



Government
of Canada

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Government Response to
the Report of the House of Commons
Standing Committee on
Environment and Sustainable Development,

***Sustainable Development and
Environmental Assessment: Beyond Bill C-9***

Canada

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1.0 INTRODUCTION

The Government is pleased to respond to the House of Commons Standing Committee on Environment and Sustainable Development report, *Sustainable Development and Environmental Assessment: Beyond Bill C-9*.

The Government welcomes the Standing Committee's additional effort and forward-looking approach in preparing its report. Although *Beyond Bill C-9* is directed primarily at those who will be involved in the next review of the *Canadian Environmental Assessment Act* (the Act) in 2010, the Government carefully and respectfully examined the Standing Committee's recommendations to determine what actions could be taken, in the meantime, to further improve the federal environmental assessment process.

This Government response is organized into three parts. The first part introduces the concept of environmental assessment. It also provides the context arising out of the Five Year Review of the Act, as well as Parliament's review and passage of Bill C-9. The second part describes how the renewed Act will provide tools that enable the Government to continuously improve the federal environmental assessment process. The third part responds to each recommendation in the Standing Committee's report.

1.1 Environmental assessment

Environmental assessment is a decision-making tool used early in the planning phase of a proposal to identify, assess and mitigate possible adverse environmental effects. In Canada, constitutional responsibility for the environment and environmental assessments is shared between the federal and provincial governments. The *Canadian Environmental Assessment Act*, which came into force in 1995, provides the legal basis for the federal environmental assessment of proposed projects.

The Act applies to proposed projects where the Government of Canada has decision-making authority – whether as a proponent, land manager, source of funding or regulator. For example, before taking a decision on whether to provide funding to support the construction of a sewage treatment plant, a federal department would be required to ensure an environmental assessment of the proposed project is conducted. The Act is based on the principle of self-assessment, that is, the federal body that has a decision to make about a proposed project is required to ensure that an environmental assessment is conducted and that the results of the assessment are considered before final decisions are made.

Most projects are assessed through a screening. Larger projects that have greater potential for adverse environmental effects may require a more detailed assessment through a comprehensive study, which includes mandatory opportunities for public participation. Assessments by a mediator or review panel appointed by the Minister of the Environment occur when warranted by public concerns or when environmental effects are uncertain or more likely to be significant.

The *Canadian Environmental Assessment Act* is one of several tools used by the Government of Canada to safeguard the environment and promote sustainable development. Strategic environmental assessment occurs under the 1999 *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*. By incorporating environmental considerations into the development of public policies, the *Cabinet Directive* contributes to decisions that are consistent with Canada's commitment to sustainable development. The *Canadian Environmental Protection Act, 1999*, encourages pollution prevention and regulates toxic substances. The *Species at Risk Act* provides for the protection and recovery of threatened and endangered species. The *Fisheries Act* protects fish and fish habitat.

The *Canadian Environmental Assessment Act* is somewhat different, in that, it sets out a decision-making process that overlays the requirements of other federal laws. Consequently, federal authorities consider a broader scope of environmental effects before taking final decisions about proposed projects.

Each year, the Government of Canada applies environmental assessment to decisions approximately 6500 projects that have the potential to affect our natural environment. Environmental assessment makes a significant difference in the way that projects are planned and their subsequent effects on the environment. For example, as a result of a screening assessment, the original route of the Southern Crossing Pipeline in British Columbia was changed to avoid two wetlands and construction was limited to periods outside the breeding season of the local bird population.

Project-by-project and step-by-step, environmental assessment assists the Government of Canada in making wise choices about the environment.

1.2 The Five Year Review and Bill C-9

The *Canadian Environmental Assessment Act* required a review of its provisions and operations by the Minister of the Environment five years after coming into force. The Minister launched the Five Year Review in December 1999 with the release of *A Discussion Paper for Public Consultation*. The Review, which included cross-Canada consultations, was generally welcomed as open and constructive. Karen Campbell of the West Coast Environmental Law Association told the Standing Committee:

Certainly, in principle, we do support regular review of the Act. For our part, the five-year review process that we have participated in has been incredibly valuable and useful in better understanding how EA works. (Meeting 60)

In March 2001, the Minister of the Environment reported the results of the Five Year Review to Parliament and introduced Bill C-19, since renumbered as Bill C-9.¹ At that time, the Canadian Environmental Network issued a news release that stated:

¹ With the prorogation of the 1st Session of the 37th Parliament in September 2002, Bill C-19 died on the Order Paper. It was reintroduced as Bill C-9 on October 9, 2002.

