April 23, 2019

Standing Senate Committee on Energy, the Environment and Natural Resources  
The Senate of Canada  
Ottawa, Ontario  
Canada K1A 0A4  
Via email: enev@sen.parl.gc.ca

RE: ExxonMobil Canada submission on Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Dear Committee Members,

ExxonMobil Canada Ltd. (EMC) appreciates the opportunity to provide a written submission on Bill C-69. EMC has been an active participant in the feedback process related to the review of Canada’s environmental assessment processes, beginning with the presentation to the Expert Panel in St. John’s, NL in October 2016. Although EMC supports the broad objective of this regulatory reform as described by the Government “to regain public trust and help get resources to market”, there are significant concerns that need to be addressed.

EMC’s feedback is related to our Atlantic Canada offshore oil and gas activities as we have been investing in Nova Scotia and Newfoundland and Labrador (NL) for approximately 50 years. We are very proud of the legacy created by the Sable asset in Nova Scotia, which operated for 20 years and brought not just clean burning natural gas, but 630 direct jobs annually and $4 billion CAD of economic impact to Nova Scotia. In NL, we are the operator of the Hebron project, lead owner in the Hibernia project, operator of the Hibernia Southern Extension project and joint venture interest holder (19%) in the Terra Nova project. EMC has also committed to exploration drilling in the Flemish Pass in 2019.

EMC is aligned with the amendments proposed by the Canadian Association of Petroleum Producers (CAPP). More specifically, our key points can be summarized as follows:

- The role of the life-cycle regulators such as the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) and the Canada Nova Scotia Offshore Petroleum Board (CNSOPB) requires clarification and should respect the provisions of the Accord Acts for the joint management of the offshore.
- The increased timelines for impact assessments related to offshore activities, as set out in Bill C-69, will have a negative effect on the competitiveness of Canada’s offshore oil and gas industry. We suggest streamlining the proposed review panel approach to abridge the timelines for offshore projects.
- Projects with well-known impacts, and established mitigations, applied as a matter of course by lifecycle regulators should not be on the Designated Project List. E.g., offshore exploration drilling and geophysical programs.
- We are supportive of progressing the Regional Environmental Assessment approach as soon as possible. Bill C-69 ought to ensure clear boundaries, scope and criteria so these assessments can be effectively used in relation to project-specific assessments and for the development of exclusion criteria in the Designated Project List regulations.

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Background

EMC is supportive of the Newfoundland and Labrador’s Advance 2030 initiative and the aim to grow the oil and gas industry over the next 11 years. The offshore oil and gas industry is a vital part of NL’s community and economy. Energy accounts for more of the province’s exports than any other sector. In addition, the oil and gas industry (and supporting activities) is the largest contributor to provincial Gross Domestic Product (GDP) and employs a significant number of Newfoundlanders and Labradorians. The royalties and revenues garnered from the four operating projects has enabled the provincial government to invest in capital infrastructure, health care and education. In order to maintain the current level of investment and position Canada as a preferred location for oil and gas development, Canada must ensure the competitiveness of the oil and gas industry and remove regulatory uncertainty for investors. Investors require a process that is clear, transparent, efficient and predictable. For trade exposed industries like ours, it needs to be competitive.

The U.S. Energy Information Administration forecasts that fossil fuels will continue to represent 77 per cent of global energy use in 2040. Yet Wood Mackenzie’s 2018 global upstream outlook predicted that oil and gas exploration spending would drop by 7 per cent and that there would be increasing competition for global exploration & production investment. EMC, as a global affiliate of Exxon Mobil Corporation, is aware of the increased exploration drilling in Brazil, Guyana and the US Gulf of Mexico. For there to be increased development and production offshore NL there must be increased exploraton drilling. There were 55 exploration wells drilled in the NL offshore in the last 10 years; whereas the top six comparative countries (Australia, Brazil, US Gulf of Mexico, the UK, Norway and Mexico), drilled 2 to 17 times as many (Wood Mackenzie 2018, Newfoundland & Labrador Competitiveness in Oil & Gas Investment).

Bill C-69, as currently proposed is:
- Overly complicated, inefficient, time consuming and uncertain, legally vulnerable to challenge and, as a result, increases investment uncertainty, and;
- As written would be a significant barrier to future investment, jobs and associated benefits

For Atlantic Canada offshore oil and gas, specific concerns with Bill C-69 include:

1. Diminished role of life-cycle regulator

   In keeping with the intent of the Accord Acts, the life-cycle regulators (C-NLOPB and CNSOPB) should be designated as the Responsible Authority for all impact assessment processes in their respective jurisdictions, as was originally conceived and enacted in Federal environmental assessment legislation.

   As proposed in Bill C-69, including the life-cycle regulators with minority representation on the review panel does not fully incorporate the expertise of the offshore boards in the process, nor does it respect the provisions of the Accord Acts for the joint management of the offshore

   Recommendation:
   EMC supports the CAPP recommendation that clear provisions need to be established in Section 21 of the Bill to address this issue and recognize the C-NLOPB and CNSOPB as life-cycle regulators.

2. Panel reviews and timelines

   Projects with well-known impacts, and established mitigations, applied as a matter of course by lifecycle regulators should not be on the Designated Project List. As stated in previous submissions, EMC believes that offshore exploration drilling and geophysical programs within established areas in offshore Atlantic Canada do not belong on the Designated Project List. To date, there have been more than 400 offshore

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wells drilled in Atlantic Canada. The six Atlantic offshore production developments, Hebron, Hibernia, Sable and Terra Nova among them, each have had intensive environmental assessment and effects monitoring programs. The results of decades of assessments and monitoring demonstrate that offshore exploration and drilling can be conducted without adversely affecting the environment through the application of proven mitigations.

