



**Submission  
to the Expert Panel Reviewing  
Environmental Assessment Processes in Canada**

December 12, 2016

## Executive Summary

The Vancouver Fraser Port Authority, like all Canada Port Authorities, has been undertaking environmental reviews and project permitting since 1998 when the *Canada Marine Act* came into effect and ports were considered regulated authorities. Further, as an agent of the Federal Crown, the Vancouver Fraser Port Authority has been delegated the authority to manage federal lands by the *Canada Marine Act* and, therefore, conducts Aboriginal consultation on behalf of the Crown when contemplated conduct has the potential to adversely impact Aboriginal or treaty rights.

The Vancouver Fraser Port Authority welcomes the federal government review of the various environmental assessment processes as a critical and positive step in efforts to improve public trust in regulatory and permitting agencies. Environmental assessment and review is a planning tool that helps to predict potential environmental effects of proposed projects and helps to inform regulatory and permitting decisions. As such, the integrity of such assessments and reviews must be sound, transparent and contribute to robust decisions.

In general, the Vancouver Fraser Port Authority believes that CEAA 2012 is working well, however, there are opportunities for enhanced clarity, appropriate resourcing and greater transparency to earn public trust. We offer the following recommendations for consideration:

### Theme A: Environmental assessment in context

1. Consider other mechanisms or forums for meaningful public dialogue around policies outside of environmental assessment processes.
2. Ensure mitigation measures, whether they are technologies, construction and operational practices, or other measures, are both technically and economically feasible in the specific context of the project being proposed.
3. Introduce more stringent requirements for proponents to provide information about project and site-specific technical and economic feasibility (including the criteria used to determine feasibility).

### Theme B: Overarching Indigenous considerations

4. Enhance the capacity of Aboriginal groups to more effectively participate in a federal environmental assessment process.
5. Provide for coordination of Crown consultation and proponent engagement.
6. Continue to provide guidance, ideally developed in collaboration with Aboriginal groups, for the consideration of Aboriginal traditional knowledge in environmental assessments.

### Theme C: Planning environmental assessment

7. Maintain the list of designated projects in the *Regulations Designating Physical Activities*.
8. Enhance CEAA by developing clear mechanisms and appropriate guidance to help initiate, define scope and fund regional studies, including regional cumulative effects assessments.
9. Establish a template approach to ensure consistent approaches and styles for environmental reviews.

#### **Theme D: Conduct of environmental assessment**

10. Enhance the capacity and resources of those charged with the administration of the review process, specifically the Canadian Environmental Assessment Agency.
11. Maintain the current provisions and processes for designating projects.
12. Compel port authorities to provide appropriate transparency around project and environmental reviews and permitting, and improve public participation in informing environmental determinations and permitting decisions.
13. Provide greater oversight and transparency for non-designated projects in a timely way.
14. Use appropriate qualified and experienced accredited professionals to prepare technical content of an environmental assessment, and identify those professionals transparently.
15. Ensure continued standard requirements to describe the methods used to collect and analyze data, including the specifications and parameters of models (such as confidence limits and margins of error) used to predict potential environmental effects.
16. Make available to participants in the environmental assessment process data upon which an environmental assessment is based.
17. In cases where opinions of participants in the environmental assessment process clearly point to issues that warrant further consideration, solicit input from independent, impartial technical experts who have the scientific expertise and experience appropriate to the issue.

#### **Theme E: Decision and follow-up**

18. Provide transparency regarding the factors taken into consideration by the statutory decision maker when making a public interest decision and the process by which such a decision may be made, including identifying the source of information used to inform the public interest decision, if other than the federal environmental assessment.
19. Enhance or create regulations to include specific requirements around reporting on environmental monitoring for project impacts and/or compliance monitoring of environmental conditions, especially for non-designated projects.
20. Create a centralized reporting tool to streamline and enhance reporting of the annual declaration to Parliament for federal authorities.
21. Authorize port authorities to issue administrative monetary penalties.

#### **Theme F: Public involvement**

22. Require proponents and the permitting agency to provide plain language summaries of the technical information in a format accessible to the public.
23. Continue the requirement to consider public and Aboriginal input when selecting valued components for federal environmental assessment.
24. Ensure all reviews are based on science, facts and evidence.

#### **Theme G: Coordination**

25. Continue the provision for process harmonization and coordination for designated projects where both a federal and provincial environmental assessment are required.

26. Consider as a model for designing substitution provisions the successful memorandum of substitution between the Canadian Environmental Assessment Agency and the British Columbia Environmental Assessment Office.
27. Consider provision for “reverse” substitution for designated projects where both a federal and provincial environmental assessment are required.
28. Re-introduced provisions for non-designated projects located on federal land or otherwise within federal jurisdiction to increase consistency and avoid duplication in the manner in which multiple federal authorities identify, evaluate, and determine the significance of potential environmental effects.
29. For non-designated projects on federally administered lands and waters, such as port lands and waters administered by a Canada Port Authority, assign lead responsibility for identifying, evaluating, and determining the significance of potential environmental effects to the port authority. In addition, other federal authorities should be obligated to provide relevant specialist or expert information in a timely manner, similar to the provision of section 20 of CEAA 2012 for designated projects.
30. Clarify the scope of environmental reviews of non-designated projects, in particular specifying the factors that should be considered, and provide guidance with respect to core requirements and methods to improve consistency in such evaluations between federal authorities and in different regions.
31. Include provisions or requirements for regional multi-stakeholder and multi-agency collaborative partnerships or forums, including with the representation of local municipalities and Aboriginal groups, for the purpose of environmental management oversight and advice.

