):
In contrast to some earlier provisions, this one usefully establishes attention to cumulative effects of multiple "development activities". It should also require attention to other stressors, including climate change and other activities or phenomena that may not qualify as "physical."

- re A1.6, provision (t) for the analysis of effects, mitigation and follow-up (p.A-5):
Including this one omnibus point on socio-economic matters, is inadequate for sustainability-based assessment. Among the considerations that are crucial and merit specification here are the current and potential future distribution of social, economic, environmental and health effects. These include positive effects (including opportunities) and adverse effects (including risks) among communities, among people of various identities (including levels of current advantage and disadvantage), between Indigenous and non-Indigenous peoples, between the region and places beyond, and between current and future generations. Also crucial for sustainable regional development purposes is serious attention to economic viability matters, especially in light of the consequences of historical failures to do so, including in cases of projects subject to assessment.

- re A1.6, provision (v) for the analysis of effects, mitigation and follow-up (p.A-5):
The inclusion of attention to enhancing positive effects as well as mitigating adverse one is welcome. However, the provision should be expanded to ensure that the enhancement and mitigation options to be considered go beyond those at the project level. They should recognize that the most effective and efficient initiatives may well be ones taken at the regional scale or beyond – through plans, programs, regulatory steps, special governance arrangements, commitments to appropriate distribution of revenues, etc., that would address some or all the suite of factors that may cumulatively affect the Study Area.

Expectations that the RA should inform planning are mentioned below, but there is no indication of that here.

- re A1.6, provision (w) for the analysis of effects, mitigation and follow-up (p.A-5):
This component is limited to existing strategic level tools. It should be expanded to include making recommendations on further law, regulations, guidance and standards, plus plans, programs, special governance arrangements, commitments to appropriate distribution of revenues, etc.

- re A1.6, provision (x) for the analysis of other considerations and requirements (p.A-6):
This passage suggests that the requirements in IAAct s.63 a&e are to be addressed and recommendations provided only for project approval and licensing purposes. Those requirements should also be considered in identification and analysis of regional scale response needs and options, and associated recommendations for action.

- re A1.6, provision (y) for the analysis of other considerations and requirements (pp.A-6):
This is a potential opening for a broad range of distributional equity considerations. Making that explicit is important. See the comment above re provision (t).

- re A2.3, overall goal (p.A-7):

This goal seems to contain the only mention of implications for planning except for point C(b), below. It should be broadened to refer to implications for immediate as well as future initiatives at the regional scale, and preparation of associated recommendations.

- re A2.3, Objective A (p.A-7):

This objective should be revised to focus attention to cumulative effects of the multiple activities and stressors in the area, including other anticipated ones, including those to which wind development may contribute (positively or adversely) and implications of these effects, including for other activities in the study area.

- re A2.3, Objective A(a) (p.A-7):

This language appears to preclude commissioning or gathering or considering new information. At very least, that should be left open for the committee to decide.

- re A2.3, Objective A(b) (p.A-7):

The focus on implications for individual projects should be expanded to include implications for region-scale initiatives, consistent with objective C(b), below.

- re A2.3, Objective A(d) (p.A-7):

The first sentence should be revised to add, after “economic conditions,” the following text: “in combination with the effects of other human activities and other stressors”.

- re A2.3, Objective B (p.A-7):

The information's purposes should be expanded to include informing development and/or adjustment of regional and strategic level initiatives.

- re A2.3, Objective B(a) (p.A-8):

Despite the broad objective, there's nothing under this heading about implications for plans or planning. Those need to be added.

- re A2.3, Objective B(a)(i) (p.A-8):

This language is much more appropriate than the many narrower references above that exclude attention to many contributors to cumulative effects in the region. This conception should be replicated throughout, and linked to the scope of expected recommendations including for action at the regional/strategic level.

- re A2.3, Objective C (p.A-8):

The reference to recommendations on mitigation measures and “other approaches” should be expanded to emphasize that these approaches include measures at the regional scale as well as at the project level. That would be consistent with the specifics in current contents of Objective C clarifications (a) and (b), but clearly needs to be stated explicitly in the overall objective, since action at the regional scale is mostly absent in the sections of the terms of reference about the work to be done to supply information for the committee report.

