

February 24, 2023

Hon. Steven Guilbeault
Minister of Environment and Climate Change
House of Commons
Parliament Buildings
Ottawa, ON K1A 0H6

Terence Hubbard
President, Impact Assessment Agency of Canada
22nd Floor, Place Bell
160 Elgin Street
Ottawa, ON K1A 0H3

cc: Hon. Jonathan Wilkinson
Minister of Natural Resources
House of Commons
Parliament Buildings
Ottawa, ON K1A 0H6

via email

Re: Withdraw and Reconsider the Draft Policy Framework for Regional Assessments

Dear Minister Guilbeault and Mr. Hubbard,

We are writing to urge withdrawal and full revision of the draft Policy Framework for Regional Assessment under the *Impact Assessment Act* (2019; the “IAA”) posted December 12, 2022. As experts with extensive knowledge and experience who have been deeply engaged in the development and implementation of the IAA, we find the draft document profoundly disappointing. It disregards decades of evidence on the inadequacy of project-level assessment to meaningfully address cumulative effects and the need for informed and authoritative regional approaches. The framework dismisses the spirit and intent of the IAA and ignores virtually all global and Canadian best practice documented in peer-reviewed literature and lived experience.

Both the draft framework and early experience under the Act present the chief purposes of regional assessments as being to expedite project approval and facilitate reduction of the already few projects subject to federal assessment. This is contrary to the purposes of the Act, which are to: foster sustainability; protect components of the environment within federal authority; ensure impact assessments take into account all effects, science and knowledge; respect Indigenous rights; and encourage consideration of cumulative effects.

The draft framework's provisions for regional assessment would preclude gathering and considering new information on regional cumulative effects and virtually eliminate prospects for authoritative results that could have a material effect on sustainability.

We do not see efficiency and sustainability as conflicting: Perhaps the most compelling promise of a well-executed regional assessment is its potential to document and anticipate cumulative effects at the regional scale, facilitate planning towards shared visions of regional futures, and identify and evaluate options for regional and strategic level initiatives that will guide and direct regional activities, including project development and assessment.

Such results would enrich the informational basis of impact assessment, clarify expectations and ease burdens on proponents. Experience has demonstrated the potential for a regional assessment to improve environmental and other sustainability outcomes while reducing burdens on project assessment and approval processes. As written, the draft framework will achieve none of those goals.

Most concerning to us is the lack of meaningful attention to cumulative effects and sustainability in the draft document. Indeed, the draft framework retreats from some aspects of the Agency's current published guidance on these matters.

Planning-based regional assessment that is primarily aimed at addressing cumulative effects need not risk jurisdictional overreach: Even absent provincial partners, a regional assessment can be scoped to focus on areas of federal jurisdiction and cooperation with Indigenous peoples towards rights-based approaches to project assessment and decision making.

Nor does good policy guidance on regional assessment need to sacrifice flexibility. We agree that flexibility is necessary for tailoring regional assessments to regional contexts and needs. However, flexibility must include options for regional assessments that are sufficiently ambitious to address cumulative effects effectively. Also, flexibility must be exercised within the parameters of preventing environmental and socio-economic harms and ensuring projects that impact areas of federal jurisdiction will contribute to equitably-distributed and lasting benefits. Otherwise, regional assessments will frustrate efforts to regain public trust and foster sustainability through application of the IAA.

Commitment to timeliness is also a poor excuse for weak regional assessment. We agree that the biodiversity and climate crises need urgent action, and in cases like the Regional Assessment in the Ring of Fire Area, proposed and potential projects would benefit from timely regional assessment outcomes. But the timelines applied to date – 18 months for the regional assessments of offshore exploratory drilling and offshore wind – are short to a degree that makes cumulative effects assessment impossible. That critical shortcoming was clearly demonstrated by the Regional Assessment of Offshore Exploratory Oil and Gas Drilling East of Newfoundland and Labrador. There is no justification for limiting all future regional assessments to timelines that preclude gathering new information and giving serious attention to effective means of addressing cumulative effects.