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## **Purpose of this submission**

This submission is in response to the call for feedback to the expert panel undertaking review of environmental assessment processes under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

The Vancouver Fraser Port Authority agrees the federal government review of the various environmental assessment processes is a critical and positive step in efforts to improve public trust in regulatory and permitting agencies. Environmental assessment and review is a planning tool that helps to predict potential environmental effects of proposed projects and helps to inform regulatory and permitting decisions. As such, the integrity of such assessments and reviews must be sound, transparent and contribute to robust decisions.

This submission includes an overview of the Port of Vancouver and the Vancouver Fraser Port Authority, sets the regulatory context for environmental assessments within federal lands and waters managed by the Vancouver Fraser Port Authority, and describes the project and environmental review processes that we undertake to fulfill our requirements under the *Canada Marine Act* and the *Canadian Environmental Assessment Act, 2012*. Further, we have included specific feedback in respect to key questions and themes the expert panel has been asked to consider in carrying out its review.

## **About the Port of Vancouver and the port authority**

The Port of Vancouver is Canada's largest, supporting close to one in every five dollars of Canada's trade in goods and offering the broadest range of cargo-handling options of any port in North America.

The Vancouver Fraser Port Authority is responsible for the stewardship of federal port lands and waters in and around Vancouver, British Columbia. Like all Canada Port Authorities, the Vancouver Fraser Port Authority is established by the Government of Canada pursuant to the *Canada Marine Act*, and accountable to the federal Minister of Transport. The Act sets out a mandate for the port authority to facilitate Canada's trade objectives, ensuring goods and passengers are moved safely and efficiently, while protecting the environment and considering local communities. Further, as an agent of the Federal Crown, the Vancouver Fraser Port Authority has been delegated the authority to manage federal lands by the *Canada Marine Act* and, therefore, conducts Aboriginal consultation on behalf of the Crown when contemplated conduct has the potential to adversely impact Aboriginal or treaty rights.

Sustainability has always been a part of our legislated mandate, and our organizational vision is to be the world's most sustainable port. The Vancouver Fraser Port Authority defines a sustainable port as one that delivers economic prosperity through trade, maintains a healthy environment, and enables thriving communities through collective accountability, meaningful dialogue and shared aspirations.

## **Regulatory context for environmental assessment at the Vancouver Fraser Port Authority**

Canada Port Authorities have been the permitting authority for federal port lands and waters since the introduction of the *Canada Marine Act* in 1998, and they conduct environmental reviews of projects in accordance with section 67 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). The Vancouver Fraser Port Authority has been undertaking environmental reviews and project permitting since 1998 when the

*Canada Marine Act* came into effect and ports were considered “regulated authorities”. Prior to 1998, the Vancouver Fraser Port Authority undertook environmental reviews for due diligence purposes and to protect port assets. Under CEAA 1992, and the Canada Port Authority Environmental Assessment Regulations, port authorities were required to undertake screening level environmental assessments of projects that met certain thresholds. These projects were then posted to a public registry administered by the Canadian Environmental Assessment Agency (the Agency) that was accessible via website.

When CEAA 2012 came into effect, port authorities were identified as “federal authorities” in Schedule 1. As a federal authority, port authorities are required to make a “determination” as per section 67 of CEAA 2012 before exercising any power or performing any duty or function that could permit a project to be carried out, in whole or in part, on federal lands. The port authority must also consider, with respect to Aboriginal peoples, section 5 (1)(c) of CEAA 2012. These include non-designated projects or those projects that are not listed in *Regulations Designating Physical Activities*.

If a project is included in the list of designated projects as identified in the *Regulations Designating Physical Activities*, an environmental assessment is required and is undertaken by one of three responsible authorities: the Agency, the National Energy Board, or the Canadian Nuclear Safety Commission. Designated projects within federal port lands and waters requiring an environmental assessment are typically reviewed by the Agency or the National Energy Board.

Additionally, the Port Authorities Operations Regulations promulgated under the *Canada Marine Act* are designed to promote the safety, security, and good order of port operations; Section 5 states that no person shall allow or permit anything to be done in a port that has, or is likely to:

- jeopardize safety or health of persons in the port
- cause a nuisance
- adversely affect soil, air or water quality
- adversely affect port operations or the property management, held or occupied by the port authority

## **Port authority governance, permitting and public trust**

The current governance structure for Canada Port Authorities, as established by the *Canada Marine Act* in 1998, has worked extremely well because it has allowed for the commercialization of ports that has facilitated national trade growth, while providing for a high level of environmental protection and community engagement on behalf of the federal government.

Community members who have concerns about the impacts of port activities and proposed projects will often point to flaws in governance or the review process as the reasons for their concerns. It is a common refrain, heard by all regulatory and permitting agencies when decisions are made that do not sit well with some. Calls for more local representation in port governance and affairs fail to recognize the significant competitive and operating advantage that Canadian ports have by maintaining a national focus on their operations. One need look only to many U.S. ports with locally-appointed board members to see how they struggle to grow and adapt because of an inability to realize community support and federal funding for gateway-enhancing infrastructure.

