



IMPACT OF KEY FEDERAL REGULATORY CHANGES ON CONSULTATION

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OBA Institute 2013 - Aboriginal Law
February 7, 2013

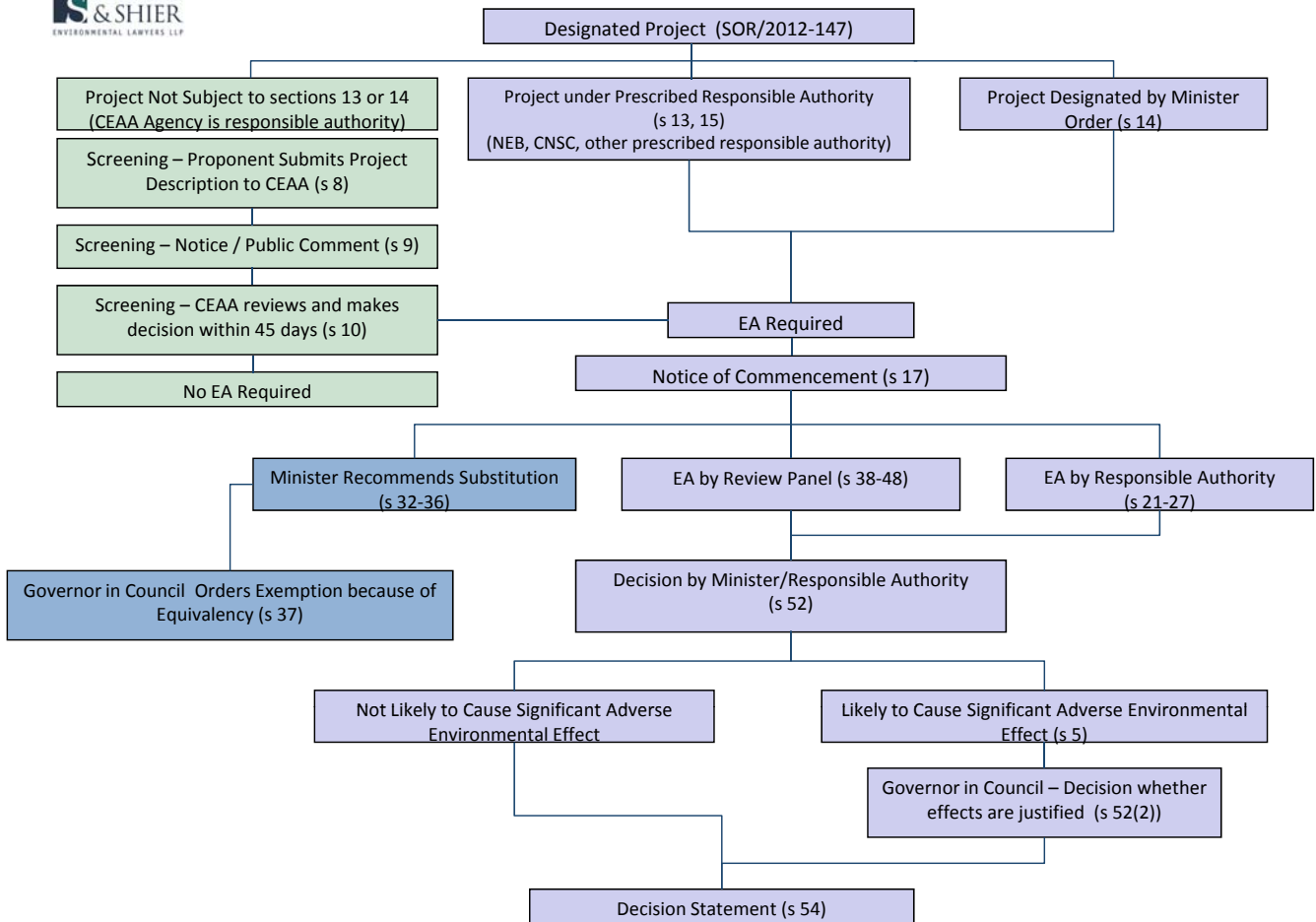
Overview

- ***Canadian Environmental Assessment Act (CEAA)***
 - What's new?
 - Implications for the Duty to Consult
 - Implications for FN projects
- ***Fisheries Act* proposed amendments**



