

**CANADIAN ENVIRONMENTAL NETWORK (RCEN)
ENVIRONMENTAL PLANNING & ASSESSMENT (EPA) CAUCUS**

**STRATEGIC ENVIRONMENTAL ASSESSMENT
[A DISCUSSION PAPER FOR CAPACITY-BUILDING PURPOSES]**

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SUMMARY

This discussion paper is an output of a capacity-building workshop on strategic environmental assessment (SEA) set within the positive collaboration that has become established between the Canadian Environmental Assessment Agency [the Agency] and the Canadian Environmental Network's Environmental Planning and Assessment Caucus over the years. It was made possible by a special Agency contribution dated 05 February 2007.

The author first introduces the two parties to the contribution agreement, provides background on the advent and development of strategic environmental assessment in Canada, and summarises the workshop feature presentation and the two cases discussed. He then explores various weaknesses in strategic environmental assessment in Canada either perceived by persons having attended the workshop, by himself through his participation in the network's Environmental Planning and Assessment Caucus since 1999, and from his own experience as an environmental assessment practitioner. This in turns leads to the identification of opportunities for the advancement of strategic environmental assessment as an instrument of sustainable development in Canada. Several recommendations are formulated, particularly within the scope of the upcoming Seven-Year Review of the Canadian Environmental Assessment Act, to be completed in 2010, but also for the nearer future.

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NOTICE

This paper has been developed and is submitted as input towards the improvement of Strategic Environmental Assessment (SEA) and to assist in moving SEA forward as an instrument of truly sustainable development in Canada.

Highly positive are the current statutory requirement for the periodic review of the Canadian Environmental Assessment Act (CEAA) with major public participation; and occasional reviews by the Auditor General of Canada's Office and the Privy Council Office among others. The Regulatory Advisory Committee (RAC) on the Canadian Environmental Assessment Act and its various subcommittees also allow for stakeholder input [the Canadian Environmental Network (RCEN)'s Environmental Planning and Assessment (EPA) Caucus has three seats on the Regulatory Advisory Committee]. Canada being a democracy, the Parliamentary process itself is a major strong point.

Moreover, a positive working relationship has developed over the years between the Canadian Environmental Assessment Agency and the RCEN's EPA Caucus, which is comprised of members of Canadian environmental non-governmental organisations (ENGOS) with an interest in environmental assessment – including SEA. Agency funding allows the caucus to meet once or twice a year, to meet yearly with senior Agency cadres and to conduct occasional capacity-building workshops such as the one which resulted this discussion paper.

These positive features deserve full recognition. This said. In the discussion paper the author dwells instead on those items which are seen as needing more work, whether identified during the workshop, raised in the literature or through practical experience.

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ACRONYMS

Acronym	Signification
Anon.	Anonymous
CBD	Convention on Biological Diversity
CEAA	Canadian Environmental Assessment Act, 1997
CEAA	Canadian Environmental Assessment Agency
DFAIT	Department of Foreign Affairs and International Trade (Canada)
DFO	Department of Fisheries and Oceans [Fisheries and Oceans Canada]
EA	environmental assessment
EC	European Community
ENGO	environmental non-governmental organisation
EPA	environmental planning and assessment
EPMP	Environmental Process Modernization Plan
GoC	Government of Canada
GoUK	Government of the United Kingdom
HUD	Housing and Urban Development Department (United States of America)
IAIA	International Association for Impact Assessment
IISD	International Institute for Sustainable Development
LNG	liquefied natural gas
NGO	non-governmental organisation
NRIA	National Resources Industry Associations
OECD	Organisation for Economic Co-Operation and Development
RAC	Regulatory Advisory Committee on the Canadian Environmental Assessment Act
RCEN	Canadian Environmental Network
SEA	strategic environmental assessment
UNECE	United Nations Economic Commission for Europe

CANADIAN ENVIRONMENTAL NETWORK (RCEN) ENVIRONMENTAL PLANNING & ASSESSMENT (EPA) CAUCUS

STRATEGIC ENVIRONMENTAL ASSESSMENT [A DISCUSSION PAPER FOR CAPACITY BUILDING PURPOSES]

1.0 Introduction

The Canadian Environmental Assessment Act, 1997 [the Act] provides for environmental assessment (EA) in Canada. It was amended in 2003 following a statutory Five-Year Review.

The Act defines environmental assessment as “a process to predict the environmental effects of proposed initiatives before they are carried out”, allowing decision-makers to identify possible adverse environmental effects and propose measures to mitigate them [CEAA 2003].

The Act also established the Canadian Environmental Assessment Agency [the Agency] as an independent organisation under the authority of Canadian Minister for Environment, to administer the **federal** environmental assessment process and to “promote policies and practices”.

One of the Agency’s “objectives” is to ensure an opportunity for timely public participation in the environmental assessment process. Another is to support research in matters relating to environmental assessment. The Agency also has a role in encouraging the development of environmental assessment techniques and practices, whether alone or in cooperation with other agencies or organisations.

The Canadian Environmental Network (RCEN) is a network of regional environmental networks and their member groups operating throughout Canada. Its Environmental Planning and Assessment (EPA) Caucus [the Caucus] was created in the late 1980s. It promotes environmental assessment for sustainable development in Canada.

The Caucus has 80+ members: environmental assessment practitioners, community-based educators, academics, activists, lawyers, policy analysts, independent consultants and other concerned citizens, all with first-hand experience with EA. The Caucus operates principally on funding by the Agency, but remains totally independent.

This capacity-building workshop on strategic environmental assessment (SEA) was set within the positive collaboration that has become established between the Agency and the RCEN’s EPA Caucus over the years. It was made possible by a special Agency contribution dated 05 February 2007 covering it [and other items]. As per the agreement the workshop would feature one to three speakers and one result would be a discussion paper on how the caucus can move forward with SEA.