With respect to projects on port lands, the matter of independence in the project and environmental review is a reasonable concern. Critically, can port authorities ensure the integrity of an environmental review given two possible proponents: a tenant that is, or will be, paying lease revenue to the port authority, or the port authority itself?

Our project and environmental review process is not unlike that of other self-regulating bodies, such as municipalities that approve development projects for which they will earn fees and taxes, or other federal authorities. Port authorities must legally ensure they operate safely and competitively and the environment is protected. However, to address the concern about the financial benefit to port authorities of permitting tenant projects, it is important to have an understanding of the financial model of a Canada Port Authority.

Canada Port Authorities earn revenues from leases and fees, but they are not profit-centric in the typical sense and are not focused on earning additional lease revenue for the sake of profit-taking. They must be self-sustaining and pay an annual stipend to the federal government. Revenues must cover expenses as well as generate funds to be invested in common-use port infrastructure, such as port roadways. Additionally, ports must be competitive for terminals to attract shippers. The supply chain runs on reliability and cost, therefore, port authorities must control costs and help ensure terminals can operate efficiently and keep their shipping rates competitive. If cargo goes elsewhere, Canada loses out on economic activity.

Sometimes, a port authority can be a project proponent when there are circumstances where the economics of a particular project are such that a terminal operator or tenant would never propose it, even though it is in the best interests of the gateway and national trade. One example is in the container terminal sector where there is no single customer, as is the case in the commodities sector, willing to invest in the creation of new terminal land or an expanded terminal footprint, which ultimately is federal land managed by the port authority and is necessary to accommodate growth. In Vancouver, past such projects include Deltaport, Canada's largest container terminal, the proposed Roberts Bank Terminal 2 project and the proposed Centerm container terminal expansion. These projects involve the establishment of new federal lands that are leased to terminal operators who are then proponents for projects to build operating infrastructure (such as cranes and rail lines) on those lands.

The Vancouver Fraser Port Authority takes our legal mandate to ensure environmental protection extremely seriously, but public confidence requires demonstrable proof that reviews are sound. The real opportunity to earn public trust in the environmental review process is to demonstrate robust, transparent project and environmental reviews with appropriate Aboriginal and public consultation.

In the port authority context, public trust could be further enhanced by defining which specific supply chain communities make up critical trade gateways and corridors and then granting preferred status to those communities through government infrastructure programs. This will explicitly recognize the unique role of these communities in Canada's economy, which can then lead to identification of the specific impacts as hosts of nationally significant trade corridors, and potentially provide for meaningful recognition and mitigation.

## **Vancouver Fraser Port Authority Project and Environmental Review process**

As a federal authority under CEAA 2012, the Vancouver Fraser Port Authority has developed a review methodology called the Project and Environmental Review process to determine



whether or not a project is likely to cause significant adverse environmental effects and inform our decision-making requirements under section 67 of CEAA 2012. This Project and Environmental Review process meets regulatory objectives under CEAA 2012, the *Canada Marine Act*, and Vancouver Fraser Port Authority's Letters Patent.

All projects proposed on Vancouver Fraser Port Authority-administered federal lands and waters must go through the Project and Environmental Review process, including projects proposed by the Vancouver Fraser Port Authority. The process enables the port authority to consider and make a determination on the potential environmental effects of proposed projects before making any decision that would allow a project to proceed and, if it were approved to proceed, under what conditions. Under CEAA 2012, sections 71 and 72, the port authority must report on our decisions in a declaration laid before the House of Parliament annually. The port authority also posts our declaration and list of environmental decisions on our website at <http://www.portvancouver.com/environment/environmental-reviews/>

### ***Project and environmental review renewal***

In July 2015, and after a thorough, third-party assessment of the previous process, the Vancouver Fraser Port Authority launched our improved Project and Environmental Review process to more effectively guide applicants through the environmental review and permitting process. Though the previous process was found to result in robust decisions, public and stakeholders expressed a desire for improvements that would provide greater clarity, efficiency, transparency and access to information, as well as more predictable timelines. The March 2014, third-party assessment by McMillan and Kirk & Co. titled *Project Review Process Evaluation* is available on the Vancouver Fraser Port Authority website at <http://www.portvancouver.com/wp-content/uploads/2015/03/mcmillana-and-kirk-amp-co-project-review-evaluation-report1.pdf>.

The following principles guided the development of the new process and are now institutionalized in our process:

- **Transparency** - Interested parties are able to obtain information about projects and decisions that are subject to the port authority's Project and Environmental Review process (with due respect for third-party confidentiality and business interests).
- **Clear and Accountable** - The Project and Environmental Review process is clearly defined for participants and process performance measures are tracked, measured and reported annually.
- **Appropriate Level of Review Relative to Potential Impacts** - The Project and Environmental Review process provides appropriate levels, categories of review, in keeping with the potential impacts and interests associated with a proposed project.
- **Aboriginal Consultation** - The Project and Environmental Review process includes Aboriginal consultation when the proposed project may adversely impact asserted or established Aboriginal or Treaty rights.
- **Opportunities for Public Consultation and Engagement** - The Project and Environmental Review process provides appropriate opportunities for public consultation and engagement relative to the review stream or category as noted above in Appropriate Level of Review Relative to Potential Impacts.
- **Efficient Use of Resources** - The Project and Environmental Review process promotes the efficient use of resources, including those required of the project proponent, referral agencies, Aboriginal groups, third party participants, as well as the port authority.