This is further demonstrated by the CEAA approval for the Eastern Newfoundland Offshore Drilling Project obtained on April 17, 2019, which states that “the Project is not likely to cause significant adverse environmental effects, taking into account the implementation of key mitigation measures”. With a submission date of September 16, 2016, it took 2.5 years to obtain an approval for an exploration well that only takes 1-3 months to drill. Compare this to the UK and Norway, which have equitable levels of environmental protection as Canada, where it only takes 1 to 5 months to obtain an approval. Moreover, given the operating environment and the importance of seasonal weather windows for project execution, the uncertainty in timelines presents significant challenges with decisions to make firm contractual commitments (e.g., MODUs) when missing one weather window may require the project to wait a full year for the next weather window. To be globally competitive, timelines need to be certain and comparable to other jurisdictions.

EMC welcomed the Federal Government’s June 2017 proposal that for major offshore oil and gas projects, the Impact Assessment Agency and life-cycle regulators would jointly conduct impact assessments as part of a single, integrated review process. However, the proposal in Bill C-69 instead requires mandatory panel reviews for all offshore activities with a proposed timeline of nearly 600 days plus the mandatory 180 days in the early planning phase. This significantly increases the existing timelines set out in under CEAA 2012. This is deemed as duplicative, unnecessary and will lead to even longer and more uncertain timelines. Further, section 37 (2)(a) and 37 (3) provide discretion for the Minister to establish a time limit that could exceed the 600 days with the option for this to be extended up to 90 days multiple times. These provisions put offshore projects at a significant disadvantage resulting in additional, uncertain and unplanned regulatory delay.

**Recommendation:**
EMC supports CAPP’s recommendation to remove the mandatory panel review in Part 1, Sections 21 and 43, for activities regulated under the life-cycle regulators. EMC also recommends removing the provisions in Section 37 that allow the Minister to establish time limits longer than 300 days.

3. **Regional Assessments**

EMC supports the concept of a Regional Impact Assessment and is pleased with the recent announcement of a Regional Assessment being conducted jointly between the Government of Canada, the Government of NL and the life-cycle regulator for offshore NL.

We are concerned that Bill C-69 lacks clarity about what the process will be for regional and strategic assessments, who will conduct them, when they will be conducted, what the scope, and criteria for subsequent use will be, and how they will be used. As written, there are no mandated boundaries or guidance for the completion of a regional or strategic assessments. The Bill needs to ensure clarity so these assessments can be effectively used in relation to project-specific assessments, and for the development of exclusion criteria in the Designated Project List regulations. Exploration drilling must be removed from the Designated Projects List. The Government should confirm that a Regional Assessment is an acceptable exclusion provision, and clearly define timelines for the Regional Assessment. This should be specifically required in Bill C-69.
RecommenYation:
EMC recommends adding clarity to Section 93 as per the CAPP’s Proposed Amendments¹.

In Summary:
EMC continues to believe that there is a viable approach to environmental assessment for the offshore that will provide stringent environmental protection while allowing Canada’s resource sector to remain globally competitive. To that end EMC is supportive of the Regional Environmental Assessment now underway in NL.

Clarity, predictability and certainty around environmental assessment processes are important for all stakeholders, Indigenous Peoples, industry and investors. EMC is supportive of the Government maintaining legislated impact assessment timelines. Opportunities to extend or “stop the clock”, which frequently occur today, should be eliminated or limited to very specific circumstances. The impact assessment process should be clearly articulated and support timely evidence-based decisions reflecting the best available science, project information and Indigenous knowledge.

We fully support the full amendment package put forward to the Senate by CAPP. We recommend deferral of this Bill for at least a year for a fulsome review of the Designated Projects List alongside the proposed amendments.

Sincerely,

[Signature]

Peter D. Larden
President, ExxonMobil Canada Ltd.

cc: The Honourable Catherine McKenna, P.C., M.P., Minister of Environment and Climate Change
The Honourable Amarjeet Sohi, P.C., M.P., Minister of Natural Resources
The Honourable Seamus O’Regan, M.P., Minister of Indigenous Services
The Honourable Siobhan Coady, MHA, Minister of Natural Resources, NL
The Honourable Geoff MacLellan, MLA, Minister of Energy, NS

Attachment:
CAPP Bill C-69 Amendment Package

¹ https://www.capp.ca/media/issues-and-submissions/capp-proposed-amendments-to-bill-c-69
**IMPACT ASSESSMENT ACT**

**Issue: Issuance of Approvals and the Path to Construction**

The recent Federal Court of Appeal’s decision regarding the Trans Mountain Expansion Project (TMX) is evidence Canada’s regulatory system not only creates uncertainty for industry and investors, but also is so complex even the Government of Canada and National Energy Board have not met regulatory requirements. Bill C-69 will add to the complexity and therefore will not prevent decisions like TMX. Instead, Bill C-69 will create greater regulatory uncertainty and litigation risk, both of which will result in decreased investor confidence. Amendments to the Bill are required to ensure key items are well defined at an early stage (such as the scope of the impact assessment, and the scope and process for consultation) and to ensure various discretionary decisions made under the Impact Assessment Act (the Act) may only be challenged in limited circumstances and are provided appropriate deference.