The Agency should be congratulated for striving to conduct a thorough and transparent review and for moving forward to Parliament on many issues where a consensus was found among the diverse interests.

The goals of the renewed Act are to:

- make the federal environmental assessment process more certain, predictable and timely;
- produce high-quality environmental assessments; and
- strengthen opportunities for meaningful public participation.

The Government appreciates the diligent and thorough review of Bill C-9 by the Standing Committee from December 2001 until December 2002. After hearing from a wide range of witnesses representing diverse interests, the Standing Committee made a considerable number of improvements ultimately supported by the Government and passed by Parliament. Significant amendments made to Bill C-9 include:

- extending environmental assessment obligations to Crown corporations;
- adding the precautionary principle to the Act;
- expanding the Canadian Environmental Assessment Registry to ensure timely public access to information and documents about assessments of specific projects; and
- requiring a review of the Act in seven years by a parliamentary committee.

Bill C-9 received royal assent on June 11, 2003 and was brought into force on October 30, 2003.

2.0 USING THE TOOLS IN BILL C-9 FOR CONTINUOUS IMPROVEMENT

The central question of the Standing Committee's report is "whether federal EA [environmental assessment] is making a significant contribution to sustainable development and being used to make decisions that benefit the environment." The Government shares the Standing Committee's view about the importance of this question. Indeed, one of the purposes of the Act is to:

encourage responsible authorities to take actions that promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy (paragraph 4(1)(b)).

As a result of Bill C-9, there are new tools and obligations in the Act that will provide the Government and parliamentarians with the information needed to answer questions about the contribution of environmental assessment to project planning and Government decision making.

2.1 New tools and obligations

The Government intends to use the following three elements of the renewed Act to examine, on an ongoing basis, the effectiveness and efficiency of the environmental assessment process:

- mandatory requirements for follow-up programs of larger projects;
- the Quality Assurance Program; and
- the Internet site of the Canadian Environmental Assessment Registry.

The information gathered will indicate what results are being achieved. Follow-up programs, in particular, will determine the:

- accuracy of predictions made during the environmental assessment of a project; and
- effectiveness of measures taken to mitigate the adverse environmental effects of the project.

Under the renewed Act, follow-up programs are mandatory for all projects that have been assessed as a comprehensive study, mediation and review panel. For screening assessments, responsible authorities are required to consider if a follow-up program is appropriate and indicate their decision on the Registry Internet site.

The lessons learned from follow-up programs will be used to improve the quality of future assessments and support implementation of adaptive management approaches that develop additional mitigation measures to address unforeseen environmental effects.

To encourage information sharing, the Agency is creating an electronic repository of follow-up program results that is accessible to environmental assessment practitioners and the public through its Web site at www.ceaa-acee.gc.ca.

The Agency-led Quality Assurance Program will gather data on the effectiveness and efficiency of the federal environmental assessment process. As a first step, the Quality Assurance Program will examine whether responsible authorities are meeting the new requirements of the Act arising out of Bill C-9.

Finally, the Registry Internet site will provide a means for tracking the assessment of projects, including the amount of time taken, the quantity and nature of public participation opportunities and decisions taken throughout an environmental assessment.

As information about the effectiveness and efficiency of the federal environmental assessment process is gathered, necessary adjustments can be made to the way the Act is applied. This process of review and adjustment need not wait until the next review of the Act in 2010. For example, modifications to the Agency's guidance material, training initiatives and amendments to regulations may be used to address identified problems. In this way, the renewed Act will foster a cycle of continuous improvement so that the process delivers results in an efficient manner. Moreover, when it comes time for the

review of the Act, parliamentarians will have much better information about the contribution of federal environmental assessment to sustainable development.