- **Responsive to Stakeholders** - While fulfilling the port authority's legislative mandate, the Project and Environmental Review process provides clear and timely reviews for stakeholders and proponents of projects.

The improved Project and Environmental Review process includes several key improvements:

- Four new project review categories, based on the scale and potential impacts of the project under review, each with prescribed steps including public, stakeholder and Aboriginal consultation where appropriate
- An improved web presence to increase transparency and accessibility of information for applicants, the public and other stakeholders
- A new application guide and technical guidance documents to assist in preparing applications and understanding the port authority's requirements
- New online project intake application forms

The Vancouver Fraser Port Authority has also implemented a continuous improvement program to guide future enhancements to the process.

Based on comparison to other review processes, we can conclude our Project and Environmental Review process demonstrates best practice.

### ***Project and environmental reviews***

Annually, the Vancouver Fraser Port Authority typically makes over 200 environmental determinations as per CEAA 2012, section 67. In 2014, the port authority made 265 decisions and in 2015 it made 212 decisions. As of early December 2016, the Vancouver Fraser Port Authority is on track to make over 200 decisions in 2016.

To undertake the number of reviews within the port authority's Project and Environmental Review process timelines, the port authority employs a team of environmental scientists and professional planners to lead coordinated reviews of proposed projects, drawing on the expertise of other port authority departments who support the process, including Aboriginal affairs, project communications, transportation planning, harbour master and marine operations, and engineering and maintenance.

To initiate the Project and Environmental Review process, applicants submit a suite of studies, as required and following the technical guidelines posted on our website, that describe the potential effects of the proposed project. The environmental review team comprises specialists in environmental assessment, contaminated sites, fish, migratory birds, air, and noise. Most of these staff hold graduate degrees in the field of environmental science and are members of professional associations that include a professional code of ethics, such as the British Columbia College of Applied Biology, the British Columbia Institute of Agrologists and the Association of Professional Engineers and Geoscientists of British Columbia. If in-house expertise is not available in matters relevant to the project under review, the Project and Environmental Review team will retain third-party technical consultants and advisors as necessary to help ensure a thorough, science-based review, and to inform robust decisions.

The review team undertakes the review of proposed projects to assess the potential adverse effects on the environment. Our Aboriginal affairs team is an integral part of the review team and works closely with the environmental specialists to also determine whether there is potential for adverse effects on Aboriginal peoples resulting from a change in the

environment on land use, health and socio-economic conditions, physical and cultural heritage, and structures, sites, and things of significance. Each specialist reviews the technical studies and assesses the potential effects of the project against relevant (local, provincial or federal) environmental standards and criteria. We also evaluate if best practices have been employed to reduce potential effects on the environment, and will work with applicants to add best practices and measures to their projects to prevent or further reduce effects. Once the review is complete, a recommendation is made to the appropriate level of management as defined by which of the four project categories the proposed project falls. If it is determined that the project is not likely to cause significant adverse environmental effects, a project permit – with conditions as required – will be approved.

The integrity of the review process is further ensured by various processes and protocols in place to maintain separation of permitting and other functions of the port authority. Specifically, work instructions guide Project and Environmental Review team members undertaking the reviews to ensure that those individuals are dedicated to the permitting role for the project.

## **Review of environmental assessment processes**

We understand that the expert panel has been asked to specifically consider five key questions, matters raised in the mandate letters of the Minister of Environment and Climate Change Canada and the Minister of Indigenous and Northern Affairs. Additionally, the expert panel has identified discussion themes to help guide feedback.

The Vancouver Fraser Port Authority provides responses to these questions and themes in the following sections.

As noted above, the Vancouver Fraser Port Authority is a federal authority with decision making responsibilities under section 67 of CEAA 2012. The port authority has developed a Project and Environmental Review process that applies to all projects on federal port lands and waters administered by the Vancouver Fraser Port Authority. It is through this process that the port authority undertakes environmental reviews in order to make our determination as per section 67 of CEAA 2012. Proponents of projects could be port tenants or the port authority itself, but regardless of the proponent, all projects must be reviewed through the Project and Environmental Review process.

The Vancouver Fraser Port Authority most commonly reviews non-designated projects proposed by tenants but, as described earlier, sometimes the port authority is a proponent for a non-designated project and, less commonly, the port authority is the proponent of a designated project. The port authority may also be a participant in a whole of government review of a designated project wherein the port authority holds a permitting function following the federal environmental assessment. Given our experience, we have included reference to both non-designated and designated projects in the responses below.

In general, the Vancouver Fraser Port Authority believes that CEAA 2012 is working well, however, there is opportunity for enhanced clarity, appropriate resourcing and greater transparency.