- re A2.3, Objective C(a) (p.A-8):

This agenda recognizing the importance of the distribution of effects is admirable but there is little hint of it in the earlier parts of the terms of reference. Those earlier parts need revision to ensure they deliver the information and analyses necessary for preparing a committee report that addresses matters of distributional equity.

- re A2.3, Objective C(b) (p.A-8):

As with the previous comment, this agenda recognizing the importance of responses to identified regional scale cumulative effects – including through policies, plans or other strategic level initiatives – is admirable, but the earlier parts of the terms of reference are not drafted with language that will ensure that the necessary information and analyses will be available for informed committee recommendations and conclusions on these matters. Revisions are needed to align the assessment work with the objectives for the report.

- re A2.3, Objective D(b) (p.A-8):

This conception of follow-up seems limited to updating the regional assessment report. There should be explicit provision for establishing broader follow-up of issues, options and responses, and for recommending establishment of appropriate governance structures and processes.

- re A2.4(b) on purposes and need (p.A-9):

Note that addressing these matters (on the purposes and need for offshore wind development and potential benefits) defensibly will require information on economic viability. See comment above. re A1.6 provision (t).

- re the whole document

Climate change effects are not mentioned in the document, even though they already contribute to cumulative effects and are certain to worsen in the foreseeable future involved in this regional assessment.

Specific comments on the draft Agreements:

The following comments report on the draft agreement between with Nova Scotia, but since the draft agreement with Newfoundland and Labrador is virtually identical, the comments may be taken as applicable to both draft agreements.

- re Preamble, clause 5 on sustainable development (p.1):

Despite the common misconception, sustainable development *does not* seek to attain a balance between or among presumed-to-be-competing economic, environmental, health and social objectives. The Brundtland Commission, which elaborated and won widespread support for the concept, centred its findings on recognition that protection of the environment and elimination of poverty could not be achieved unless both were pursued together in ways that contributed to both environmental protection and human wellbeing, in mutually supporting ways. Countless subsequent findings have confirmed the broader conclusion that sustainability is not achievable unless our objectives and approaches are aligned and supporting, not balanced and conflicting.

- re Preamble, clause 7 on Indigenous people, rights and interests (p.2):

The acknowledgement here includes no explicit recognition of Indigenous authority or Indigenous rights to give or withhold free, prior and informed consent or to establishing government-to-government relationships.

- re 1.1, 1.2 and 1.3 on goals and objectives and scope (pp.3-4):

The goals and, especially, the objectives here seem to be somewhat broader in concept than they are in the Terms of Reference document (with the exception of the ToR sections on the committee report). In particular, they anticipate findings and recommendations to inform planning and address cumulative effects in a way that recognizes effects of wind development and other existing and future activities. Also the agreement provisions do not seem to preclude acceptance of the various adjustments to the Terms of Reference suggested above.

- re 3.2 on the committee secretariat (p.6):

The expertise in the secretariat concerning crucial cumulative effects considerations should be expanded by drawing staff from other federal and provincial agencies, including for example Fisheries and Oceans Canada.

- re 3.4 on the committee secretariat (p.6):

The information collecting tasks of the Secretariat need to be expanded to include all the main areas of information needed by the committee. That should include (and emphasize) information on existing and anticipated future cumulative effects resulting from all the contributing activities and phenomena as well as the potential further contributions (positive and adverse) from wind development. It should also include information on potential response options.

The Secretariat should also identify information gaps and expert assessments of related implications.

Appendix

Briefing notes on the essential components of a useful policy framework for guidance on regional assessments under the *Impact Assessment Act*

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Notes prepared for consideration in reviewing the Impact Assessment Agency of Canada's anticipated policy framework for regional assessments and draft terms of reference for particular regional assessments

Key starting points

The *Impact Assessment Act's* (the Act's) provisions for regional assessments (RAs) are minimal and largely enabling. Much is left to be clarified in policy guidance, including in the anticipated IAAC policy framework for RAs.

The objective should be strong policy framework that reflects firm commitment to the purposes of the law and respects what we have already learned from regional assessment experience in Canada and beyond. Provision for flexibility in application is also necessary. RAs in Canada will be called upon to address problems and opportunities in diverse regions and with diverse jurisdictions. However, flexibility for a broad range of useful applications should be entirely compatible with a clear and credible framework of fundamentals.