2.0 Workshop Summary

The workshop took place in Ottawa on 16th March 2007 and was attended by 22 persons [Appendix “A”] from nine of Canada’s 13 provinces and territories. The participants were

selected following a call for delegates in accordance with RCEN procedures. Its goals were to cover and discuss the following items and time permitting to come to a consensus on:

- What is SEA?
- How does SEA differ from regional, class and project EA?
- How is SEA done?
- Current [perceived/actual] resistance to the “SEA” term
- What do we - the RCEN EPA Caucus, want out of SEA? Is this different from the Cabinet Directive?
- How to develop/advance a valid EA process for/in Canada?
- SEA priorities for Canada as seen by the RCEN EPA Caucus.

The workshop had two major features, namely: I) A presentation by Mr Tim Smith, Senior Policy Analyst with the Agency, assisted by Ms Candace Anderson, Policy Analyst, also with the Agency; II) The examination and discussion of two specific cases in which SEAs were invoked recently, facilitated by Mr Stephen Hazell, Executive Director, Sierra Club of Canada.

Mr Smith and Ms Anderson convene or/and chair the Canadian Environmental Assessment Act Regulatory Advisory Committee (RAC) subcommittee on SEA.

3.0 Background

At [http://en.wikipedia.org/wiki/Strategic Environmental Assessment](http://en.wikipedia.org/wiki/Strategic_Environmental_Assessment) Wikipedia, The Free Encyclopedia, defines/describes SEA as:

“a system of incorporating environmental considerations into policies, plans and programmes”...

In the Cabinet Directive on the environmental assessment of policy, plan and program proposals—the Cabinet Directive [GoC 2004], first issued by Canada in 1990, SEA is defined more forcefully as:

“The systematic and comprehensive process of evaluating the environmental effects of a policy, plan or program and its alternatives”.

The latter definition is adapted from that given by Théirivel and Paridario (1996) in “The Practice of Strategic Environmental Assessment.”

The very concept of SEA would have its origins in regional development and land use planning in the “developed” world. Early impetus to SEA was given in 1981 when the United States of America’s Housing and Urban Development Department (HUD) published its [Area-wide Impact Assessment Guidebook](#); whereas in 1991 the [Convention on Environmental Impact Assessment in a Transboundary Context](#) laid the foundations for the introduction of SEA in Europe. All European Union member states were to have ratified SEA Directive 2001/42/EC by mid-2004 [Anon. 2007]. The European directive is available @: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0042:EN:HTML>.

As mentioned, for Canada, the Cabinet Directive was issued in 1990. It was subsequently modified in 1999 and again in 2004. It is available at the Agency's web site <<http://www.ceaa-acee.gc.ca/>>. The former modification was brought shortly after the passage of the Act in 1997, the latter shortly after the conclusion of the Five-Year Review in 2003.

However, before the Five-Year Review had been finalised, on September 30, 2002, in the Speech from the Throne, the Government of Canada expressed its intention to strike an external advisory committee on Smart Regulation. Smart Regulation was announced on 24th March 2005. At the [Smart Regulation](#) web site it is seen that Canada's government is committed to a "performance-based regulatory system that will protect and advance the public interest in the areas of health, safety and security, the quality of the environment, and the social and economic well-being of Canadians".

Smart Regulation, which formally recognises the interdependence of social, environmental, and economic objectives, is an integral part of the Government of Canada's management agenda and advances objectives set in recent public policy documents. Theoretically, therefore, Smart Regulation pursues sustainable development.

From the foregoing it is seen that save for the HUD Guidebook the move towards a wider use of SEA in policy development and in the definition of development programmes and plans coincides with planning phase of the 1992 Earth Summit held in Rio de Janeiro, Brazil. An [International Association for Impact Assessment](#) (IAIA) was organised in 1980. It fosters best practice in the use of impact assessment for "informed decision making" with respect to policies, programmes, plans and projects.

A rapid Google® search reveals there is now a wealth of material on SEA, and SEA is now also being introduced into international development assistance. Some interesting sites are listed in Appendix "B".

Terminology

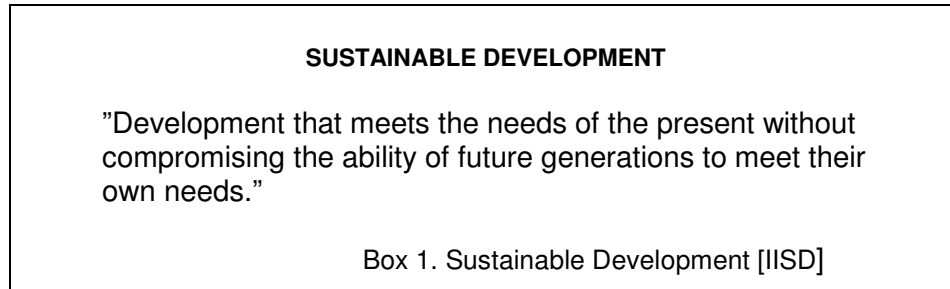
Clearly SEA is meant as a tool in the pursuit of sustainable development. In order to properly grasp what this entails, it is worthwhile to examine some of the terms used above.

"Strategic"

As opposed to "tactical", which concerns the short term, "Strategic" is concerned with **long-term goals**. From this, SEA is of relevance to long-term development goals and how they are reached on the one hand; and the examination of alternatives by which to reach them on the other. How society chooses between such alternatives, including the null alternative, that is the option not to pursue a particular goal or, stated in other words, the absolute need to pursue an objective at a given time and under specific circumstances, is another major consideration.