2.2 Enhanced role for the Canadian Environmental Assessment Agency

The need to enhance the role of the Agency was one of the most important messages arising out of the Five Year Review of the Act. As a result, the Agency has several new powers and responsibilities. The Quality Assurance Program is linked to a new duty that requires the Agency to “promote, monitor and facilitate compliance with the Act and its regulations.”

The Agency will be the Federal Environmental Assessment Coordinator for assessments involving other jurisdictions and comprehensive studies. The Coordinator role comes with new duties and powers, including the ability to set time lines, in consultation with responsible authorities and federal authorities that possess expert or specialist information.

The Act formally recognizes that the Agency has a role to assist parties in the building of consensus and resolution of disputes. Finally, the Agency may now coordinate the Government response to the report of a mediator or review panel.

3.0 TAKING ACTION NOW: RESPONDING TO THE STANDING COMMITTEE’S RECOMMENDATIONS

The following sections respond to the individual recommendations of the Standing Committee’s report, *Sustainable Development and Environmental Assessment: Beyond Bill C-9*.

Beyond Bill C-9 is directed at those who will be involved in the review of the Act by a parliamentary committee in 2010. Nevertheless, this response outlines actions that the Government has taken or will take before the next review which are consistent with the spirit of the Standing Committee’s recommendations.

Recommendation 3.1: A Clear Vision for Federal Environmental Assessment

The Committee recommends that the Canadian Environmental Assessment Act be amended to incorporate an effective approach that would achieve tangible results in environmental assessments, both in terms of project sustainability and ecosystem integrity. The Committee further recommends that specific targets, performance measures and process standards be developed to achieve these results.

Response

The Government is committed to performance measures and process standards that support project sustainability and environmental results. The Standing Committee’s report provides two examples:

- Fisheries and Oceans Canada *Policy for the Management of Fish Habitat*; and
- requirements in the *Canada National Parks Act* that set “ecological integrity” as the first priority in the management of national parks.

There are several other examples of federal laws and policies that inform environmental assessment decisions including:

- prohibitions in the *Species at Risk Act* against the killing, harm, harassment or capture of an extirpated, endangered or threatened species; and
- *Federal Policy on Wetlands Conservation*.

Because the Act allows environmental assessments to take into account any available information, standards and performance measures prepared by other jurisdictions and partners are also of relevance. Examples of such documents include:

- *B.C. Sensitive Ecosystems Inventory* (prepared by the Government of British Columbia in cooperation with Environment Canada); and
- *Hydro Quebec Sensitive Areas Map*.

The Agency’s research and development program has also been examining the issue of significance and the role of standards. The following studies are available on the Agency’s Web site at www.ceaa-acee.gc.ca:

- *Using ecological standards, guidelines and objectives for determining significance, an examination of existing information to support significance decisions involving wetlands*, Lynch-Stewart & Associates.
- *Using ecological standards, guidelines and objectives for determining significance in environmental assessments, Phase II: Results of a practitioners workshop*, Lynch-Stewart & Associates.

The challenge of incorporating climate change considerations into environmental assessment will particularly benefit from ongoing and future efforts. The Agency’s research and development program is examining the integration of climate change factors into the environmental assessment of:

- highway infrastructure projects in the Montreal area; and
- hydro-electric projects in eastern Canada.

The Agency is working in partnership with provincial governments on a guideline for incorporating climate change considerations into environmental assessment. The results of this work will be incorporated into the Agency’s guidance material.

The Minister of the Environment is developing guidelines to inform responsible authorities’ decisions on whether to provide opportunities for public participation during a screening.

Environment Canada, Natural Resources Canada and the Department of Foreign Affairs and International Trade currently provide expert advice on Canada's international and national commitments. The Government will work to systematically translate these domestic commitments and those arising out of international agreements ratified by Canada into policies and guidelines that are applicable in the context of the environmental assessment of specific projects.