<table>
<thead>
<tr>
<th>Section</th>
<th>Current Wording</th>
<th>Reasons for Amendment</th>
<th>Proposed Amendment</th>
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<tbody>
<tr>
<td>18</td>
<td>Notice of commencement</td>
<td>Issuing the notice of commencement pursuant to subsection 18(1) of the Act provides an opportunity for the Agency to define the scope of the impact assessment at an early stage, which then sets out the process and requirements against which the impact assessment should be measured. This will give participants increased certainty regarding the process, factors to be considered in the impact assessment, and the process for consulting Indigenous groups that may be affected by the designated project.</td>
<td>Amend subsection 18(1)(a) as follows: Notice of commencement 18 (1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with (a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment; and</td>
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<td>Notice of commencement</td>
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<td>(i) the scope of the designated project as described in section 2 that the Agency has determined will be subject to the impact assessment; (ii) the information or studies that the Agency considers necessary for it to conduct the impact assessment; (iii) the factors under subsection 22(1) that the Agency has determined will be taken into account in the impact assessment of the designated project; (iv) subject to the Minister’s discretion in paragraph 22(2)(b), the scope of the factors to be taken into account in the impact assessment pursuant to paragraph 22(2)(a); and</td>
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### Factors — impact assessment

**22 (1)** The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

- As currently written, section 22 is stated in mandatory terms: the impact assessment of a designated project "must" take into account the listed factors. The Agency or review panel has no discretion to determine what factors are accounted for in an impact assessment, and an impact assessment that does not take into account a factor in the list may be attacked for failing to comply with requirements.

  - The list of factors in section 22 that "must" be taken into account is extensive. It is very likely one or more of the factors listed will not be relevant to a given project's impact assessment. Nonetheless, if the Agency or review panel does not expressly address one of the factors, the entire process—including the proponent's considerable time and expense—could be invalidated.

  - The proposed amendment directs the conduct of the impact assessment to the notice of commencement issued pursuant to subsection 18(1). Further to the referenced amendment, the notice of commencement will give the Agency an opportunity to consider the factors under subsection 22(1) that are relevant to a given project's impact assessment, allowing the Agency or review panel to focus on relevant matters while reducing the risk that the process will be invalidated because an irrelevant factor was not expressly addressed. Discretion regarding what information must be considered is common in provincial environmental assessment legislation (e.g., British Columbia Environmental Assessment Act, section 11; Alberta Environmental Protection and Enhancement Act, section 49).

### Amend subsection 22(1) as follows:

**22 (1)** In determining the factors to be set out in the notice of commencement provided pursuant to subsection 18(1) and to be taken into account in the impact assessment of a designated project, whether it is conducted by the Agency or a review panel, the Agency must take into account the following factors:

- y) in addition to the information provided pursuant to paragraph 18(1)(b), the processes that the Agency considers appropriate to engage meaningfully with the public and, in particular, the Indigenous groups that may be affected by the carrying out of the designated project.
22 Factors – impact assessment

22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

(a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including

(i) the effects of malfunctions or accidents that may occur in connection with the designated project,

(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and

(iii) the result of any interaction between those effects;

(b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;

(c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;

(d) the purpose of and need for the designated project;

(e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;

(f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;

(g) Indigenous knowledge provided with respect to the designated project;

(h) the extent to which the designated project contributes to sustainability;

(i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;

Project assessments are not the place to debate broader public policy issues. Policy debates have plagued environmental assessments for more than a decade, resulting in delays, increased cost and regulatory uncertainty. A project proponent expects the assessment to focus on the project being reviewed, not become a forum to debate public policy.

The Act provides government with the powers to undertake strategic and regional assessments and develop policy guidance that, if implemented properly, can be the forum needed for considered discussions on public policy issues such as climate change, sustainability, and the intersection of sex and gender with other identity factors.

One critical outcome of a strategic assessment is to define a framework to assess whether an individual project is compliant with a given public policy objective. In this way, policy debates will not have to be repeated for every project application.

Public policy items in the list of factors in subsection 22(1) should be referred to any applicable completed strategic or regional assessments, or other policy guidance. If boundaries are not established for public policy items, the Act will open impact assessments to broad policy debates, which negatively affects certainty, efficiency, and the overall purpose of the process.

Regarding paragraph 22(1)(f) – alternatives to a designated project – there is no value in requiring a proponent to complete an assessment of theoretical project alternatives they have no intention to invest in or build. Spending proponent, stakeholder and government time and resources in this way will result in inefficiency and waste. The objectives of this type of exercise are appropriately addressed in paragraph (e), alternative means of carrying out a project, as this allows for an investigation of alternative, feasible methods for carrying out a project that still address the project’s need and purpose.

Amend subsection 22(1) as follows:

22 (1) In determining the factors to be set out in the notice of commencement provided pursuant to subsection 18(1) and to be taken into account in the impact assessment of a designated project, whether it is conducted by the Agency or a review panel, the Agency must take into account consider the following factors:

(a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including

(i) the effects of malfunctions or accidents that may occur in connection with the designated project,

(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and

(iii) the result of any interaction between those effects;

(b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;

(c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;

(d) the purpose of and need for the designated project;

(e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;

(f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;

(g) Indigenous knowledge provided with respect to the designated project;

(h) relevant published policy on the extent to which the designated project contributes to sustainability framework that is developed by the Agency under paragraph 155(h) and that is
(j) any change to the designated project that may be caused by the environment;
(k) the requirements of the follow-up program in respect of the designated project;
(l) considerations related to Indigenous cultures raised with respect to the designated project;
(m) community knowledge provided with respect to the designated project;
(n) comments received from the public;
(o) comments from a jurisdiction that are received in the course of consultations conducted under section 21;
(p) any relevant assessment referred to in section 92, 93 or 95;
(q) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;
(r) any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;
(s) the intersection of sex and gender with other identity factors; and
(t) any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to be taken into account.