“Sustainable Development”

At <http://www.iisd.org/sd/>, the International Institute for Sustainable Development (IISD) defines “Sustainable Development” as in Box 1, hereunder. It is emphasised that this commonly used definition integrates the two key concepts of “needs” and “limitations” as explained in Box 2, also hereunder.



In A better quality of life - strategy for sustainable development for the United Kingdom [GoUK 1999], sustainable development is explained in terms of four objectives, being:

- Social progress which recognises the needs of everyone;
- Effective protection of the environment;
- The prudent use of natural resources; and
- The maintenance of high and stable levels of economic growth and employment [Anon. 2007].

As seen @ <http://www.sustainable-development.gov.uk/what/principles.htm> [21st March 2006 update], these objectives were/are set within five “principles of sustainable development”, namely:

- Living within environmental limits;
- Ensuring a strong, healthy and just society;
- Achieving a sustainable economy;
- Using sound science responsibly;
- Promoting good governance.

The first of the above principles is to be understood as ensuring that those natural resources “needed for life” are unimpaired and remain so for future generations. The second is meant to ensure that among other things the needs of all people are met. Prosperity for all and the efficient use of natural resources are basic tenets of the third. Strong scientific evidence and the Precautionary Principle are the basis of the fourth; whereas effective, participative systems of governance are the foundation of the fifth principle [GoUK 1999].

“Precaution”

As developed by Cameron & Aboucher (1991) the [Precautionary Principle](#) is a **fundamental** principle of global environmental protection policy and law. The term was first used in English around 1988 to express the view that if the consequences of a venture are unclear but the

possibility exists of major or irreversible negative consequences, then it is better not to proceed with the activity. The principle is most often invoked with respect to new technology or the absolute need of a proposed development. Principle 15 of The Rio Declaration, 1992 further says:

“In order to protect the environment the Precautionary Approach shall be widely applied by States according to their capabilities.”

[The Rio Declaration, 1992]

The [Wingspread Statement](#) goes even further by laying the burden of proof squarely on the proponent.

SUSTAINABLE DEVELOPMENT
— TWO KEY CONCEPTS —

- The concept of **needs**, in particular the essential needs of the world's poor, to which overriding priority should be given; and
- The idea of **limitations** imposed by the state on technology and social organisation on the environment's ability to meet present and future needs."

Box 2. Sustainable Development – Key Concepts

4.0 **The Advent and Development of SEA in Canada**

From the foregoing, SEA officially became a feature of economic development in Canada with the issuance of the Cabinet Directive in 1990. Another major phase came with the passage of the Act in 1997, followed by the first modification to the Cabinet Directive in 1999. A statutory Five-Year Review of the Act was launched in 2001. It was completed in 2003 and was shortly followed by a second modification of the Directive. The year previous, the Government of Canada had already announced it would introduce Smart Regulation as a “performance-based regulatory system” that would advance the public’s interest in the integrated areas of health, safety and security, environmental quality and social and economic well-being. [Smart Regulation](#) came into application in 2005.

5.0 **The Workshop**

The workshop was set within the broad EPA Caucus mission to build EA capacity among its members and to advance EA in Canada, including SEA, for truly sustainable development. Another consideration is upcoming Seven-Year Review of the Act, to take place by 2010.

THE PRECAUTIONARY PRINCIPLE

“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

Box 3. The Precautionary Principle [The Rio Declaration, 1992] ⁽¹⁾

The term “truly” is emphasised by the author above because in his opinion, the common definition of Sustainable Development [Box 1] used in the Cabinet Directive is weak not to say flawed in that among other things it does not properly value the integrity of ecosystems and species both in terms of quality and quantity. Moreover, the matter of burden of proof is not taken into account. Indeed, “meeting the needs of the present without compromising the ability of future generations to meet their own needs” is rather vague in both respects.

To illustrate, the development of shrimp farming in the Amazon is clearly a means of [contributing to] meeting present and future protein needs of the world. But how to prove whether or not it compromises the ability of future generations to meet [all] their needs? And who is to say? In other words, how can differing interests arrive at consensus on what compromises the ability of future generations to meet their needs?

Feature Presentation

In his presentation, the guest speaker, Mr Tim Smith briefly reviewed the evolution of SEA in Canada from the issuance of the Cabinet Directive in 1990. He then explained the coming into existence of the aforementioned RAC Subcommittee on SEA:

A review by the Commissioner of Sustainable Development had found “problems” in the application of SEA in Canada. The subcommittee was struck in 2005 in response to a request by Canada’s Minister for Environment’s that RAC look at ways to correct this. Among other items, therefore, the subcommittee is examining:

- a) the definition and purposes of SEA,
- b) the linkages between SEA and project EA,
- c) public participation in SEA by all stakeholders.

The subcommittee has also looked at generic design criteria for SEA in Canada; undertaken an issues inventory; and drafted a frame for its report.

Among the issues identified by the RAC subcommittee are:

1) The full text of Principle 15 - The Precautionary Approach, The Rio Declaration, can be seen @:
<http://www.gdrc.org/u-gov/precaution-7.html>.

- The weak recognition of the relevance of SEA notwithstanding the Cabinet Directive,
- The weak integration of SEA into the decision-making process,
- How and by whom should an SEA process be triggered?
- Current uncertainty concerning the appropriate degree and type of linkage between SEA and project EA,
- The absence of clear legislative bench marks for SEA in Canada,
- The absence of consensus on what constitutes “best practice” , and
- How to go about SEA and what tools to use. Among other things: I) What roles should the public play? II) How to ensure that SEA is transparent and inclusive yet timely and efficient? III) Who should have the ultimate authority to follow up on recommendations from a SEA exercise? IV) How to ensure that the interests of different jurisdictions are accommodated and their inputs coordinated?

Another major issue relates to the accountability for SEA in Canada. This being so, the Agency has recognised the need for a legislative basis for SEA in Canada.