As part of the Quality Assurance Program required by Bill C-9, the Agency will look at the performance of responsible authorities in meeting the process requirements that are explicitly set by the Act, such as providing a minimum 15- day period between the posting of a notice of commencement on the Registry Internet site and the decision following a screening. Forthcoming revisions to the *Federal Coordination Regulations* will also include time lines and process standards against which the performance of the Agency and federal authorities can be objectively evaluated.

The Government will use the results of the Quality Assurance Program as well as research and development efforts to further develop targets, measures and standards that can inform environmental assessment decisions.

The Committee further recommends that the term "significant" in the phrase "significant adverse environmental effect" be defined in the Canadian Environmental Assessment Act to include at least the following factors:

- *An effect that exceeds any regulated federal or provincial standard or target;*
- *An effect that is inconsistent with any international commitment of the Government of Canada; and*
- *An effect that extends into any territory that is within the jurisdiction of a government other than the federal government, and which has been the stated concern of the government of that jurisdiction.*

In addition, because of the importance, in law and practice, of the term "significance," its definition should continue to be studied in order to ensure that its statutory definition does not limit the Minister's power to act when necessary.

Response

The decisions of responsible authorities respecting the significance of adverse environmental effects are fundamental to the operation of the Act. For example, responsible authorities are prohibited from exercising any power or duty, such as providing funding that would permit a project to proceed if a screening assessment determines that the project is likely to cause significant adverse environmental effects. These projects must be turned down or referred to a mediator or review panel.

The "significance" of adverse environmental effects is determined by a combination of scientific data, regulated thresholds, standards, social values and professional judgment. The ecological context of a project, in particular, is a key determinant of whether adverse effects are significant. For example, effects that occur in an ecologically fragile area with little resilience to imposed stresses are more likely to be significant. The Agency

reference guide, *Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects*, is intended to assist responsible authorities with these decisions and to ensure they are made in a reasonable and transparent manner.

The Agency's research and development program has also been used to explore this complex matter in considerable detail. The following papers are available on the Agency web site at www.ceaa-acee.gc.ca:

- *A decision support tool to aid in evaluating significance of adverse effects on birds for environmental assessment*, David Kirk
- *Determining significance of environmental effects: An Aboriginal perspective*, Winds and Voices Environmental Services
- *Specification of sustainability-based environmental assessment decision criteria and implications for determining "significance" in environmental assessments*, Robert B. Gibson

The challenge of the recommendation in *Beyond Bill C-9* lies in succinctly identifying in law all types of adverse environmental effects that could be significant under certain circumstances. In some cases, the environmental effects cannot be predicted, modeled or completely described to allow the rigid application of standards or criteria that might be set in a legal definition.

The complexity of this issue is apparent in much of the above research. The paper prepared by Winds and Voices Environmental Services, for example, lists 48 indicators that could indicate significant adverse environmental effects in the context of projects that may affect the lives of Aboriginal peoples. These include limitations or restrictions on the exercise of harvesting rights or negative effects on the quality or safety of traditional food.

The Government has concerns that a definition in law would be static. It would not cover all potential harmful effects. Moreover, new science generally helps environmental assessment practitioners and decision makers to better understand which effects are significant. Enshrining a definition of "significant" in the Act might not provide the flexibility necessary to take advantage of ongoing scientific developments.

The Agency will make its research on this issue available to the parliamentary committee that will conduct the next review of the Act.

Recommendation 3.2: Effective enforcement of environmental assessment responsibilities

The Committee recommends that prior to, and in preparation for, the seven-year review by the Parliamentary Committee, the Commissioner of the Environment and Sustainable Development should be asked to review the operation of federal environmental assessment under CEAA, as amended by Bill C-9.

The Committee recommends that the Canadian Environmental Assessment Act be amended to establish a system for the issuance of environmental assessment permits by federal

departments, in accordance with criteria prepared by the Agency, giving departments authority to set terms and conditions for mitigation and follow-up.

The Committee further recommends that the Canadian Environmental Assessment Act be amended to prohibit, through the use of penalties, a federal department or project proponent from proceeding with a project without a permit, or in breach of terms or conditions of a permit.