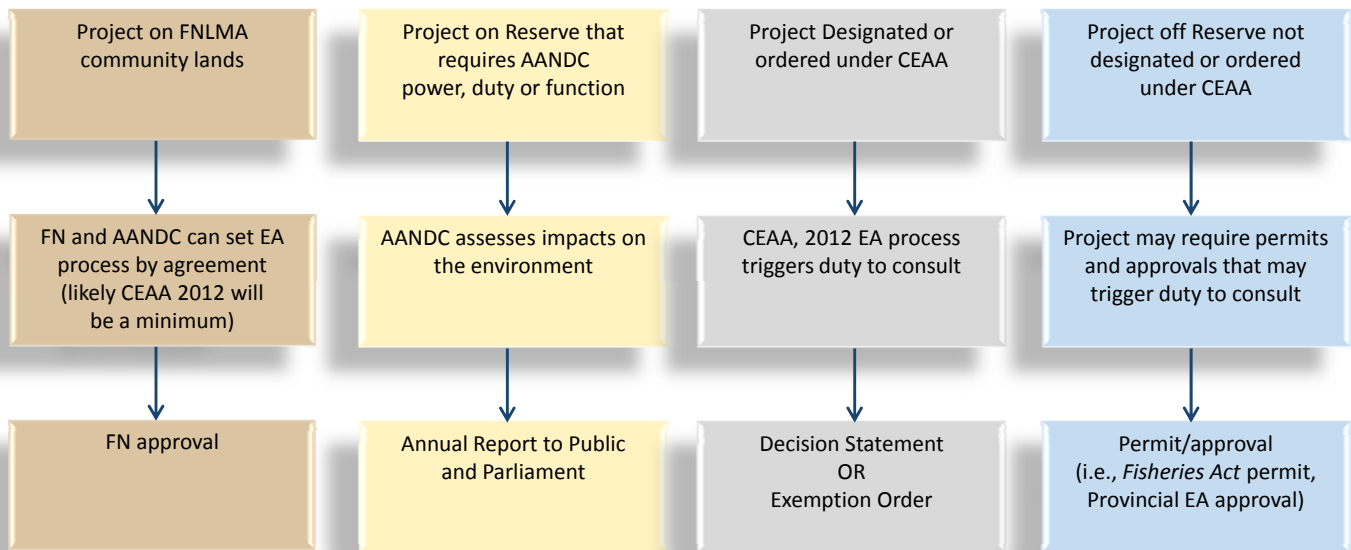
WHAT'S NEW WITH CEAA?

Canadian Environmental Assessment Act, 2012



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What Process Applies To Projects?



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CEAA, 2012

- **Purpose of CEAA, 2012 includes to...**
 - “promote communication and cooperation with Aboriginal people with respect to environmental assessments”
 - This is new

CEAA, 2012 covers:

- **Designated Projects**
 - Listed in Regulation
 - Includes major projects like mines, large hydro projects, etc
 - Smaller projects that used to trigger CEAA by a permit (ie. *Fisheries Act*) no longer trigger CEAA
- **Projects on federal lands**
 - For example, harbours, military bases, Reserves

CEAA, 2012

On Reserve	Off Reserve
<ul style="list-style-type: none"> • When the federal government exercises a power, performs a function, proposes a project on Reserve • Who is responsible for the EA: the federal authority • usually AANDC 	<ul style="list-style-type: none"> • When? <ol style="list-style-type: none"> 1. If Agency screens Designated Projects and decides an EA is required 2. Designated Projects with CNSC, NEB hearings 3. If ordered by Minister • Who is responsible for the EA: <ul style="list-style-type: none"> • CEEA Agency • Review panel • NEB • CNSC or • Province

CEAA, 2012

On Reserve	Off Reserve
<ul style="list-style-type: none"> • What is the process: the federal authority determines if there will be significant environmental effects • Ministries will develop their own process (ie. Parks have their own “Environmental Impact Analysis”) • How will this work for reserve lands? 	<ul style="list-style-type: none"> • What is the process: If by Agency: • Screening • Notice of Commencement posted • Minister may refer Project to Review Panel • Environmental Assessment is conducted • RA may request more studies • Draft report posted for comment • Minister makes decision within 1 year of notice of commencement