Other items that may affect the subcommittee’s work include an upcoming/ongoing evaluation/review of the Cabinet Directive by the Privy Council Office, Treasury Board, and others; a follow-up audit of SEA [to be undertaken] by the Commissioner for Sustainable Development; and the mandated Seven-Year Review of the Act, which is to be completed in 2010.

For all these reasons the Agency is considering conducting potential pilot SEA exercises that could help resolve these questions. The Agency also has a small budget for research on SEA.

Two Case Reviews

The second major feature of the workshop was a review of two cases from Western and Eastern Canada.

Case I – Expansion of Skiing in Banff National Park

The first case reviewed related to Parks Canada’s plans to expand skiing facilities contiguous to/within the boundaries of Banff National Park. It was presented by Mr. Peter Duck, Executive Director, Bow Valley Naturalists, based in Banff, Alberta.

From the presentation, Parks Canada’s long-range planning process with respect to ski areas would be governed by its internal guidelines in the regard, which specify that ecological integrity and other requirements under CEAA and the National Parks Act are to be addressed during the development of detailed long-range plans for individual ventures, each of which is to be the subject of a “SEA”.

Moreover, in a response to a question from Bow Valley Naturalists, Parks Canada wrote that “the implications for ecological integrity were fully integrated into the development of the Guidelines themselves”, which itself was based on a strategic assessment conducted internally.

But as explained by Mr. Duck, long-range plans for individual ski areas are recognised as “projects” under the Act’s comprehensive study regulations. This raises a number of question with respect to:

- a) the understanding of what is SEA, particularly whether SEA is relevant or applies to individual projects;
- b) the interpretation of Cabinet Guidelines by the current Federal Government and its approach to SEA;
- c) SEA triggers;
- d) transparency of process.

Other questions are whether the strategic assessment mentioned in Park Canada’s response to Bow Valley Naturalists is consistent with what the Agency [CEAA] considers as SEA, and if the Agency finds this interpretation to meet the requirements with respect to SEA as set out in the Cabinet Directive?

There was consensus among the workshop participants that long-range plans for individual ski areas do **not** correspond to the definition of SEA found in the Guidelines to the Cabinet Directive. In the author’s view, if strategic at all they would simply be strategic business plans of sorts.

In fact, Park Canada’s guidelines re skiing area development may not even trigger the Act and, as a consequence, there might not even be any public participation in the consideration of individual ventures by Parks Canada.

Moreover the Park Canada guidelines is said to have resulted from an internal SEA. The Cabinet Directive stipulates that agencies and departments should use “to the fullest extent possible existing mechanisms to involve the public, as appropriate”. In the same vein, the Guidelines say that such involvement should take place “when appropriate”.

Notwithstanding the foregoing latitude given to agencies and departments, the lack of consultation by Parks Canada would seem contrary to at least one of the SEA guiding principles set in Section 2.2.1 of the Guidelines, namely “accountability”, which calls for the “involvement of affected individuals and organizations”. Park Canada’s approach to the matter at hand further appears not at all in line with the spirit of the Cabinet Directive ⁽²⁾ or of [Agenda 21](#) on transparency and good governance.

Given the absence of public participation in the definition of Park Canada’s guidelines it is very difficult if not impossible, therefore, to say how the sections on process and public concerns in the Cabinet Guidelines were applied.

Participants in the workshop are also gravely worried that Park Canada’s public claim, that it is conducting SEA when the work simply corresponds to the environmental feasibility stage of project EA, may have the highly undesirable effect of muddying the perception of SEA both within Government and the general public.

2) As per Section 2.5 of the Cabinet Directive, “Departments will determine the content and extent of the public statement according to the circumstances of each case. The purpose of the statement is to demonstrate that environmental factors have been integrated into the decision-making process... Separate reporting of strategic environmental assessments is not required.”

Consensus among participants was that there is indeed a need for a “true” SEA of skiing in Canada’s National Parks that fully considers the activity against the very purpose of the country’s National Parks system. The exercise should definitely be subject to public input and consideration. One item to be examined would be how to take into account the carrying capacity of individual parks.

Case II – Production of Tidal Energy in the Bay of Fundy

The second case reviewed a recently initiated SEA process of tidal energy development in the Bay of Fundy. It was presented for discussion by Mr. Meinhard Doelle, Ph. D. Mr. Doelle is one of the Directors of Clean Nova Scotia, an environmental NGO based in Halifax, NS.

As understood by the author, a number of turbines would be installed directly in the water in various places in the Bay of Fundy for the production of offshore [renewable] energy. Several industrial concerns would have expressed interest in the proposition. The Federal Minister for the Environment has agreed that a SEA on the venture would be carried out the Government of Nova Scotia; and a one-person panel has been appointed to work/consult/review various aspects of the venture with stakeholders: individual fishermen, commercial and industrial fishing interests, the tourism industry, environmental non-governmental organisations (ENGOS) and others who use the Bay of Fundy. The exercise is to be carried out over the coming year.

The panel has been developing background information and will be conducting workshops as means of consulting stakeholders. The exercise is being structured as a transparent broad-ranging consultation and will incorporate a flexible scoping process. Energy costs, safety/security, greenhouse gases, and other aspects/factors are to be identified during the course of the exercise and conditions will be attached to the pilot developments. Pilot developments would be allowed in the meantime under certain conditions, but there would be no class/general approval of additional ones within one year following completion of the assessment. The exercise is seen, therefore, to have many positive aspects.