Scope of factors

(2) The scope of the factors to be taken into account under paragraphs (1)(a) to (f), (h) to (l) and (s) and (t) is determined by —

identified in the tailored guidelines provided to a proponent of a designated project under paragraph 18(1)(b);
(h) any relevant assessment referred to in section 92, 93 or 95 regarding the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change, where the assessment has been completed prior to the notice of commencement of the impact assessment of the designated project;
(i) any change to the designated project that may be caused by the environment;
(j) the requirements of the follow-up program in respect of the designated project;
(k) considerations related to Indigenous cultures raised with respect to the designated project;
(l) community knowledge provided with respect to the designated project;
(m) comments received from the public;
(n) comments from a jurisdiction that are received in the course of consultations conducted under section 21;
(o) any relevant assessment referred to in section 92, 93 or 95 that is not related to a factor noted in paragraph 22(1)(h), where the assessment has been completed prior to the notice of commencement of the impact assessment of the designated project;
(p) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;
(q) any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;
(r) relevant published policy on the intersection of sex and gender with other identity factors that is developed by the Agency under paragraph 155(h) and that is identified in the tailored guidelines provided to a proponent of a designated project under paragraph 18(1)(b); and
Amend subsection 22(2) as follows:

Scope of factors

(2) The scope of the factors to be taken into account under paragraphs (1)(a) to (e), (g) to (k) and (r) and (s) is determined by
(a) the Agency; or
(b) the Minister, if the impact assessment is referred to a review panel.

Add the following after subsection 22(2):

(3) For clarity, notwithstanding paragraphs 22(1)(h) and (o), the Agency or review panel shall not adjourn or defer the impact assessment of a designated project by reason only of the incompletion of an assessment referred to in section 92, 93 or 95.

(4) In considering an assessment referred to in section 92, 93 or 95, the Agency or review panel shall, in its discretion, consider the weight to be given to an assessment, having regard to both the relevance of the assessment and its conclusions to the project under consideration and the strength of evidence supporting the assessment's conclusions.

Add the following after section 94:

94.1 For clarity, the purpose of an assessment under section 92 or 93 shall include, but is not limited to:
(a) improving knowledge of baseline environmental conditions in a region; and
(b) providing information that can be relied on in an impact assessment to reduce the scope of studies required and expedite the impact assessment.

Add the following after section 95:
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Revised Content</th>
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</table>
| 33(1)  | **Conditions**                                                              | **33 (1) The Minister may only approve a substitution if he or she is satisfied that**
|         | *(a)* the process to be substituted will include a consideration of the factors set out in subsection 22(1); | A condition of approving substitution, per paragraph 33(1)(a), is that the process to be substituted will include a consideration of the factors set out in subsection 22(1). Where a process may be substituted for an impact assessment under the Act, subsection 31(1) stipulates that a decision will be made prior to a notice of commencement being issued under subsection 18(1). If this process is followed, the Agency will not yet have determined the factors that will be considered in the impact assessment. Accordingly, where substitution is being considered, the Minister should make a determination as to the factors that are relevant to the designated project. Alternatively, a process could be established whereby the Agency makes a determination on the relevant factors, which is then considered by the Minister when reviewing a request for substitution. |
|         | *(b)* the Minister and the Minister of Foreign Affairs may enter into an agreement or arrangement with any jurisdiction referred to in paragraph (h) or (i) of that definition respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted. | Revise paragraph 33(1)(a) as follows:

33 (1) The Minister may only approve a substitution if he or she is satisfied that

(a) the process to be substituted will include a consideration of the factors set out in subsection 22(1) that the Minister has determined are relevant to the designated project.

42 | **Provisions of agreement**                                               | **42 When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in subsection 22(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that**
|         |                                                                             | As per the proposed amendment to subsection 18(1), by the time an arrangement or agreement to jointly establish a review panel is executed, the Agency will have determined the relevant factors under subsection 22(1). Accordingly, such arrangement or agreement should require consideration of the relevant factors set out in the notice of commencement, as opposed to all factors set out in subsection 22(1). |
| 49     | **Summary and information**                                              | **49 Where a designated project is referred to a review panel, and before the terms of reference for the review panel are established by the Minister, the Agency will have:** *(i)* issued a notice of commencement pursuant to subsection 18(1), setting out the information and
|         |                                                                             | Amend section 49 as follows:

49 In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of...
In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in section 14. studies required to conduct the impact assessment; and (ii) determined that the proponent has provided all the required information and studies. This is a significant part of the overall impact assessment process. In essence, most of the scope of the impact assessment will have already been determined. Accordingly, in setting the terms of reference for a review panel, the Minister should consider work that has already occurred, especially the Agency’s determination in the notice of commencement as to what information is required. The rationale for this proposed amendment remains valid whether or not CAPP’s proposed amendment to subsection 18(1) is accepted.

The Act has many decision points, any of which could mean that in early planning stages the reviewing court could substitute its judgment for the Agency, the review panel, the Minister or the Governor in Council, and then deem determinations to be in error because of a failure to strictly adhere to the impact assessment process as perceived by the court.

The government will have established an expert Agency as well as a roster of subject matter experts who may be appointed to a review panel. In light of this specific expertise, decisions made under the Act should be respected in order to protect the expert review process. Court challenges should be narrowly focused on matters of law and jurisdiction, and not create an opportunity to re-litigate matters of fact and the reasonable judgement rendered by the Agency, a review panel, the Minister, or the Governor in Council.

The proposed provision is analogous to the one proposed in section 70 of the Canadian Energy Regulator Act, and other examples that can be found in governing statutes of federal agencies and tribunals, such as the National Energy Board Act.

Add the following in the Act:

**Section [X]** Except as provided for in this Act, every decision of the Agency, a review panel, the Minister or the Governor in Council made under this Act is final and conclusive.

**Section [Y (1)]** An appeal from a decision of the Agency, a review panel, the Minister or the Governor in Council under this Act on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

**Section [Y (2)]** Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances.

**Section [Y (3)]** An appeal must be brought within 60 days after the day on which leave to appeal is granted.

**Section [Y (4)]** For greater certainty, a report submitted by the Agency under subsections 28(2) or 59(1) or by a review panel under 51(1)(e) is not a decision or order for the purposes of this section and neither is any part of the report.