The main alternative to strong policy guidance is incremental development of established practice through the accretion of case-by-case interpretations. That approach would benefit from gradual learning by doing. However, as we have seen in the first regional assessment under the Act (the RA of exploratory oil/gas drilling east of Newfoundland and Labrador), the case-by-case approach is vulnerable to being driven more by immediate political and institutional priorities than by commitment to the purposes of a sustainability-based assessment law.

What are the Act's provisions for RAs?

The Act's few specifics concerning RAs include the following:

- RAs are initiated by the Minister of Environment and Climate Change.
- RAs must address “the effects of existing or future physical activities” [s.92].
- RAs may involve federal lands only [s.92], or non-federal lands, or a combination [s.93].
- The Act requires consultations and provides for agreements between the federal government and other Canadian or foreign jurisdictions to carry out RAs [s.93•94].
- The Act provides for public requests for an RA or a strategic assessment and obliges the Minister to respond publicly, with reasons and within a time limit [s.97].
- Responsibility for carrying out an RAs may be assigned to the Agency or to a committee.
- RAs must ensure opportunity for public participation [s.99] and make the information used in the assessment publicly available [s.98].
- Each RA must produce a report to the Minister [s.102] and the report is to be posted online for public information.
- Also, the Act's provisions for RAs are accompanied by provisions for strategic assessments and, potentially, an RA case could also be initiated as a strategic assessment. Strategic assessments can be about any existing or proposed federal policy, plan or program or any issue that is “relevant to conducting impact assessments” [s.95(1)].

Where is guidance needed?

Virtually all the provisions above need elaboration in policy (and/or regulations)

- to establish a consistent set of basic principles, substantive requirements, processes and associated practices (while recognizing that flexibility must be maintained so that RAs may usefully address quite different problems and opportunities in significantly different regions), and
- to enhance prospects for RA predictability, consistency, credibility and efficiency (without compromising the ability to adjust the specifics of processes and anticipated products for different applications and contexts).

In addition to elaborations of the Act's basic provisions for RAs, policy guidance is needed to address three key matters left uncertain in the Act:

- *Application of the Act purposes, mandate obligations and principles in RAs:* Section 6 of the Act sets out the law's 15 overall purposes [s.6(1)], three mandate obligations (emphasizing purposes of fostering sustainability, respecting Indigenous rights and applying the precautionary principle) [s.6(2)], and four principles (scientific integrity, honesty, objectivity, thoroughness and accuracy) to be applied in deliberations and decision making under the Act [s.6(3)]. These purposes presumably apply to RAs (and strategic assessments) as well as project assessments. Certainly, there is nothing in the Act to suggest otherwise. But to ensure appropriate application in RAs, the policy framework for RAs should set out the obligations explicitly and explain their implications for RA practice.
- *Attention to cumulative effects in RAs:* One of the purposes of the Act refers directly to encouraging "the assessment of the cumulative effects of physical activities in a region" [s.6(1)(m)]. Because this expectation is not repeated in the Act's provisions for RAs [s.92-94], it merits particular emphasis throughout the RA policy framework to ensure that cumulative effects are central considerations in all RAs and are addressed in a manner consistent with the other purposes, mandate obligations and principles set out in s.6.
- *Application of project-level substantive expectations to RAs:* The Act's more detailed core provisions for what substantive considerations need to be addressed in project-level assessments [s.21(1), s.28(3) and s.51(1)] and in project decision making by the Minister of Cabinet [s.63] should also be core provisions for substantive considerations in RAs. While the Act does not require that all RAs focus on providing guidance for project assessments and decision making, it is reasonable to anticipate that most if not all RAs will have implications for project assessment under the Act. Accordingly, RA deliberations and recommendations should also be based on foundations of scope and expectations set out for project-level assessments. Especially because of the sustainability, Indigenous rights and precautionary obligations emphasized in the Act's section on mandate [6(2)], the RA policy guidance should also require attention to the interactions among effects related to the listed factors.

Essential components for a policy framework for RAs under the IAAct

Scope and agenda/mandates for RAs

The scope of each RA must reflect the Act's contribution to sustainability objectives and apply all the other s.22(1) factors and s.63 considerations to ensure the resulting guidance for regional assessments matches what is required for project assessments.