From the discussion and the author’s own experience, however, it raises a number of questions with respect to what triggers SEA. It also points to a number of process issues. Re process, additional to the Who decides? question on the importance of foreseeable – and unforeseeable – effects:

1. What benchmarks are there to measure against? Contrary to offshore drilling for oil or natural gas, which incorporates the risk of disastrous spillage of deleterious substances into the water, it is not entirely clear what this venture may have as environmental and ecological effects, though one may suspect that marine mammals might be affected in some way.
2. How are social and economic considerations to be integrated into the assessment? Two items that come to mind are: I) How will the venture affect the movement of fishing, pleasure boating and commercial shipping in the bay? and II) Would there be restrictions on other uses of the bay and its shores, particularly by persons and communities that have been using them for centuries?

3. Are jurisdictional issues being properly addressed? Is the venture only of concern to Nova Scotia, or also to New Brunswick? How are the interests of the latter in the Bay to be considered? Why hasn't the assessment been devolved to this province instead? Furthermore, the argument that what takes place in the Bay of Fundy concerns all Canadians cannot be rejected outright, so why then has the exercise been devolved at all? How are differing views with respect to the environment and economic development held at the federal, provincial, municipal levels of authority to be harmonised? On such issues, isn't it for the Government of Canada to provide orientation? Who is to provide Intervenor Funding? And finally, how are the findings and recommendations of the exercise to be handled? In other words, who will decide what goes on in the waters of concern?

No doubt several if not all of the foregoing questions will be covered during the proceedings, and this make for a highly interesting pilot SEA exercise.

6.0 Weaknesses in SEA in Canada

From the feature presentation, the two cases examined and the respective experience of individual caucus members, there would be a number of weaknesses in SEA as it is applied in Canada. Those identified during the workshop are discussed to varying depth hereafter.

6.1 Misunderstanding of what is “Sustainable Development”

As presented above, perhaps the most basic weakness in regard of SEA in Canada is the incomplete though widely used definition of the term “Sustainable Development” [Box 1]. Indeed, the phrase “without compromising the ability of future generations to meet their own needs” can be debated at very great length.

Regrettably, the Precautionary Principle, and particularly the [Wingspread Statement](#) on where rests the burden of proof that a venture might compromise or not the ability of future generations to meet their own needs, are not well entrenched in Canadian law.

To illustrate, clearcutting typical Acadian Forest stands followed by their conversion to coniferous plantations later to be released from competing vegetation by the massive application of herbicides may indeed sustain future employment hence economic well being in the Maritimes. Some would therefore argue this will allow future generations of Maritimers to meet their own needs, for instance make it possible for them to buy housing, transportation and food including tropical fruits. But the ever mounting evidence of serious long-term ill effects of phytocides on human health and the food chain is serious cause for concern and allows others to question the environmental and social sustainability of this silvicultural practice.

In short, sustainable development as seen by some may incorporate direct or indirect impacts that allows others to question the sustainability of the venture.

6.2 Lack of a Common Understanding of what is SEA

SEA can be a powerful means to address many of the foregoing issues and to inform choices with respect to economic and other human endeavours. But what SEA is and what it entails is itself often misunderstood, as exemplified by the Parks Canada case reviewed during the workshop, and by weaknesses noted by the author in the Cabinet Directive and the Guidelines for its implementation.

For instance, in Anon. (2005) Sadler and Verheem (1996) not only define SEA as in the Guidelines to the Cabinet Directive, they add that its **purpose** is “to ensure that they [the environmental consequences of the proposed initiatives] are fully included and appropriately addressed at the earliest appropriate stage of decision making on par with economic and social considerations”.

Although the Cabinet Directive calls for the consideration of environmental aspects in the development of policies, plans and programmes “on an equal basis with economic and social analysis”, this is not seen in the definition of SEA given in the Guidelines.

A major flaw in the Cabinet Directive with respect to the environmental and social aspects of development, at least from the author’s experienced point of view, is that an initiative “may” [or not] be selected for a strategic assessment “if there are strong public concerns about possible environmental consequences”.

But “strong public concern” is greatly dependent on the free flow of information and the availability of funds and time to acquire and express it. This is not always possible, particularly when the press is concentrated in the hands of a few.

From a recent World Bank review of SEA applied to policies [Anon. 2005.], three other definitions/descriptions of SEA are as follows:

Connor and Dovers (2004) conceptualise SEA “as a mechanism for mainstreaming environment and sustainability across the higher levels of policy making”... This seems to point to the inadequacy of existing policy definition processes and to a need for a heightened awareness of environmental issues among policy makers. By the same token it suggests the need for more effective policy making processes, particularly is SEA is seen simply as “an upward extension” of [project] EA .

Dalal-Clayton and Sadler (2004) [quoted in Anon. (2005)] propose the related expression “integrated assessment”, which they explain as “a structured process to assess complex issues and provide integrated insights to decision-makers early in decision-making processes.” These authors use “integration” to mean “the joint consideration of social and economic factors along with environmental concerns”. The author finds this well describes the exercise to be conducted of tidal power generation in the Bay of Fundy – Case II above.

Other expressions such as “sustainability assessment” or “sustainability appraisal” too stress the importance of such joint consideration of environmental, social, and economic effects of developmental policies, programmes and plans. But some fear environmental concerns may lose out or somehow be diminished when simultaneously examined with economic and social issues [Connors and Dover 2004 quoted in Anon. (2005)].

Finally, The World Bank describes SEA as “a participatory approach for upstreaming environmental and social issues to influence processes for development planning, decisionmaking, and implementation at the strategic level” (Anon. 2005). Two key terms here would be “participatory” and “upstreaming”, which both suggest strong public contribution.

Differing views by Canadian decision-makers of what is SEA, exemplified by Cases I and II examined during the workshop, is therefore seen by the author as a major impediment to sustainable development.