**Section [Y (5)]** The filing of a notice of appeal under section [Y (1)] does not suspend the operation of a decision made under this Act.
**Issue: Public Participation**  
In its current form, the Act may result in processes that are unworkable from a public participation perspective.

<table>
<thead>
<tr>
<th>None</th>
<th>Currently no provision.</th>
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<tr>
<td></td>
<td>Repeated references in the Act to meaningful public participation, which is undefined, will lead to unintended consequences such as drowning out the voices of directly impacted parties.</td>
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<td></td>
<td>As currently drafted, the Act does not provide appropriate discretion to the Agency to determine the nature and scope of public participation in an impact assessment. Without appropriate discretion, any decision by the Agency regarding public participation would be vulnerable to legal challenge.</td>
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<td>The Agency must have appropriate discretion to determine its own processes, and this should be clearly stated in the Act.</td>
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<tr>
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<td>Add the following after section 27:</td>
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<tr>
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<td>27.1 The Agency has discretion to determine the nature and scope of participation by a member of the public in an impact assessment of a designated project conducted by the Agency. A decision of the Agency under this section is final and conclusive.</td>
</tr>
<tr>
<td>51</td>
<td>Review panel’s duties</td>
</tr>
<tr>
<td>51 (1)</td>
<td>A review panel must, in accordance with its terms of reference, ...</td>
</tr>
<tr>
<td>51 (4)</td>
<td>A review panel has discretion to determine the nature and scope of participation by a member of the public in a hearing conducted under paragraph 51(1)(c). A decision of a review panel under this subsection is final and conclusive.</td>
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<tr>
<td>11</td>
<td>Public participation</td>
</tr>
<tr>
<td>11</td>
<td>The Agency must ensure that the public is provided with an opportunity to participate meaningfully in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.</td>
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<tr>
<td>11</td>
<td>References to meaningful participation in the Act should be bound by reference to the regulatory and legal framework created by the Act. If not, the term “meaningful participation” will be open to interpretations outside the regulatory framework, resulting in unacceptable uncertainty.</td>
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<tr>
<td>11</td>
<td>Amend section 11 as follows:</td>
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<td>11 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, as set out in the Act, in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.</td>
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<td></td>
<td>For consistency throughout the Act, similar amendments are required in section 27, paragraphs 31(1)(e) and (f), paragraph 51(c), section 99 and subsection 181(4.1).</td>
</tr>
</tbody>
</table>
Issue: Timeline Certainty
The Government of Canada contends that the proposed Impact Assessment Act will shorten regulatory timelines and increase timeline certainty; however, a number of provisions in the Act do exactly the opposite, creating potential for delay and allowing the Governor in Council to extend timelines without providing reasons. This creates uncertainty and issues regarding transparency and discipline of the impact assessment process.

15 Proponent’s obligation — notice
15 (1) The proponent must provide the Agency with a notice that sets out, in accordance with the regulations, how it intends to address the issues referred to in section 14 and a detailed description of the designated project that includes the information prescribed by regulations made under paragraph 112(a).

Additional information
(2) If, after receiving the notice from the proponent, the Agency is of the opinion that a decision cannot be made under subsection 16(1) because the description or the prescribed information set out in the notice is incomplete or does not contain sufficient details, the Agency may require the proponent to provide an amended notice that includes the information or details that the Agency specifies.

Copy posted on Internet site
(3) When the Agency is satisfied that the notice includes all of the information or details that it specified, it must post a copy of the notice on the Internet site.

While the use of a planning phase in the Act has certain advantages if done properly, as presently drafted it is onerous for proponents. In particular, the requirement under section 15 to provide a notice that sets out how issues raised by the public and Indigenous groups will be addressed is unnecessary and duplicative at this stage of the assessment. Such information will be set out in the information and studies provided by the proponent in the impact assessment. CAPP recommends that this step be removed from the planning phase and that section 15 be deleted.

Delete subsections 15(1)-3.

16 Decision
16 (1) After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.

Factors
(2) In making its decision, the Agency must take into account the following factors:

... (f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the

While the planning phase is 180 days, there are no interim timeframes related to various steps in the process. In particular, for projects that the Agency determines will not be subject to an impact assessment, it is important to receive that decision as soon as possible, and certainly before the 180-day period has elapsed. CAPP recommends a timeline be established in regulations applicable to issuing a decision under section 16.

In addition, the Government of Canada has indicated that certain projects on the "Project List" may be excluded from requiring an impact assessment if there is a regional or strategic assessment in place that addresses impacts from such projects. However, it is not clear in the Act how this will work in practice. CAPP believes that

Amend subsections 16(1) and (2) as follows:

16 (1) After posting a copy of the notice on the Internet site under subsection 10(2), the Agency must decide within the time period prescribed by regulations made under paragraph 112(b) whether an impact assessment of the designated project is required.

Factors
(2) In making its decision, the Agency must take into account the following factors:

...
<table>
<thead>
<tr>
<th>designated project — and that has been provided to the Agency; and (g) any other factor that the Agency considers relevant</th>
<th>guidance developed for the conduct and use of regional and strategic assessments needs to ensure clear outcomes so these assessments can be effectively used in relation to project-specific assessments, and for development of exclusion criteria in the regulations. CAPP recommends a reference in 16(2) to exclusion criteria that may be included in regulations such as the Project List regulations. (f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency; (g) exclusion criteria set out in any applicable regulations; and (h) any other factor that the Agency considers relevant.</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>The Act does not currently contain provisions regarding a legislated maximum timeframe, which creates increased uncertainty and potential for delays. A lack of legislated milestones opens various opportunities for timeline extensions and stopping the clock at each step of the process. The potential for delay is increased by the expanded scope of the assessment process and broader participation rights. A maximum legislated timeframe is required to provide greater certainty and discipline of process. The proposed amendment also allows the proponent to request an extension of the maximum legislated timeline, which allows a proponent to react to changing conditions while still maintaining its spot in the process.</td>
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<tr>
<td>18(5)</td>
<td>The Act reasonably requires that where the Minister extends a timeline – for example, under subsection 18(3) – the extension and the reasons for granting the extension must be published as outlined in subsection 18(5). The Act does not impose the same requirement for publication of reasons where the extension is decided by the Governor in Council. This inconsistency should be rectified, to facilitate process transparency and discipline.</td>
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| 18(1)... Extension of time limit by Governor in Council (4) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (3) any number of times. Posting notice on Internet site (5) The Agency must post on the Internet site a notice of any extension granted under subsection (3), including the Minister’s reasons for granting that extension, and a notice of any extension granted under subsection (4). | }
When the Minister makes a determination under paragraph 60(1)(a), he or she must issue the decision statement no later than 30 days after the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site.

When the Governor in Council makes a determination under section 62, the Minister must issue the decision statement no later than 90 days after the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site.

The Minister may extend the time limit referred to in subsection (3) or (4) by any period — up to a maximum of 90 days — for any reason that the Minister considers necessary.

The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (5) any number of times.

It is reasonable that through different parts of the regulatory process the Minister, and then the Governor in Council, have some flexibility to adjust process timelines to accommodate exceptional circumstances or requirements. However, once a determination by the Minister is made under 60(1)(a), or by the Governor in Council under 62, there is no reason to allow an extension of the time limit for the decision to be issued beyond 30 days for a Ministerial decision (as per 65(3)) or 90 days for a Governor in Council decision (as per 65(4)). Even under exceptional circumstances, one extension of up to 90 days by the Minister should be more than sufficient and the Governor in Council should not be allowed to further postpone issuing the decision.

Delete subsection 65(6).

Issues: Project Planning Certainty
As currently worded, the proposed Impact Assessment Act prohibits a proponent from doing any act or thing in connection with a designated project that may cause any change to the health, social or economic conditions of the Indigenous peoples of Canada.

Section 7 (1)(d),

Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:

(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on

(i) physical and cultural heritage,

(ii) the current use of lands and resources for traditional purposes, or

This clause captures a wide range of activities that presumably are not meant to be prohibited by the section (e.g., executing capacity funding agreements with Indigenous groups) and it creates considerable uncertainty for proponents in terms of project planning.

The terms “may cause” and “any change” are vague criteria not tied to an environmental impact, have no materiality thresholds, and would apply even where changes are positive. In addition, given the complex social, economic and other factors that affect the health,

Amend section 7 as follows:

Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:

(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on

(i) physical and cultural heritage,
| Minster’s power to designate | The list of designated projects to be included in regulations made under paragraph 109(b) will be developed using clear and objective criteria to identify projects that may require impact assessments under the Act. As stated in the Government of Canada’s consultation paper on the “Project List,” the guiding principle is “the potential for adverse effects in an area of federal jurisdiction related to the environment.” \(^1\)

As written, the provision leaves total discretion to the Minister regarding whether to designate a project under subsection 9(1). This results in considerable uncertainty for proponents, even where proposed projects are not included on the “Project List.”

There should be some minimum threshold for designation that guides the Minister. The proposed amendment sets out objective standards, similar to those used to develop the “Project List,” to guide the Minister’s decision-making under subsection 9(1). Further, Amend subsection 9 (1) as follows:

9 (1): Subject to subsection (1.1), the Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion either the carrying out of that physical activity may cause significant adverse effects within federal jurisdiction or adverse direct or incidental effects or public concerns related to those effects warrant the designation and one of the following applies:

(a) project type effects within federal jurisdiction are complex and may require a complex set of mitigation measures; or

(b) the project type is novel and the severity of effects within federal jurisdiction, or mitigations are unknown.

Add the following after subsection 9(1):

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physical activities not included in the Project List should only be designated pursuant to subsection 9(1) in exceptional and unique circumstances.

Further, tying the Minister’s power to a prescribed timeframe (i.e. public disclosure of a project) in subsection 9(7) would help address industry concerns about the open-ended timeframe for designations, and would prevent either the Agency or special interest groups from proposing designations for federal reviews when projects are already at an advanced stage of provincial review processes.

9 (1.1): The Minister may only designate a physical activity under subsection (1) if there are unique or exceptional circumstances that warrant designation of the physical activity.

Amend subsections 9(2) and (7) as follows:

9(2) Before making the order, the Minister may take into account any adverse impact that a physical activity may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 as well as any relevant assessment referred to in section 92, 93 or 95.

... (7) The Minister must not make the designation referred to in subsection (1) if more than 90 days after the day on which the proponent publicly discloses a physical activity that will require the preparation of an environmental impact assessment under provincial law, (b) more than 90 days after the day on which the proponent files an application with a provincial regulatory agency to seek approval for a physical activity that does not require an environmental impact assessment under provincial law, (c) if the carrying out of the physical activity has substantially begun; or (d) if a federal or provincial authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act or under an Act of a Legislature that could permit the physical activity to be carried out, in whole or in part.