## ***Theme A: Environmental assessment in context***

### **Address public concerns**

The Vancouver Fraser Port Authority uses environmental review as a planning tool to inform our permitting decisions. Through our Project and Environmental Review process, the public, Aboriginal groups and stakeholders have in recent years expressed concern around the types of commodities that move through the port. In particular, energy products have received wide attention and opposition over the last several years. Environmental review processes are not well equipped to facilitate or address Canadian policy-related conversations around trade, energy and climate change. It is our experience that environmental review and assessment is being used as one of the only avenues for this dialogue.

#### **1. Recommendation:**

Other mechanisms or forums for meaningful public dialogue around policies should be considered outside of environmental assessment processes.

***Key Question: How to require project advocates to choose the best technologies available to reduce environmental impacts?***

### **Consider the best technologies**

The consideration of mitigation in the context of (federal) environmental assessment has long been focused on technically and economically feasible measures. Mitigation measures, whether they are technologies, construction and operational practices, or other measures, must be both technically and economically feasible in the specific context of the project being proposed and its location.

However, the documentation of technical and economic feasibility in environmental assessment is not always sufficient to provide the reviewer confidence that best available technologies have received due consideration.

#### **2. Recommendation:**

Ensure mitigation measures, whether they are technologies, construction and operational practices, or other measures, are both technically and economically feasible in the specific context of the project being proposed.

#### **3. Recommendation**

Introduce more stringent requirements for proponents to provide information about project - and site-specific - technical and economic feasibility (including the criteria used to determine feasibility), in addition to information that is already required about the relative environmental effects of the mitigation alternatives, to provide greater assurance that the best available feasible technologies (and other mitigation measures) are in fact being selected.

When more than one technically and economically feasible technology (or other mitigation measure) has been identified, an additional requirement for the proponent to provide a rationale for the selection of the technology (or other mitigation measure) preferred by the proponent, particularly if the selected technology (or other mitigation measure) has more frequent or serious adverse environmental effects than other feasible alternatives, would

allow the statutory decision maker to consider whether the selection is justified in the circumstances.

Requiring the use of a specific technology or other mitigation measure is already within the capacity of the statutory decision maker through the authority and responsibility of the decision maker to impose conditions with which the proponent must comply (e.g. section 53 of CEAA 2012) and the inclusion of those conditions in the decision statement (per section 54 of CEAA 2012). This is a demonstrably effective way to ensure the best available feasible technologies are selected.

## ***Theme B: Overarching Indigenous considerations***

***Key question: How to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects?***

### **Improve Aboriginal involvement**

Overarching Aboriginal considerations are best provided by Aboriginal groups. That said, in our experience, the capacity of Aboriginal groups to effectively participate in a federal environmental assessment process can vary and could be enhanced by providing focused training in fundamental environmental assessment methodologies and processes to those groups potentially affected by a project. This approach has been successfully taken by other jurisdictions; for example, the British Columbia Environmental Assessment Office has, in some cases, provided workshops to potentially affected Aboriginal groups regarding general environmental assessment methodology, including the selection of valued components and assessment of potential effects on them (consistent with provincial guidance in place at the time), and how the provincial environmental assessment process works. These workshops ensure potentially affected Aboriginal groups are better positioned to understand and provide timely and relevant feedback on a project environmental impact statement under review.

#### **4. Recommendation:**

The port authority recommends the capacity of Aboriginal groups be enhanced to more effectively participate in a federal environmental assessment process.

Consultation with potentially affected Aboriginal groups is a Crown responsibility; however, proponents typically engage the same Aboriginal groups to identify issues and concerns to inform scoping of the environmental assessment, to obtain information about traditional uses of land and resources, and to obtain traditional knowledge, among other information relevant to conducting an environmental assessment. Duplicative or overlapping engagement and consultation can contribute to consultation 'fatigue' among affected Aboriginal groups, straining their capacity to effectively participate in environmental assessment processes.

#### **5. Recommendation**

It is recommended that future federal environmental assessment legislation and associated guidance should provide for coordination of Crown consultation and proponent engagement through the environmental assessment and subsequent permitting processes to avoid the above outcome.

## **6. Recommendation:**

Consistent with the July 2016 *Interim Principles* published on its website, the Agency should continue to provide guidance, ideally developed in collaboration with Aboriginal groups, for the consideration of Aboriginal traditional knowledge in environmental assessments. While international best practices may exist, Aboriginal groups in Canada are extremely diverse. In order to support the renewal of nation-to-nation relations and progress reconciliation, Aboriginal peoples need to be central to the development of policy approaches that involve them.

### **Theme C: Planning environmental assessment**

#### **Enhance transparency and trust in environmental assessment review processes**

The Vancouver Fraser Port Authority currently plays a very effective role in environmental protection and project approval, but there are opportunities to improve public trust.

## **7. Recommendation:**

The port authority believes the list of designated projects in the *Regulations Designating Physical Activities* is currently appropriate and is still consistent with the Comprehensive Study List Regulations under CEAA 1992. The Vancouver Fraser Port Authority also believes our enhanced review process reflects best practices, provides an appropriate assessment process commensurate to the scale, complexity and potential effects of a particular project, and is an example of excellence in science-based, publicly-responsive environmental reviews.