The mandate for each RA, set out in formal terms of reference, must include delivery of recommendations setting out appropriately authoritative regional strategic-level responses (plans, programs and/or policies or the equivalent) to the issues involved, and guidance for implementation of those responses, including in project planning and assessment.

Regional studies, including studies identifying current and reasonably anticipated cumulative effects and comparing future scenarios, may often play major contributing roles in regional assessments, but studies are not assessments. To be assessments, RAs need to identify the studies' implications for project assessments and other activities in the region, evaluate options for effective responses, and present conclusions (as recommendations) for what policy guidance, plans, programs, and/or regional/strategic initiatives are needed.

Where RAs are initiated to address pressing needs for direction on regional matters, their mandates may anticipate delivery of interim recommendations for working guidance and other initiatives to serve while more extensive and detailed consultations, deliberations and decision making is undertaken.

Anticipating RAs with different levels of ambition

The RA policy framework must recognize and address different case requirements. The following examples are merely illustrative:

- cases with needs for quite quick RAs to review options and recommend immediately applicable direction on matters facing project-level planning and assessment cases already underway in a region;
- cases where anticipatory RAs may be able in two years or less to survey issues and options, consult and provide at least initial working guidance on key matters for design and assessment of future projects and other activities in a region;
- cases where somewhat more ambitious RAs aim to foster sufficient collaboration among multiple authorities and/or jurisdictions to review issues and options and propose responses, which the RA can assess and address in recommendations for working guidance for projects and other activities in a region; and
- cases requiring longer RAs for more fully consultative and detailed development of regional initiatives and associated governance structures to address the recognized problems and opportunities, though perhaps with expectations for interim reports/recommendations for policy and other direction while the RA process continues.

Expected basic substantive activities and contributions of all RAs

The following is a non-exhaustive list of the core expectations to be set in a policy framework for RAs:

- identification and evaluation of past and current cumulative effects;
- identification of reasonably anticipated future activities and other changes, and their potential effects including interactions, and implications (may often benefit from identification and comparative evaluation of alternative future scenarios);
- identification and comparative evaluation of regional response options (strategic-level regional alternatives);
- identification and recommendation of the best response option or package – the recommended regional initiative or set of initiatives (see products) and associated responsibilities for further development and implementation;
- applied commitment to maximize contributions to lasting wellbeing while avoiding significant adverse effects;
- integrated consideration of the s.21(1) factors and s.63 considerations in analyses, evaluations and recommendations; and

- open publication of findings, conclusions and recommendations with reasons addressing the s.63 considerations.

Expected products of all RAs

RAs may be more or less ambitious, but in all cases

- must report on each of the basic substantive items set out above plus the recommended package of initiatives (plans, programs, policies/guidance, etc.), each with clearly specified authority and responsibility for further development and implementation;²
- must include recommendations for regional initiatives, including explicit regional policy guidance for project planning and assessment;
- must specify recommended follow-up measures, including time limits for (valid until a specified date) and regular reviews of recommended policies, plans, programs, etc.;
- may provide interim working guidance, etc. (e.g., from 1-2 year regional assessments), anticipating more detailed collaborations, consultations and deliberations to follow; and
- must consider, and where appropriate recommend means of meeting, needs to establish new governance arrangements as well as new plans, policies, etc., especially in cases of RAs involving multiple authorities and/or jurisdictions.

Basic process components for all RAs

The RA policy framework should specify basic core requirements for committee-led and Agency-led RAs, including process elements, mandates, transparency and accountability, visible independence, funding, timing, etc. In particular, the RA policy framework should

- specify criteria for determining when the Agency or a committee should lead the RA (see the discussion below concerning when and how to initiate a RA);
- clarify how assessment in either form will deal with roles of proponents and reviewers
 - As discussed in the footnote below, regional assessments may often be assigned to address needs for regional initiatives such as policy guidance, plans and programs that no authoritative body has yet proposed. Eventually, however, the equivalent of a proponent, or set of proponents, will be needed to undertake any new strategic-level initiative arising from the RA. How proponents are best identified will depend on the case and context, including the nature of the collaborating jurisdictions and authorities. But until actual proponents are determined, the Agency or committee will need to play the beginnings of that role in identifying, elaborating and comparing options for needed initiatives, and proposing the best option for approval and implementation.