Add the following after subsection 17(2):

17 (3) For greater certainty, the provision of a written notice to a proponent of a designated project under subsection 17(1) does not suspend or terminate the impact assessment of the designated project.
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[54x78]2
[60x75]https://openparliament.ca/debates/2018/2/14/catherine-
[294x75]-mckenna
[334x75]-3/

| Section 63 | Factors — public interest | Further, and consistent with CAPP’s proposed amendments to subsection 22(1), consideration of Canada’s obligations and commitments in respect of climate change should be framed under applicable completed regional or strategic assessments. While references to protecting the environment are found throughout the Impact Assessment Act, economic considerations do not figure prominently in the legislation. To ensure that economic the Minister’s stated objectives underlying the legislation are recognized and factored into decision making. To address this perceived imbalance, it should be explicit that a decision maker will consider the economic and social effects of a designated project. | Amend section 63 as follows:

63 The Minister’s determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council’s determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors:

- any relevant assessment referred to in section 92, 93 or 95 regarding the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change, where such assessment was completed prior to the notice of the commencement of the impact assessment of the designated project; and
- the potential economic and social effects of the designated project.

| 6(1) | Purposes | See comments above under section 63. | Revise subsection 6(1) by adding paragraph 6(1)(o):

6 (1) The purposes of this Act are

- to improve investor confidence, strengthen the Canadian economy, encourage prosperity and improve the competitiveness of the Canadian energy and resource sectors;

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**Issue: Involvement of Lifecycle Regulators in Review Panels**

2 https://openparliament.ca/debates/2018/2/14/catherine-mckenna-3/
As currently worded, the Act directs that where an impact assessment of a designated project that includes activities regulated by a lifecycle regulator (i.e., Canadian Energy Regulator; Canadian Nuclear Safety Commission; Canada-Nova Scotia Offshore Petroleum Board; Canada—Newfoundland and Labrador Offshore Petroleum Board) is referred to a review panel, the panel chairperson may not be a member of the lifecycle regulator for the CER and CNSC, and members of lifecycle regulators may not make up a majority of the review panel in all cases. This is counterproductive and limits the usefulness of establishing a roster of subject matter experts from lifecycle regulators. Since the roster of experts who may be appointed to a review panel will have been established by the Minister, nothing can be accomplished by restraining their eligibility to sit on a review panel.

| 47(4) | When the Minister refers an impact assessment of a designated project that includes activities regulated under the Canadian Energy Regulator Act to a review panel, the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish the panel’s terms of reference and appoint the chairperson and at least two other members. | This clause minimizes the involvement of lifecycle regulators and the expertise of such organizations. Review processes should leverage the unique expertise of both provincial and federal lifecycle regulators, especially since the Minister will have established the roster of experts who may be appointed to a review panel. | Amend section 47 by deleting subsection 47(4). Subsections 44(4) (Canadian Nuclear Safety Commission), 46.1(4) (Canada-Nova Scotia Offshore Petroleum Board) and 48.1(4) (Canada–Newfoundland and Labrador Offshore Petroleum Board) should also be deleted for the reasons set out. |

| 21 | The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — must offer to consult and cooperate with respect to the impact assessment of the designated project with any jurisdiction referred to in paragraph (a) of the definition jurisdiction in section 2 if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of a designated project that includes activities that are regulated under the Canada Oil and Gas Operations Act, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act or the Canada Transportation Act; and any jurisdiction referred to in paragraphs (c) to (i) of that definition if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of the designated project. | CAPP proposes removing the mandatory panel review and opening up all existing process options in the Act to offshore oil and natural gas activities (i.e., Agency review, panel review, subsections 44(4) and 47(4) joining panel reviews). This allows for the “scale of the assessment to be aligned with the scale of the potential impacts.”¹ | Amend section 21 as follows: 21 (1) — (a) any jurisdiction referred to in paragraph (a) of the definition jurisdiction in section 2 if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of a designated project that includes activities that are regulated under the Canada Oil and Gas Operations Act, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act or the Canada Transportation Act; and 

| Add the following after section 21: (2) The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — and the... |

¹ https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/share-your-views/proposed-approach/discussion-paper.html
With respect to impact assessments referred to review panels, we have suggested the Minister must include provisions for cooperation in the panel’s terms of reference, and the panels must include Board members. This approach is similar to the current process, but mandates closer cooperation than the currently proposed process, where the Minister simply appoints two offshore board members.

Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be, shall cooperate with respect to the impact assessment of a designated project that includes activities that are regulated under the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act or the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act.

(3) The Agency and the Canada-Nova Scotia Offshore Petroleum Board and Canada-Newfoundland and Labrador Offshore Petroleum Board shall, to ensure effective cooperation and avoid duplication of work and activities, conclude memoranda of understanding in relation to the conduct of impact assessments – other than impact assessments referred to a review panel – referred to in subsection (2) above.

(4) Sections 25-29 apply mutatis mutandis to the Agency and the Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be, in relation to the impact assessment of a designated project – other than any impact assessment referred to a review panel – referred to in subsection (2) above.

(5) Where the Minister has referred the impact assessment of designated project referred to in subsection (2) above to a review panel:

(a) the panel’s terms of reference established by the Minister in accordance with section 41 shall include provisions for the panel’s cooperation with the Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be; and

(b) the Minister, on the recommendation of the Chairperson of the Canada-Nova Scotia Offshore Petroleum Board or Canada-Newfoundland and Labrador Offshore Petroleum Board, as the case may be, shall appoint to such panels at least two persons.
43 The Minister must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under any of the following Acts:
(a) the Nuclear Safety and Control Act;
(a.1) the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act;
(b) the Canadian Energy Regulator Act.
(c) the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act.

CAPP proposes that the mandatory review panel requirement be removed for designated offshore oil and natural gas projects regulated under the Accord Acts, and that flexibility be added by permitting substitutions and joint panel reviews where appropriate. A proposed amendment to Section 43 is provided. To permit substitutions and joint panel reviews, similar revisions will be required at subsection 31(1), and paragraphs 32(b), 39(2)(a.1) and (c).

For most designated projects, the Act permits a variety of impact assessment processes. Where an impact assessment is required, the Agency will generally conduct the impact assessment (ss. 24-29); however, the Minister also has the discretion to refer the impact assessment to a review panel process if the Minister is of the opinion that a review panel is in the public interest (s. 36).