Response

The Commissioner of the Environment and Sustainable Development reports to Parliament. The Government notes that the 1998 Commissioner's report on the implementation of the Act provided valuable information and analysis in preparation for the Five Year Review. The Government will ask the Commissioner to examine how the Act has been implemented in advance of the next review by a parliamentary committee.

With respect to the second aspect of this recommendation, the creation of a permitting system for environmental assessment might add bureaucracy without any corresponding improvements in performance. Responsible authorities already have authority to set terms for mitigation and follow-up programs. As the Standing Committee's report notes, Bill C-9 clarifies that a responsible authority is not limited by the scope of legislation through which it is acting when setting mitigation measures and follow-up programs. For example, environmental protection or conservation conditions, such as measures to protect migratory birds, could be attached to permits issued under the *Navigable Waters Protection Act*, even though that Act is silent on matters of environmental protection. Bill C-9 also provides new authority to the Minister of the Environment to set out mitigation measures and requirements for follow-up programs at the completion of a comprehensive study.

In rare circumstances where a proponent decides to proceed with project construction before the environmental assessment is complete, the Minister of the Environment or the Minister of a responsible authority has a new power to issue prohibition orders. These orders to halt activity that would alter the environment are enforceable through a court injunction.

The Act now requires that the Agency promote, monitor and facilitate compliance. Information gathered and actions taken by the Agency in this new role will be provided to the parliamentary committee that conducts the next review of the Act.

In examining the issue of enforcement, the Standing Committee focused on the question of whether the federal environmental assessment process should continue to operate on the principle of "self-assessment." This principle means that the federal authority with the decision to make about a proposed project is also responsible for the environmental assessment. The Government agrees with the Standing Committee's observation that a major benefit of self-assessment is that the work of understanding the environmental effects of a proposed project remains with the body that has decision-making authority. Moreover, a responsible authority is usually best positioned to understand the intricacies of a proposed project and the ways that adverse environmental effects can be mitigated.

Nevertheless, the Government's fundamental objective is to have an environmental assessment process that yields positive environmental results and decisions that support sustainable development. The new tools provided by Bill C-9, such as requirements for follow-up programs, will be used to determine if this objective is being adequately met under a process based on self-assessment.

Recommendation 3.3: Use of environmental assessment as a constructive tool to improve projects

The Committee recommends that the Minister of the Environment develop and implement measures to establish environmental assessment as a constructive tool that enhances project planning and improves environmental protection.

Response

The Government believes that environmental assessment is being used as a constructive tool that enhances project planning and improves environmental protection. Each year, the environmental effects of about 6500 projects that require a federal decision are considered. For example, the construction of the Greenville to Kincolith Road in British Columbia, intended to end the isolation of Kincolith Band of the Nisga'a First Nation, included mitigation measures to protect the region's grizzly bear population. As a result of the comprehensive study, the road will undergo spot closures during salmon spawning season so that grizzly bears are not discouraged by the presence of vehicles from using their established fishing sites.

Despite the many successes of federal environmental assessment process, the Government believes that more can be done to learn from the lessons of past assessments. Changes made by Bill C-9 require mandatory follow-up programs after a comprehensive study, mediation and review panel. In order to take full advantage of these new provisions, the Agency has established on its Web site – accessible at www.ceaa-acee.gc.ca -- an electronic repository of information gathered during follow-up programs.

By applying the lessons of past experience – both successes and failures -- environmental assessments will make better predictions and result in improved mitigation measures which, in turn, will mean fewer unanticipated adverse environmental effects.

The federal environmental assessment process must also evolve in response to changes in other federal programs, laws and regulations. The Government is currently proceeding with amendments to regulations under the *Canadian Environmental Assessment Act* to reflect the implementation of the *Canadian Nuclear Safety Act* and the creation of the Canadian Nuclear Safety Commission. In the future, the Agency will lead regular reviews of the environmental assessment regulations to ensure that they remain relevant with respect to the purposes of the *Canadian Environmental Assessment Act* and to broader changes in government programs and priorities. For example, new or revised regulatory regimes will be added to the *Law List Regulations* where appropriate.