Experience so far also makes clear that meaningful early planning processes have been sacrificed under aggressive timelines. Taking additional time to ensure robust regional assessments are carried out could make a highly meaningful difference in the quality of and buy-in to their outcomes. A more reasonable timeframe need not unduly delay subsequent decisions, and there is near-endless potential in employing staged approaches to regional assessments, based on iterative learning and effective tiering with other types of assessment and regulatory processes.

In our view, the Policy Framework for Regional Assessment should achieve three objectives. First, it should state that the main objectives of regional assessments are to deliver informed and effective responses to cumulative effects problems and opportunities, respect Indigenous rights and advance reconciliation, and inform project-level assessment and regulatory processes. Second, it should provide clear guidance to the Agency and the Minister about designating and planning regional assessments based on those objectives. Third, it should set out core process standards that ensure Indigenous nations, the public and experts can participate meaningfully in regional assessments.

These objectives align with the consensus recommendations of the Multi-Interest Advisory Committee appointed in 2016 to advise on the federal environmental assessment review. That Committee, which was comprised of representatives of the three national Indigenous organizations, environmental organizations, academia, industry sectors that included the Mining Association of Canada, Canadian Association of Petroleum Producers, Canadian Energy Pipeline Association, Water Power Canada and Canadian Construction Association, and the Canadian Energy Regulator and Canadian Nuclear Safety Commission, agreed that regional assessment would be “a more appropriate means of addressing significant cumulative effects” than project assessment.

Instead, as it is currently written, the draft framework aims mostly to restrict the potential ambition of regional assessments and on other matters relies on vague and permissive language and provides no clear guidance or specified criteria for the conduct of regional assessment.

We see little possibility that any regional assessment, as envisioned in the draft framework, would be an effective means of addressing significant cumulative effects.

The IAA has provided a potentially viable response to the long-recognized inability of piecemeal project-level assessments to capture cumulative impacts or overall contributions to sustainability.

We urge you to direct the Agency to withdraw its draft policy framework for regional assessments and to prepare a replacement that:

- Emphasizes use of regional assessments as means to identify and recommend effective means of addressing regional cumulative effects, including through authoritative guidance for planning and proposing projects subject to assessment, in accordance with

the IAA's purpose of encouraging "the assessment of the cumulative effects of physical activities in a region";

- Incorporates the IAA's sustainability-based purposes, including by setting out core requirements for sustainability-based regional assessments (recognizing the interdependence and interactions among ecological, social, health and economic objectives and effects); and
- Promotes reconciliation, including through commitments to recognize and respect the inherent authority and jurisdiction of Indigenous peoples and the provisions of the *United Nations Declaration on the Rights of Indigenous Peoples*.

The reconsidered policy framework should facilitate and guide regional assessments that reflect these three fundamentals, and should set out the core criteria that will guide regional assessment decisions-making, including decisions on whether to initiate a regional assessment, and whether it will be Agency- or committee-led. Absent a fundamental shift away from the current focus on process towards one aimed at substantive sustainability objectives, we see regional assessments having the potential to do far more harm than good.

We would of course be pleased to respond to any questions you or your staff may have with respect to our concerns outlined in this letter.

Sincerely,

Kerrie Blaise, Blaise Law
Jill Blakley, University of Saskatchewan
Cheryl Chetkiewicz, Wildlife Conservation Society (WCS) Canada
Robert Gibson, University of Waterloo
Stephen Hazell, Ecovision
Anna Johnston, West Coast Environmental Law
Jamie Kneen, Mining Watch Canada
Mike Kofahl, East Coast Environmental Law
Rick Lindgren, Canadian Environmental Law Association
Justina Ray, WCS Canada/University of Toronto
John Sinclair, University of Manitoba