6.3 Jurisdictional Issues

Succinctly, Canada’s Constitution provides for the separation of powers between the Federal and Provincial Governments. The Government of Canada sets policies and enters into international agreements, whereas the Provinces have jurisdiction over the management of natural resources and education. Provincial policies can be influenced by the Federal Government, but it is safe to say that in general the Provinces are very jealous of their constitutional prerogatives. The Government of Canada maintains a strong role in trans-provincial matters.

In the pursuit of what is sometimes called “streamlining” or “harmonisation” or “efficiency of process”, a rather simplistic response to jurisdictional issues has been for the Federal Government to “devolve” its accountability or “delegate” its authority to the provinces in some areas. Again it can safely be written that this is supported by the industry generally, and more particularly so by those industrial sectors with interests in more than one province/territory.

This is not without associated legal and practical issues. One rather important question is whether the Federal Government may indeed devolve itself of its constitutional mandate on the premise that most ventures are not without trans-boundary implications. The decision by the Federal Government to let Nova Scotia conduct the assessment of tidal power generation in the Bay of Fundy is one example. Why not New Brunswick? Why devolve the exercise at all?

Another case devolved to a province relates to the development of the tar sands in Western Canada, which are found mostly in Alberta but extend into Saskatchewan, and which requires the exploitation of natural gas fields of the Canadian Arctic and the construction of a major pipeline all the way up the MacKenzie and Athabaska River Valleys. Additional to having different legislation on environmental assessment, the different jurisdictions have different official languages, and this can affect public participation. For instance, the author, who is from New Brunswick, was allowed to submit his views on tar sands development to the commission appointed by the Government of Alberta to study the venture, but he was not allowed to do so in the French official language of Canada, his mother tongue. This is but one of the practical items of concern with devolution.

The current lack of a clear sustainable development vision [objectives + strategy] for Canada is another major item of concern under this heading. On the one hand Canada’s international commitments with respect to the environment hence EA and SEA are interpreted differently by successive governments even successive Ministers for the Environment under a given government. On the other hand, the provinces seem interested in the exploitation of natural resources principally for direct and indirect revenue generation through royalties and income tax. Notwithstanding the November 1992 federal-provincial agreement signed in advance of the ratification by Canada of the Convention on Biological Diversity, the author has come to the conclusion that the provinces show only lukewarm interest in environmental matters compared to

the Federal Government generally. There is a major risk therefore, that environmental concerns will receive less attention if SEA exercises are devolved to the provinces on a regular basis.

Finally, jurisdictional issues are not without raising enforceability concerns, particularly with respect to which jurisdiction is responsible for enforcing decisions arising from SEA exercises.

6.4 Lobbying. Disinformation. Lack of Openness of Process. Ill Will

Some of the difficulties in obtaining a meaningful participation from ordinary citizens under certain conditions have been alluded to above. It is also widely known that intense lobbying by powerful industrial and commercial interests principally concerned with short-term profit and the actual value of company shares, is not without influencing natural resources policy and governmental decisions re their exploitation. Clearly, the Canadian environmental movement does not have the same access to senior civil servants or concerned ministers as the industry.

To illustrate, there exists a [DFO-National Resources Industry Associations \(NRIA\) Steering Committee](#) ⁽³⁾, which has met at least twice in recent years. Through it seven Industry Associations of Canada “were able to play an important role in 1st Phase of the Environmental Process Modernization Plan (EPMP) by leveraging the strong technical skills of their members to contribute to the development of the Risk Management Framework (i. e. Pathways of Effects) and low risk streamlining tools (i. e. National Operational Statements)”... and discuss and “improve the efficient application of the federal Fisheries Act.”

On the other hand it took more than 10 years of stubborn determination by one member of the EPA Caucus to finally get a first ever meeting between DFO middle management and the RCEN in 2006, at which, positively, it was agreed to meet more regularly and with more senior DFO officials.

EPA Caucus members have seen the continuous gnawing away of environmental protection in Canada over the years. Scoping of environmental assessment exercises has become narrower and narrower whilst the absolute need for ventures being considered and various options thereto are not always examined. There also seems to be a recourse in some cases to what may be arguably illegal tools to circumvent the requirement to conduct an environmental assessment where called for by the Act.

Scientific evidence is questioned publicly even denied in what is considered by many as an orchestrated disinformation effort that among other things uses of Aesopian vocabulary such as “efficiency of process” and “streamlining” that surreptitiously confounds the general public into believing that improvements are being made while environmental guarantees are actually being eroded. The perverse view that “Green is costly and works against the economy” is widely propagandised.

There is also what seems to be organised resistance in some circles to quality participation, with strict timelines and short funding that do not allow for environmental NGOs and concerned private citizens to properly prepare to intervene. Timelines are visibly driven by industrial and commercial concerns and like narrow scoping may result in exercises lacking in thoroughness. And with respect to funding, notwithstanding that the Agency provides funding for the EPA Caucus, the contribution – and intervenor funding generally, is tiny indeed

3) DFO: Department of Fisheries and Oceans = Fisheries and Oceans Canada

compared to the huge subsidies available to proponents of development ventures in Canada. Needless to say, many in the environmental movement contribute their little spare time on a volunteer basis, so these constraints to their meaningful participation are very real.

Openness of process is particularly important when Canada's non-renewable resources are concerned. Notwithstanding Canada's constitutional separation of powers, why would Prince Edward Islanders for example not be allowed to voice their concern over the export of petroleum products from Alberta ? Is it not also their environment, their economy, their future?

6.5 Additional Process and Procedure Issues

Notwithstanding the Act and the establishment of the Agency as an independent organisation, under the authority of Canadian Minister for Environment, to administer the **federal** environmental assessment process, there has been a recent case of substitution of process [with respect to a natural gas pipeline in southern New Brunswick]. The Canadian environmental movement finds this very worrisome. Although legal, it goes against the efforts to have a single agency accountable for EA [including SEA] and uniform EA procedure in Canada.