On the request of certain jurisdictions, the Minister may approve the use of that jurisdiction’s assessment process in substitution of an impact assessment under the Act (ss. 31(1)). If the Minister refers an impact assessment to a review panel, the Minister may enter into an agreement with certain jurisdictions to jointly establish a review panel and the manner in which the impact assessment will be conducted (ss. 39(1)).

By allowing a variety of levels and types of impact assessment processes, the scale of the assessment and the type of process used can be aligned with the particular circumstances, nature, scope and potential impact risks associated with the designated project. However, this flexibility is inapplicable to the assessment of offshore

Amend section 43 as follows:
43 The Minister must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under any of the following Acts:
(a) the Nuclear Safety and Control Act;
(a.1) the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act;
(b) the Canadian Energy Regulator Act.
(c) the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act.

To permit substitutions and joint panel reviews, similar revisions will be required at subsection 31(1), and paragraphs 32(b), 39(2)(a.1) and (c).
<table>
<thead>
<tr>
<th>Issue: Public Participation</th>
<th>CANADIAN ENERGY REGULATOR ACT</th>
</tr>
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<tbody>
<tr>
<td>Section</td>
<td>Current Wording</td>
</tr>
<tr>
<td>52</td>
<td>Public hearings</td>
</tr>
<tr>
<td></td>
<td>52 (1) A hearing before the Commission with respect to the issuance, suspension or revocation of a certificate under Part 3 or 4 must be public.</td>
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<tr>
<th>Issue: Issuance of Approvals and the Path to Construction</th>
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<tbody>
<tr>
<td>Section</td>
<td>Current Wording</td>
</tr>
<tr>
<td>183(2)</td>
<td>Factors to consider</td>
</tr>
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<td></td>
<td>183(2) The Commission must make its recommendation taking into account — in light of, among other things, any Indigenous knowledge that has been provided to the Commission and scientific information and data — all considerations that appear to it to be relevant and directly related to the pipeline, including (a) the environmental effects, including any cumulative environmental effects; (b) the safety and security of persons and the protection of property and the environment; (c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;</td>
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Public policy items should be removed from the list of factors to be included in a project assessment in subsection 183(2) and replaced with a requirement to consider consistency with applicable strategic and regional assessments. Further, consideration of the intersection of sex and gender with other identity factors should be framed by reference to applicable policy published by the regulator.

Add the following after subsection 183(2):

(3) For clarity, notwithstanding paragraph 183(2)(i), the Commission shall not adjourn, defer, deny, refuse or reject an application by reason only of the incompletion of an assessment referred to in section 92, 93 or 95 of the Impact Assessment Act.
### Issue: Timeline Certainty

<table>
<thead>
<tr>
<th>Extension</th>
<th>The Minister may, by order, grant one or more extensions of the time limit specified under subsection (4).</th>
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<tbody>
<tr>
<td>262(7)</td>
<td>To ensure greater certainty and predictability, there must be a reasonable limit on the extensions of time the Minister may grant to the maximum legislated time limit.</td>
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<td>Amend subsection 262(7) as follows:</td>
<td>262(7) The Minister may, by order, grant one or more extensions of the time limit specified under subsection (4), provided that in no case can the time limit in subsection (4) be extended beyond 550 days after the day on which the applicant has, in the Commission’s opinion, provided a complete application.</td>
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### NAVIGATION PROTECTION ACT

#### Issue: Navigable Waters

The proposed *Navigation Protection Act* has changed the approach to how interference with navigation is characterized by including changes to water flows and water levels. The Minister also has the ability to attach any conditions he or she considers appropriate in relation to water flows and water levels. This is a fundamental shift in the approach to the navigation and will be more onerous for all parties regulated under the proposed Act.

<table>
<thead>
<tr>
<th>Section</th>
<th>Current Wording</th>
<th>Reasons for Amendment</th>
<th>Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 (1)</td>
<td>If the Minister is of the opinion that a work that is the subject of an application made under subsection 5(1), or its construction, placement, alteration, rebuilding, removal or decommissioning, may interfere with navigation, including by changing the water level or water flow of a navigable water, he or she must inform the owner, in writing, of that opinion and the owner may only construct, place, alter, rebuild, remove or decommission that work if the Minister issues an approval for the work.</td>
<td>References to changes to water flow and water levels as connected to interference with navigation is a fundamental change to regulation of navigation and could have significant consequences for proponents that operate, for example, water intakes. Further, jurisdiction over water flows and water levels arguably lies with the provinces. The inclusion of a power in subsection 7(9) for the Minister to attach terms and conditions to an approval in relation to water flows and water levels may conflict with provincial regulations or approvals, and should be removed.</td>
<td>Amend subsection 7(1) as follows: 7 (1) If the Minister is of the opinion that a work that is the subject of an application made under subsection 5(1), or its construction, placement, alteration, rebuilding, removal or decommissioning, may interfere with navigation, including by changing the water level or water flow of a navigable water, he or she must inform the owner, in writing, of that opinion and the owner may only construct, place, alter, rebuild, remove or decommission that work if the Minister issues an approval for the work.</td>
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<tr>
<td>(9)</td>
<td>The Minister may attach any term or condition that he or she considers appropriate to an approval including one that requires the owner to (a) maintain the water level or water flow necessary for navigation purposes in a navigable water; or (b) give security in the form of a letter of credit, guarantee, suretyship or indemnity bond or insurance or in any other form that is satisfactory to the Minister.</td>
<td></td>
<td>Amend subsection 7(9) as follows: (9) The Minister may attach any term or condition that he or she considers appropriate to an approval including one that requires the owner to (a) maintain the water level or water flow necessary for navigation purposes in a navigable water; or (b) give security in the form of a letter of credit, guarantee, suretyship or indemnity bond or insurance or in any other form that is satisfactory to the Minister.</td>
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