The Standing Committee's report highlights the Voisey's Bay Review Panel as an example of where a proponent was required to demonstrate positive effects of their

project. The Agency has recently promoted this approach in other assessments, such as the directives that were issued for the preparation of the impact statement for the Eastmain 1-A and Rupert Diversion panel review.

Recommendation 3.4: Panel Review of Major Projects

The Committee recommends that the Canadian Environmental Assessment Act be amended to require that projects of significance would automatically trigger a panel review or joint panel review. Regulation-making authority under CEAA should be amended and regulations developed as necessary to ensure that such projects are assessed by panel reviews.

Response

The Government considers review panels to be an important element of the federal environmental assessment process, along with the essential work done through screening and comprehensive study level assessments. Assessments by a review panel may be required when warranted by public concerns or when environmental effects are uncertain or likely to be significant.

Review panels are characterized by an open and frank exchange of views involving concerned groups and members of the public. Information provided to the review panel, including the environmental impact statement, is also made available to the public. Individuals may present evidence, their concerns and recommendations at public hearings that are structured, but relatively informal.

Upon completion of the assessment, the review panel prepares a report with its conclusions and recommendations for the Minister of the Environment and the responsible authority. Recommendations by review panels are advisory and the Government then makes the final decision on the appropriate course of action.

In the nine months since Bill C-9 was reported back to the House of Commons by the Standing Committee, the Minister of the Environment has referred the following seven projects to review panels:

- Mackenzie Gas
- Brooks Power Plant
- Whites Point Quarry
- Eastmain-1-A and Rupert Diversion Project
- Kénogami Watershed Flood Control Project
- Jackpine Mine Project
- Horizon Oil Sands Project

This brings the total number of review panels appointed since the original Act came into force in 1995 to eighteen.

Through the *Comprehensive Study List Regulations*, the federal environmental assessment process includes a mechanism to ensure that projects which are likely to have significant adverse environmental effects undergo a thorough review. Approximately 100 types of projects listed in these regulations automatically require a comprehensive study if they are not referred to a review panel or mediator. Changes to the Act made by Bill C-9 do three things:

1. The Minister of the Environment is required to make a decision early in the comprehensive study process, following initial public consultations, on whether to refer the project to a review panel. This contrasts with the 1995 Act which only required a decision after the comprehensive study was completed, sometimes two years from the start of the assessment.
2. The renewed Act provides two additional opportunities for public participation backed up by participant funding if the Minister decides that the project should continue to be assessed as a comprehensive study.
3. As a result of amendments passed by the Standing Committee, the content of the *Comprehensive Study List Regulations* falls within the authority of the Minister of the Environment.

The Agency will provide the parliamentary committee that reviews the Act with statistics on the Minister of the Environment's decision record in referring projects that begin as a comprehensive study to a review panel.

Bill C-9 also addressed a technical legal barrier that inhibited the full operation of the Minister of the Environment's power to refer a project to a review panel, in the absence of a federal "trigger," under the transboundary sections of the Act. Natan Obed of the Inuit Tapiriit Kanatami told the Standing Committee:

We would like to highlight the work that the Agency and the Regulatory Advisory Committee did in making the transboundary provisions of the Act workable and improving the public participation opportunities within the Bill (Meeting 68).

Recommendation 3.5: Assessment of Cumulative Environmental Effects

The Committee recommends that the Minister of the Environment ensure that cumulative effects assessment requirements under CEAA are considered priorities for the Canadian Environmental Assessment Agency and federal departments.

The Committee further recommends that the Canadian Environmental Assessment Agency examine and report on the use of

- *regional environmental assessments as a tool² to examine cumulative effects; and*
- *approaches to incorporate federal environmental assessments into provincial, aboriginal and comprehensive claim land use planning processes.*

Response

As the Standing Committee notes, Bill C-9 explicitly recognizes the value of regional studies as a tool to examine cumulative environmental effects. The Government of Canada has participated in regional studies initiated by provincial governments. For example, Environment Canada, the Department of Fisheries and Oceans, Natural Resources Canada and the Canadian Environmental Assessment Agency took part in the Government of Alberta's Regional Sustainable Development Strategy for the Athabasca Oilsands Area.