#### **Provide for regional cumulative effects assessments**

Aboriginal groups and others have called on the federal government to undertake regional cumulative effects assessments, something port authorities cannot do as it is beyond our mandate. CEAA 2012, section 73, includes provisions for regional studies but there is no clear mechanism to initiate such studies, define the scope or fund the studies. Regional cumulative effects assessments could help to reduce the pressure on individual projects (especially non-designated projects) to conduct such an assessment. Regional assessments can be very complex and would require considerable time to undertake, however, such an approach could help to build trust and could include meaningful incorporation of Aboriginal traditional knowledge.

## **8. Recommendation**

CEAA could be enhanced by developing clear mechanisms and appropriate guidance to help initiate, define scope and fund regional studies, including regional cumulative effects assessments.

#### **Ensure consistent approaches**

Federal departments issue a number of policies, guidelines and frameworks and these documents are intended to assist the proponent and the public through a federal environmental assessment.



## 9. Recommendation

The port authority believes there would be greater consistency leading to better transparency if the Agency were to establish a template approach. In many instances, documents developed by different federal departments present differing styles and in some instances differing or conflicting approaches to a technical topic.

We believe that a good approach has been used by Environment and Climate Change Canada for its guidance on assessing cumulative environmental effects. This document is located in a logical spot on their website and is updated on an on-going basis that reflects the evolving nature of the topic. We believe it would be beneficial to provide a central location for all environmental assessment-related documents, perhaps on the Agency's own site, where all current guidance documents for an environmental assessment could be maintained. This would help to reduce confusion, and would increase efficiency, consistency and transparency.

### ***Theme D: Conduct of environmental assessment***

***Key Question: How to restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with the provinces and territories to avoid duplication?***

#### **Capacity and resourcing**

In general, CEAA 2012 has helped to streamline the number of federal responsible authorities for conducting environmental assessments, and the centralization of administration of the environmental assessment process has improved efficiency and consistency. The Vancouver Fraser Port Authority supports the continuation of this model. However, the efficiency and effectiveness of environmental assessments would be further improved by enhancing the capacity of those individuals charged with the administration of the review process.

## 10. Recommendation

Specifically, the Agency needs more capacity and resources. Capacity improvements are necessary in core assessment methodologies (e.g. scoping, use and selection of valued components, determination of significance, cumulative effects assessment) and project management, as well as in resourcing generally. Ensuring process administrators have fundamental skills pertaining to environmental assessment is vital to ensuring the robustness of process oversight, achieving efficiency and effectiveness of assessment, and improving credibility of assessment outcomes.

The International Association for Impact Assessment is currently developing a professional development program that would offer on-line training for environmental assessment practitioners and administrators to provide a foundation of competency that is not specific to any jurisdiction; this program could help to address in part the noted capacity issues.

#### **Minister's power to designate projects**

The public and others have called for some types of non-designated projects, particularly those that are large or high profile, and therefore have a higher potential for significant effects or significant public interest, be reviewed not by a federal authority, such as a port authority, but by a federal responsible authority. CEAA 2012 already includes provisions for the minister to designate projects that are not already included in the *Regulations Designating Physical Activities* and these provisions could be applied more frequently. This

however would place a greater administrative burden on federal regulatory processes which would require additional resources, and would run the risk of increased costs and time for project proponents to obtain authorizations and permits. Where projects would have previously been reviewed by a port authority, the federal government would now be subject to the full brunt of opposition normally targeting the port authority. The Vancouver Fraser Port Authority does not believe this change is warranted, provided port authorities employ a sound, robust and transparent review process as reflected in the Vancouver Fraser Port Authority's improved Project and Environmental Review process.

### **11.Recommendation**

The port authority recommends that the current provisions and processes be maintained for designating projects.

### **Compel transparency around port authority reviews**

### **12.Recommendation**

It may be more appropriate to compel port authorities to provide appropriate transparency around project and environmental reviews and permitting, and improve public participation in informing environmental determinations and permitting decisions. The Vancouver Fraser Port Authority has already taken steps in this direction through our improved Project and Environmental Review process.

### **Provide additional oversight**

### **13.Recommendation**

Non-designated projects that have a greater potential for significant adverse environmental effects or the potential for significant public interest could be posted to the Canadian Environmental Assessment Registry for Agency oversight and for greater transparency. This would be a return to the way screening level projects were overseen by the Agency under CEAA 1992, but could add several weeks or months to project reviews to allow for Agency oversight and website posting. Such oversight would need to be designed to ensure project reviews continued in a timely manner to support proponent certainty, and to ensure the competitiveness of Canada's ports and Canada's ability to trade.

***Key Question: How to ensure decisions are based on science, facts and evidence and serve the public's interest?***

### **Focus on science, facts and evidence**

It is important to acknowledge that federal environmental assessment is already based on sound science, facts, and evidence. The following recommendations are focused on continuing this well-established practice.

Some jurisdictions (such as British Columbia) include in their terms of reference for environmental assessment requirement for identifying the technical experts responsible for preparing specific content within an environmental assessment, including names and qualifications. This approach provides assurance that technical content has been prepared by suitably qualified and experienced professionals. Also, some jurisdictions have professional associations for certain disciplines, such as engineering, forestry, and biology, and those professional associations establish standards of care and performance that bind their members to a level of professionalism and ethical conduct; this can provide further assurance to participants in an environmental assessment process when the technical



experts responsible for preparing an assessment are so accredited (as appropriate to the subject matter).