7.0 Opportunities for Advancing SEA in Canada

The above weaknesses all point to opportunities to improve EA in Canada. In fact, many problems with project EA could be addressed/redressed if SEAs were conducted more regularly. The EPA Caucus is definitely favourable to a more general recourse to SEA in the pursuit of truly sustainable development. There is also value in retrospective exercises that consider impacts of past and existing policies to feed the learning curve.

This can be done via pilot SEA exercises as being considered by the RAC Subcommittee on SEA, also favoured by the Caucus. Indeed, developing appropriate SEA could start with pilot SEA exercises that would test various approaches and be subject to thorough analysis.

The upcoming Seven-Year Review of the Act and its application should also see major focus of SEA.

Research on SEA is another important means of advancing SEA, by feeding the process.

8.0 Conclusions

From the foregoing, SEA is significantly different from "class" and "regional" EAs which, although considered as forms of SEA by many, respectively apply to a group of projects of a same nature such as aquaculture ponds, cited as an example, and any number of ventures scheduled a given geographic area, for instance the Canadian Prairies. This said, there can be some overlap since policies, programmes and plans often concern specific classes of projects in a particular region. Liquefied Natural Gas (LNG) ports are another example.

From the first case reviewed, it is concluded that the Cabinet Directive is not always followed. For SEA to be effective, "strategic" and "sustainable development" must be more than buzz words and properly understood and similarly used by all.

The same case further points to a lack of proper attention to at least one of the SEA guiding principles as per Section 2.2.1 of the Guidelines, namely “accountability”, which calls for the “involvement of affected individuals and organizations”. This is valid even if the Cabinet Directive allows for discretion re when to involve the public.

Meaningful stakeholder participation is a major Caucus concern. Caucus members believe that Canadians are affected, either directly or indirectly, by all federal development policy initiatives. Public involvement in SEA is therefore always relevant where impacts on long term sustainability can reasonably be expected.

From Case II, SEA finds its justification in a Canada’s official commitment to sustainable development and the pursuit of a just world. At least this is how the author interprets the phrase “Consistent with the government’s strong commitment to sustainable development” written into the Cabinet Directive. Indeed, the Cabinet Directive states that policies, programmes and plans are subject to SEA when “implementation... may result in important environmental effects, either positive or negative”. The key therefore seems to lie in the interpretation of the word “important”, but what is important may not be evident unless a SEA exercise is conducted, as has been decided for tidal energy development in the Bay of Fundy. On the other hand, the decision not to conduct a proper SEA of skiing development in Banff National Park seems to be at cross purposes.

These two decisions send mixed signals on the Government of Canada’s commitment: on the one hand, expressions such as “sustainability assessment” and “sustainability appraisal” underscore the importance of joint – and equal, consideration of environmental, social, and economic effects of developmental policies, programmes and plans. On the other hand, from the move towards a regulatory system through Smart Regulation, the trend towards ever narrower scoping, strict timelines in many cases, complicated procedure and short intervenor funding, many fear that environmental concerns may lose out or somehow be diminished when simultaneously examined with economic and social issues. With respect to timelines, a consensus is emerging that SEA should be iterative process embedded into the policy development process itself, in other words, a permanent feature of policy development.

All this points to a major policy gap with respect to SEA in Canada. Not only is the Cabinet Directive vague, there is no absolute requirement that SEA be conducted of policies, programmes and plans. SEA is only “expected” not “required”. Moreover, from the feature presentation, there is no valid legal framework covering SEA in Canada. The current situation does not provide a functional mechanism for addressing policy issues raised by project EA although many of the limitations of project EA could be overcome by SEA, for instance:

- the inability of project EA to account for the cumulative effects of multiple, successive projects, for example skiing facilities, in a particular area; and
- the inability of project EA to focus attention on strategic social and economic choices, e. g. developing energy for export, that if made would have eliminated the need for an EA exercise on a particular venture in the first place.

In line with the Rio Declaration on Sustainable Development there is a very great need for a major permanent programme to educate Canada’s civil servants, Members of Parliament and stakeholders including the general public on environmental matters in

general and SEA in particular. The former would help offset the strong lobbying efforts and disinformation campaigns by powerful vested interests.

9.0 Recommendations

9.1 Clarify SEA and Sustainable Development Terminology

A first priority would be to define/clarify what for Canada and Canadians is Sustainable Development, and the same for SEA. In particular, SEA should not be confused with strategic business planning or pilot technological feasibility evaluations which clearly still have their place; and these important tools cannot be invoked in lieu of SEA.

Sustainable Development and SEA are about the long-term, about strategic choices and alternatives. For a valid SEA, the absolute need of a venture and when it should take place have to be assessed and the same for cumulative effects of numerous small ventures, whether similar in nature or not, that may arise from the economic impetus resulting from a venture.

The Government of Canada and Parliament have a major role to play in clarifying the terminology, but the Canadian public should have a major say.

9.2 Conduct a Policy Gap Analysis

A policy gap analysis with respect to SEA should be undertaken at the soonest possible opportunity and not later than the upcoming Seven-Year Review of the Act. The aim would be to develop a coherent framework and process, with publicly known triggers. The current lack of consistency in SEA in Canada should also be covered? Another major item is how to correctly integrate environmental, social and economic considerations in line with the [Rio Declaration On Environment And Development](#), fully ensuring that the environment is taken into account on par with the other two axes.

SEA reform should definitely be undertaken before further changes are brought to the Act with respect to project EA. Other topics that should be covered during the recommended policy gap analysis include:

- The pros and cons of the devolution of Canada's own accountabilities to the provinces
- The direction of harmonisation, whether towards the lowest common denominator or the strongest environmental protection for Canada and Canadians
- The pros and cons of a regulatory versus those of a judicial process.