Regional studies are a priority issue for the Agency's research and development program. The research paper prepared by Pollution Probe, *Regional Environmental Effects Framework* is available on the Agency's Web site at www.ceaa-acee.gc.ca. Two additional papers will be produced as part of the 2003-2004 program:

- *Bridging the Gap Between Project Assessments and Regional Development Dynamic*, Hadi Dowlatabati, University of British Columbia.
- *Strategic Cumulative Effects Assessment: Towards a Regional Framework for Best Practice* Bram Noble, University of Saskatchewan.

The Minister of the Environment will ask his multi-stakeholder Regulatory Advisory Committee to examine the issue of the cumulative environmental effects assessment, including the use of regional studies.

The assessment of cumulative environmental effects by responsible authorities will also be examined through the Agency-led Quality Assurance Program. The Agency will work with federal departments and agencies to address any shortcomings identified and to implement potential improvements arising out of the research and development program and the Regulatory Advisory Committee's work on this issue.

Recommendation 3.6: Achieving federal environmental commitments through environmental assessment

The Committee recommends that the Minister of the Environment ensure that Canada's national and international environmental legal and policy commitments, objectives and standards are incorporated into the environmental assessment process under CEAA.

² The Standing Committee provides the following examples of possible regional studies: Oil sands developments in northern Alberta, or diamond mining and road construction in the Northwest Territories.

The Committee further recommends that the Minister of the Environment make recommendations to the Government of Canada for incorporating the “conservation first” principle into CEAA and other federal laws.

Response

The Government believes that environmental assessment is an important tool for ensuring progress on Canada’s domestic and international environmental commitments.

As the Standing Committee notes, the Agency published a guide on biological diversity and environmental assessment in collaboration with the Biodiversity Convention Office of Environment Canada. The Agency’s guidance material now includes information for environmental assessment practitioners on new requirements arising out of the *Species at Risk Act*.

As mentioned earlier, Environment Canada, Natural Resources Canada and the Department of Foreign Affairs and International Trade routinely provide responsible authorities with advice on Canada’s international and domestic environmental commitments. The Government will systematically examine these domestic commitments and those arising out of international agreements ratified by Canada in an effort to develop policies and guidelines that can be used to inform environmental assessment decisions.

The Conservation First principle referred to in the Standing Committee’s recommendation advocates setting aside protected areas identified with community involvement prior to the approval of any large scale development projects in wilderness areas. The Government believes that to be effective, the Conservation First principle needs to be implemented in the context of sustainable development.

The Agency’s guidance documents are being amended to recognize the importance of examining the effects of projects on existing protected areas and potentially protected areas.

The provisions of the *Fisheries Act*, the *Migratory Birds Convention Act* and the *Species at Risk Act* that are directed at preventing harm to species and their habitat also set a standard that advocates a cautious and conservative approach to any proposed development in a wilderness area.

Related to this issue, the Government is moving forward with a Protected Areas Strategy for the Northwest Territories, in cooperation with the territorial government. This Strategy will preserve areas of special natural and cultural significance while providing a more clearly defined context for resource development, including any potential pipeline through the Mackenzie Valley.

Across Canada, the Government plans to create ten new national parks and five new marine conservation areas over the next five years. This will expand the national parks system by almost fifty percent, with the total area spanning nearly the size of Newfoundland and Labrador. The ultimate goal is to represent each of Canada’s 39 natural regions with at least one national park. Creating new national parks serves the

Government's efforts to protect the environment, strengthen local communities and rural economies, and improve relations with Aboriginal peoples.

Recommendation 3.7: Panel reviews and the promoting of meaningful public participation

The Committee recommends that the Minister of the Environment and Canadian Environmental Assessment Agency increase the level of public participation in CEAA, and that the Minister uses his existing powers under the Act to make panel reviews a key tool of such participation.

Response

The Government believes that meaningful public participation is an essential component of the environmental assessment process. Public participation provides proponents and government decision makers with better information about possible environmental effects, as well as ways to address public concerns and priorities. As a result, final decisions are a better reflection of community values.