² Unlike project assessments, RAs may often begin without a proponent or proponents of existing or anticipated regional/strategic undertakings to be assessed. In such cases, roles equivalent to the roles of project proponents will need to be played by some RA participants. For example, an RA committee may itself need to identify and evaluate alternative options for addressing anticipated cumulative effects, recommend the best options as regional strategic undertakings, and identify bodies to elaborate, seek approval for and initiate the recommended undertakings. In other cases, a proponent or set of proponents may emerge during an RA or the committee may invite bodies/jurisdictions with relevant responsibilities and capacities to propose initial policy guidance and/or other strategic-level direction that can then be subject to review in the RA.

- The Agency or committee must also play the role of reviewer of the proposals of other assessment participants.
- require processes for all RAs to
 - include public review of draft terms of reference;
 - apply specified principles for design and implementation of means to facilitate meaningful public participation; and
 - have a program for participant funding and provisions for timely and effective distribution;
- identify approaches and tools for facilitating public engagement in all cases, and provide more detailed specification of how these basic requirements are to be met in the various forms and several steps of RAs of different levels of ambition;
- establish expectations for the core contents of all Agency and committee reports, including
 - expected contributions and conclusions and recommendations about regional initiatives (see the notes above concerning substantive activities and contributions);
 - public reporting on how the substance of public submissions was addressed in the assessment deliberations and decision making; and
 - ensure opportunity for public review of a draft RA report; and
- require published government(s) response to the RA report, accompanied by reasons for decision, based on an equivalent of the considerations informing decisions on projects assessed under the Act (s.63).

Decision making on application (when and how to initiate a RA)

The RA policy framework should provide core guidance and delineate explicit criteria and open processes for decision making on what RAs to initiate and whether the initiated RA is to be Agency-led or committee-led.

For decision making on what RAs to initiate,

- the policy framework should define an open process for RA selection, including review of proposals from the public [s.97(1)];
- the policy framework should also set out core criteria for decision making on RA initiation, including attention to
 - evident existing and/or anticipated regional-scale cumulative effects and associated need to remediate and avoid further adverse cumulative effects and to enhance positive ones;
 - opportunity for contributions to sustainability, mitigation of adverse effects, respect for Indigenous rights and interests, improved prospects for meeting Canadian environmental obligations and climate commitments [s.63 considerations];
 - potential for effective regional-scale responses (see notes on products, above), including a significant federal role, including potential “proponents” to develop, implement recommended regional initiatives (policies, plans, programs, associated governance arrangements., etc.); and
 - potential for willing collaboration by other relevant jurisdictions.

For decision making on whether initiated RAs should be Agency-led or committee-led, the policy framework direction should

- set out core criteria for the determination – for example, establishing that the RA would be committee-led if
 - collaborative assessment with other jurisdictions is involved; and/or
 - there is evident need for visible independence, impartiality, transparency and open public engagement, including public hearings with powers of review panels;
- include commitment to provision of public reasons for application decisions.

Decision making on both whether to initiate an RA and whether to assign it to the Agency or a committee would be enhanced if an impartial, expert body were assigned to review proposals for RAs and recommend priorities to the Minister. That option could be more credible than an internal-to-government process and less likely to be influenced by immediate political and administrative priorities.

Collaborations

The policy framework for RAs should include requirements and means for encouraging and facilitating collaboration among federal, provincial, Indigenous and/or territorial authorities. In particular, the framework should address means of using the RA provisions of the Act to encourage interjurisdictional collaboration in

- identifying regions facing significant cumulative effects in the absence of adequate planning or other means of address existing or anticipated needs for region-level direction;
- planning and undertaking collaborative initiatives, whether or not they are eventually subject to RA under the Act;
- sharing responsibility for implementing the results; and
- building a culture of collaboration.

Final notes

Many candidate cases for regional assessments will centre on big neglected cumulative effects concerns that require new regional scale undertakings for which the eventual proponents could be diverse and multi-jurisdictional authorities, well beyond the IAAC. Such cases are complex and typically require years of discussion, assessment, learning, negotiation, etc., before a credibly developed and effective new regional governance regime can be established. In such cases, there is likely to be a positive role for regional assessments to develop working policy on how to deal with the gap while the usual authorities are establishing a more adequate regional response.

The RA policy framework must recognize that with or without a RA in place, each project assessment still must consider regional cumulative effects, associated implications for the project and how to address them.