#### **14.Recommendation**

Using appropriate qualified and experienced accredited professionals to prepare technical content of an environmental assessment, and identifying those professionals transparently, could help to increase public confidence in the technical content of environmental assessment documents. Such requirements could easily be integrated into the template and/or project-specific guidelines for an environmental impact statement.

#### **15.Recommendation**

It is a standard requirement in many jurisdictions that an environmental assessment describe the methods used to collect and analyze data, including the specifications and parameters of models (such as confidence limits and margins of error) used to predict potential environmental effects. This approach allows the reviewer and other environmental assessment participants to consider the appropriateness of the methods and the quality of the information in the environmental assessment. This practice, which is already used in federal environmental assessment in Canada, should continue.

#### **16.Recommendation**

Data upon which an environmental assessment is based should be made available to participants in the environmental assessment process, so they may review it together with the interpretation provided and conclusions drawn in the environmental impact statement. This is generally already done and should continue in future federal environmental assessment.

#### **17.Recommendation**

In cases where the opinion of participants in the environmental assessment process clearly point to issues that warrant further consideration, it is recommended that the Agency, the Project Environmental Assessment Federal Review Panel, or other federal environmental assessment process administrator consider soliciting input from independent, impartial technical experts who have the scientific expertise and experience appropriate to the issue (if the expertise is not available within government). Ensuring such third-party technical input is impartial – that is, not associated with either the project proponent or its opponents – is critical to achieving process credibility. Such additional technical input to a federal environmental assessment should also then be made available to environmental assessment participants, including the proponent, for their information and review. In this way, the decision of the statutory decision maker can be demonstrated to be based on peer-reviewed science, facts, and evidence, instead of public opinion.

### ***Theme E: Decision and follow-Up***

#### **Fully consider the public interest**

With respect to ensuring decisions serve the public interest, it should be noted that the federal environmental assessment, in its current form and scope pursuant to CEAA 2012, does not provide all of the information necessary to inform a public interest decision. For example, federal environmental assessment pursuant to CEAA 2012 is focused on environmental effects, and does not take into consideration all socio-economic effects (particularly those outside of federal jurisdiction), nor does it take into consideration socio-

economic benefits that may be used to justify significant adverse environmental effects (e.g. pursuant to section 52(4) of CEAA 2012).

### **18.Recommendation**

Future federal environmental assessment legislation and related guidance should provide transparency regarding the factors taken into consideration by the statutory decision maker (whether the Governor in Council or another entity) when making a public interest decision and the process by which such a decision may be made, including identifying the source of information used to inform the public interest decision, if other than the federal environmental assessment. Providing for public input into other (i.e. non-environmental assessment) information sources that inform the public interest decision (e.g., making information about anticipated project benefits subject to a transparent review process that includes public consultation) should also be considered (although some of that information could also or instead be integrated into a federal environmental assessment). These changes will enhance public trust in the decision-making that follows a federal environmental assessment process.

### **Enhance monitoring and reporting**

For designated projects, decision statements and licenses include conditions that may require monitoring and follow-up and these conditions are enforceable.

### **19.Recommendation**

For non-designated projects, CEAA could be enhanced or regulations could be created to include specific requirements around reporting on environmental monitoring for project impacts and/or compliance monitoring of environmental conditions. Federal government resources would need to be provided to allow for appropriate oversight, monitoring and enforcement. Supporting guidance documents and tools would need to be developed as well.

### **20.Recommendation**

Federal authorities are required to make an annual declaration to Parliament (pursuant to sections 71-72, CEAA 2012) and this declaration could be enhanced. More detailed post-project reporting through a website listing could be required to supplement the annual declaration. A central reporting tool could be developed to streamline the reporting and this could be done through the on-line CEA Registry.

### **Provide for enforcement and ability to issue penalties**

The *Canada Marine Act* gives the Governor in Council the authority to enact regulations that establish administrative monetary penalties for contraventions under the *Canada Marine Act*. Canada Port Authorities are not authorized to issue administrative monetary penalties, remaining one of the only federal authorities without the ability to issue such penalties.

Canada Port Authorities can set regulations prohibiting certain activities without prior authorization, but there is no consequence if those regulations are violated. For example, port authorities can implement environmental standards and conditions but cannot fine operators who are found to be non-compliant. This has the effect of reducing the ability of the port authority to fulfill its mandate. Project and environmental review permit conditions, regulations and other initiatives, designed to reduce adverse effects are limited by the inability to properly enforce. This lack of monetary or other penalty power may create or appear to create an unintended jurisdictional vacuum.

## **21.Recommendation**

Authorize port authorities to issue administrative monetary penalties to add to the enforcement toolkits of port authorities and assist with compliance oversight activities.

### ***Theme F: Public involvement***

***Key Question: How to provide ways for Canadians to express their views and opportunities for experts to meaningfully participate?***

#### **Improve public involvement**

Complex and detailed technical studies are an important part of environmental assessment. However, the volume and complexity of the information makes it challenging for the public to meaningfully participate.

## **22.Recommendation**

It could be helpful to require proponents and the permitting agency to provide plain language summaries of the technical information in a format accessible to the public. Meaningful examples and templates would be helpful guidance.