Through amendments in Bill C-9 and other measures, the Government is taking steps to strengthen public participation in environmental assessment. For example, the Registry Internet site provides Canadians with easy access to information so they can participate effectively in the assessment of projects that could affect their communities and livelihood.

Amendments to the Act made by the Standing Committee and supported by the Government ensure that individuals also have convenient and timely access to lengthier documents and complex technical reports that are not available on-line.

The Minister of the Environment will issue a guideline on public participation in screening assessments. This guideline informs the decision-making process of responsible authorities when determining whether to involve the public in a screening.

Under the renewed Act, the comprehensive study process includes two additional opportunities for public participation, supported by participant funding.

As noted in the response to recommendation 3.4, the Minister of the Environment has referred seven projects to review panels since the Standing Committee finished its work on Bill C-9. This included use of section 28 of the Act to examine the environmental effects of the proposed Brooks power plant in Alberta.

Recommendation 3.8: Incorporation of Aboriginal perspectives

The Committee recommends that the Canadian Environmental Assessment Agency work with its Aboriginal advisory committee to carry out a systematic review of legal developments relating to Aboriginal and treaty rights as they apply to environmental assessment. In addition it should study the interaction between CEAA and environmental

assessment regimes of Aboriginal and comprehensive claims institutions, with a view to developing more effective environmental assessment.

Response

The Government recognizes the need to strengthen the incorporation of Aboriginal perspectives in environmental assessments. As a result of Bill C-9, the Agency is required to consult Aboriginal peoples on policy issues related to the Act.

The Aboriginal advisory committee is a means to help fulfill this obligation. The agenda of the Committee will be developed with its members.

The courts have been dealing with the relationship between Aboriginal and treaty rights and the environmental assessment process in several cases. For example, this is currently an issue for the Federal Court of Appeal in *Mikisew First Nation v. Minister of Canadian Heritage and The Thebacha Road Society*. The Government incorporates legal developments into the way the Act is implemented on an ongoing basis.

The Agency will work with comprehensive claims and Aboriginal self-government bodies to provide for an effective interaction between the environmental assessment process in the Act and those described in comprehensive claims and self-government agreements. This recently occurred with the development of an agreement on how to assess proposals for a northern gas pipeline through the Mackenzie Valley.

Recommendation 3.9: Improvement of strategic environmental assessment

The Committee recommends that the Prime Minister direct the Privy Council Office to develop legislation, in consultation with the Minister of Environment, as soon as possible before the seven-year review, that establishes a legal framework for mandatory strategic environmental assessment.

Response

The Government shares the Standing Committee's goal of improving the assessment of policies, plans and program proposals. The Standing Committee heard from Canadians that more information needs to be made public about the results of federal strategic environmental assessments.

The Government is amending the *1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* to require a public statement of environmental effects where, after a preliminary scan, a more detailed analysis of the environmental effects of a proposal has been conducted through a strategic environmental assessment. This public statement of the anticipated environmental effects of a policy, plan or program will be outlined at the time the initiative is announced.

In recognition of the evolving nature of this issue, the Minister of the Environment will also ask his multi-stakeholder Regulatory Advisory Committee to provide recommendations on how to improve strategic environmental assessment.

The Commissioner of the Environment and Sustainable Development is currently examining the Government's implementation of the *Cabinet Directive*. The Government will give further consideration to the Standing Committee's comments and recommendation once the Commissioner has reported her findings to Parliament and the Minister of the Environment has received recommendations from the Regulatory Advisory Committee.

4.0 CONCLUSION

The Government is supporting implementation of Bill C-9 with \$51 million in additional funding over the next five years and \$8 million per year afterwards.

By using all the tools in the renewed Act to their fullest advantage, the Government will be able to provide parliamentarians and Canadians with more information on the results arising out of environmental assessment process.

Such information will be essential for the parliamentary committee that conducts the next review of the Act. In the interim, the Agency will work with federal authorities to make adjustments, where necessary, so that the Act is implemented in a way that delivers positive environmental results, supports sustainable economic growth and contributes to the overall quality of life for Canadians.