CEAA - EA Scope

On Reserve	Off Reserve
<ul style="list-style-type: none"> • What is assessed? • Impacts on Fish, birds • Current use of lands and resources for traditional purposes by Aboriginal persons • Health, socio-economic, physical, cultural heritage, archaeology (for Aboriginal people) • Significance of impacts 	<ul style="list-style-type: none"> • What is assessed? • Impacts on Fish, birds • Current use of lands and resources for traditional purposes by Aboriginal persons • Health, socio-economic, physical, cultural heritage, archaeology (for Aboriginal people) • Significance of impacts
<ul style="list-style-type: none"> • The Federal Authority must determine how to assess 	<ul style="list-style-type: none"> • Purpose, alternatives • Mitigation, follow-up • Public comment • Traditional knowledge may be considered

CEAA - EA Scope

On Reserve	Off Reserve
<p>•What happens at the end?</p> <ul style="list-style-type: none"> • Federal authority reports on its EA activities annually to Parliament and makes information on its activities available to the public 	<p>•What happens at the end?</p> <ul style="list-style-type: none"> • Decision Statement: <ul style="list-style-type: none"> • project is not likely to cause significant adverse environmental effects; or • is likely to cause significant environmental effects (referred to Cabinet) <ul style="list-style-type: none"> • Cabinet decides if effects are justified • includes mitigation and monitoring conditions • Decision Statement posted on internet

Implications for Aboriginal Consultation

- **Does Agency screening decision trigger duty?**
- **Likely “yes” if asserted Aboriginal right is impacted**
 - Crown Conduct
 - Public consultation
- **When will consultation start?**

Implications for Aboriginal Consultation

- Does Minister's decision to substitute Provincial process trigger consultation?
- Likely "yes" if asserted Aboriginal right is impacted
- How will federal Crown ensure duty is met if province is conducting EA?

Implications for Aboriginal Consultation

- **How will losing the federal EA framework for smaller projects impact consultation?**
- **How will duty to consult and accommodate be integrated with EA?**
- **How will Aboriginal Consultation be funded?**

Responsible Resource Development Initiative

- **Proposed measures include**
 - Integrating Aboriginal consultations into the EA and regulatory process
 - Provide funding specifically to support consultations with Aboriginal peoples
 - Negotiate consultation protocols or agreements with Aboriginal groups
 - Negotiate memoranda of understanding with provincial governments to align EA processes and Aboriginal consultation

Permit Implications for Project Proponents

- **If on Reserve, and requiring exercise of any federal power or function, what will the EA process be?**
 - CEAA silent on process and timelines
 - Up to the discretion of the Minister
 - Role of consultation protocols or agreements with the Crown?

Permit Implications for Project Proponents

Under old process:

- **if only trigger was federal \$\$ for an off reserve undesignated project**
 - CEAA EA no longer required
- **if only trigger was a federal permit for an off reserve undesignated project**
 - CEAA EA no longer required
 - Duty to consult still triggered if the federal permit is required
 - Delegation of procedural aspects likely but not prescribed in regulation

FISHERIES ACT – WHAT IS COMING?

Fisheries Act

<i>Proposed Fisheries Act</i>	<i>Fisheries Act</i>
<ul style="list-style-type: none"> • Serious harm to Aboriginal fisheries or fish that support fishery will require a permit, triggers duty to consult, but not public consultation 	<ul style="list-style-type: none"> • Permits for HADD of fish habitat trigger duty to consult and CEAA
<ul style="list-style-type: none"> • Cabinet may exclude fisheries from Aboriginal fisheries by regulation 	<ul style="list-style-type: none"> • Aboriginal people identify their land use including fisheries during consultation process

Proposed *Fisheries Act*

- **Aboriginal fisheries**

- “fish is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food or for subsistence or for social or ceremonial purposes, or for purposes set out in a land claims agreement entered into with the Aboriginal organisation”
- Governor in Council may exclude Fisheries from the definition of Aboriginal fishery
- Who defines Aboriginal fisheries?
 - appears to now be a political decision

Proposed *Fisheries Act*

- How are Aboriginal commercial fisheries treated?
- Extent Cabinet excluding a fishery from Aboriginal fisheries triggers duty to consult?
- Impact on consultation of the Crown defining Aboriginal fisheries?

In closing... areas for Aboriginal consultation

- process Federal Authority applies for EA of projects on Reserve
- who defines Aboriginal Fisheries and how
- CEAA and *Fisheries Act* both silent on delegation of procedural aspects



**MI IGWETCH - MERCI -
THANK YOU**

QUESTIONS?



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