The current federal environmental assessment process already provides numerous opportunities for Canadians to express their views, including the opportunity to comment on the need for and scope of an environmental assessment, on the suitability of a substitution, on the guidelines for an environmental impact statement, and on the completeness and sufficiency of the environmental impact statement itself.

## **23.Recommendation**

The expression of concern is a valuable input to identifying components of the natural and human environment upon which an assessment should focus; this practice, which is already reflected in the use of valued components and the requirement to consider public and Aboriginal input when selecting valued components for federal environmental assessment, should continue, as it provides an important and meaningful opportunity for Canadians to express their views and influence the scope of assessment.

Similarly, once an environmental impact statement has been prepared by the proponent, expression of concern by participants in the environmental assessment process (e.g. comments on the sufficiency of an environmental impact assessment) can help to focus the Agency's or the project review panel's consideration of technical issues.

## **24.Recommendation**

It is important that the review be based on science, facts and evidence. The expression of opinion by environmental assessment participants, while useful as an indicator of aspects that may warrant further consideration, cannot be permitted to supersede science, facts and evidence. Much input from participants in environmental assessment processes constitutes opinion, often unsupported by science, facts, or evidence, and often not subject to the same standard of professional care or level of scrutiny as the content of a proponent's environmental impact assessment. The Agency, project review panel or other federal environmental assessment process administrator should demonstrate that the issues and concerns expressed by participants in the environmental assessment process have been taken into meaningful consideration, without undermining the scientific, factual, and evidence-based foundation of the environmental assessment process.

## **Theme G: Coordination**

**Key Question: How to restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with the provinces and territories to avoid duplication?**

Inter-jurisdictional cooperation, coordination, substitution, and equivalency are fundamentally important to the success of federal environmental assessments, measured in terms of efficiency, effectiveness, and public trust.

### **Harmonize designated projects**

#### **25.Recommendation:**

For designated projects where both a federal and provincial environmental assessment are required, provision for process harmonization and coordination must continue. In particular, the federal assessment process should recognize the value of and provide for the preparation of a single environmental impact statement that meets the needs of both jurisdictions. This means that the Agency (or other responsible authority) should collaborate with the other jurisdiction to prepare a single, integrated terms of reference or environmental impact statement guidelines document that incorporates the information requirements of both jurisdictions. This cannot be achieved if the federal environmental impact statement guidelines are fully templated and issued without prior engagement with the provincial environmental assessment process administrator.

#### **26.Recommendation:**

The successful memorandum of substitution between the Agency and the British Columbia Environmental Assessment Office should be considered as a model for designing substitution provisions in future federal environmental assessment legislation.

#### **27.Recommendation:**

For designated projects where both a federal and provincial environmental assessment are required (i.e. if part of the project is on provincial lands), future environmental assessment legislation should consider provision for “reverse” substitution, whereby a federal environmental assessment could be conducted in lieu of a provincial assessment, for projects that are located on federal lands (e.g. federally administered port lands and waters,) or are otherwise predominantly within federal jurisdiction. This process could be modeled on the existing substitution provisions within CEAA 2012.

### **Harmonize non-designated projects**

#### **28.Recommendation**

For non-designated projects located on federal land or otherwise within federal jurisdiction (i.e. projects to which sections 66 to 72 of CEAA 2012 now apply), provisions could be re-introduced for increasing consistency and avoiding duplication in the manner in which multiple federal authorities identify, evaluate, and determine the significance of potential environmental effects. For example, previous versions of CEAA (and related guidance) included provisions for coordination among multiple federal authorities, identifying a lead responsible authority, and conducting a single assessment. Port authorities should serve this function for projects on federal port lands.

### **29.Recommendation**

For non-designated projects on federally administrated lands and waters, such as port lands and waters administered by a Canada Port Authority, new federal legislation should assign lead responsibility for identifying, evaluating, and determining the significance of potential environmental effects to the port authority (which must conduct regulatory review of any such project in any case, regardless of the involvement of any other federal authority in permitting), and impose obligation on other federal authorities to provide relevant specialist or expert information in a timely manner, similar to the provision of section 20 of CEAA 2012 for designated projects. Should CEAA introduce new such provisions, the Vancouver Fraser Port Authority would incorporate them into our existing review process to address more efficient interagency coordination for non-designated projects.

### **30.Recommendation**

Future federal environmental assessment legislation should also clarify the scope of environmental reviews of non-designated projects, in particular specifying the factors that should be considered (i.e. establishing a provision similar to section 19 of CEAA 2012), and provide guidance with respect to core requirements and methods to improve consistency in such evaluations between federal authorities and in different regions.

### **Consider multi-agency approach to coordinate regional initiatives**

### **31.Recommendation**

CEAA could include provisions or requirements for regional multi-stakeholder and multi-agency collaborative partnerships or forums, including with the representation of local municipalities and Aboriginal groups, for the purpose of environmental management oversight. With the proper framework, mechanisms and tools, and support by all stakeholders, such partnerships or forums can help to coordinate environmental initiatives and provide advice with a goal to enhance long-term regional sustainability. The Vancouver Fraser Port Authority supports the development of a new multi-stakeholder interagency collaborative forum for the Lower Mainland of British Columbia, set up to provide such an advisory role.

We thank the expert panel for considering our comments and recommendations and we look forward to the outcomes of your review. We would be pleased to answer any questions you may have regarding this submission.