The review could lead to the development of a legal framework for SEA in Canada or to the clarification of the Cabinet Directive and the Guidelines for its application.

[Appendix "C" presents excerpts from the Executive Summary of *Integrating Environmental Considerations in Policy Formulation: Lessons from Policy-Based SEA Experience*, by The World Bank Environment Department's Environmentally and Socially Sustainable Development Vice Presidency (Anon. 2005.), as additional material for consideration in what is hoped will become a fruitful discussion on sustainable development policies.]

9.3 Ensure Meaningful Stakeholder Participation

The Government of Canada should formally commit to meaningful public involvement in the assessment of policies, programmes and plans, this as a matter of principle rather than “as circumstances warrant” or “conditional to a strong expression of public concern”, seen in the Cabinet Directive and Guidelines.

In other words, SEA needs to become part of Canada’s economic development culture, in other words a reflex. Otherwise, any expression of a “strong commitment to sustainable development” is of little value. As a minimum, there should be regular consultation of the environmental movement – via the RCEN - by the Commissioner for Sustainable Development and the Ministers for Industrial Development, the Environment, and Fisheries and Oceans.

Meaningful stakeholder participation suggests continued research on SEA theory and practice, capacity building, particularly within environmental NGOs. It also implies a major permanent educational process on the environment. Two themes that need to be broadcast are: i) that contrary to what is currently being spread in some circles, green is **not** expensive, and ii) that becoming greener stimulates the economy and has numerous positive effects on human health hence serves to reduce the cost of delivering health services.

As a corollary, appropriate mechanisms – additional to the electoral process – allowing the public to fully participate in strategic choices with respect to the environment, natural resources exploitation and economic development, should be developed. Pilot SEA exercises would be valid in the regard.

Meaningful stakeholder participation also implies proper intervenor funding. Funding available to the environmental movement is minuscule when compared to the massive subsidies available to proponents of industrial ventures, and is definitely insufficient. Basically, current levels of funding do not reflect the realities of a largely volunteer environmental sector, and often does not even allow for minimal preparation and research or legal counsel where required, and need to be reconsidered. This matter should also be an item for the Seven-Year Review.

9.4 Recommendation for The Short Term

- 9.41 A mechanism for regular consultation/exchanges between the RCEN and Parks Canada and other federal departments and agencies should be developed within a six-month horizon. Among items to be discussed is the definition of SEA and its application to areas of concern to that entity.
- 9.42 There is an urgent need for a meeting between RCEN and the newly appointed Commissioner of Sustainable Development. This meeting too should take place within a six-month horizon. On the agenda should be:

- i) What is Sustainable Development
- ii) What is SEA
- iii) Smart Regulation and its pros and cons with respect to environmental concerns
- iv) Weaknesses in the Cabinet Directive and Guidelines
- v) What constitutes meaningful public participation
- vi) Meaningful intervenor funding
- vii) Funding for research on SEA and the development of valid public participation mechanisms.

9.43 Pilot SEA exercises need not await the Seven-Year Review. Additional to the SEA of tidal energy generation in the Bay of Fundy, at least one other exercise should be launched before the inception of the review, to feed the process. Considering its double mandate to administer the **federal** environmental assessment process and to promote EA policies and practices, there would be major value in this new pilot exercise being led by the Agency itself, rather than devolved to a province. This would also allow process comparisons among other things. A number of topics for pilot SEA exercises were identified during the workshop. Among them:

- Bottom trawling
- LNG imports
- Nuclear energy production and nuclear waste management
- The further development of the Athabaska tar sands
- West Coast Gateway
- Exporting water
- Solid waste management and disposal
- Mining – broadly
- Oil and gas developments
- Forest management

Retrospective SEA exercises might cover oil spills, for instance, or the Ocean Ranger disaster.

In choosing, consideration should be given not only to the intrinsic importance of the issue, for instance the export of non-renewable resources, but to the potential it offers for the development of methods and mechanisms on performing SEA exercises, and how to take SEA forward as an instrument of sustainable development. Identification of stakeholders, public participation in policy definition, funding, benchmarks, legal aspects, enforceability, monitoring and follow-up – actual enforcement, all could be examined.

9.44 Research

As mentioned, the Agency has a small budget to support research on EA. Others too fund such research. Research on SEA should become a permanent feature of policy development in Canada. The Caucus, therefore, should identify areas for research and encourage those Caucus members with research capabilities to take them on. A number of research themes are mentioned in 9.43 above.

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APPENDIX "A"

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HAZELL, Stephen Executive Director Sierra Club of Canada	
E. Secretary	
KLEIN, Jannis EPA Caucus Coordinator Canadian Environmental Network - RCEN	

APPENDIX “B”

STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) AND RELATED TOPICS

ON-LINE INFORMATION SOURCES

Google Search Engine

<http://www.google.com/search?q=Strategic+Environmental+Assessment&rls=com.microsoft:en-gb&ie=UTF-8&oe=UTF-8&startIndex=1&startPage=1>

Agenda 21

<http://www.un.org/esa/sustdev/documents/agenda21/index.htm>

Canadian Department of Foreign Affairs and International Trade (DFAIT)
sustainable development site

<http://www.international.gc.ca/trade/sd-dd//menu-en.asp>

Canadian Environmental Assessment Agency

http://www.ceaa-acee.gc.ca/016/index_e.htm

Convention on Biological Diversity (CBD):

<http://www.biodiv.org/convention/convention.shtml>

European Parliament Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment:

<http://www.epa.ie/TechnicalGuidanceandAdvice/StrategicEnvironmentalAssessment/PDFsforSEA/FileUpload.7427.en.pdf>

International Association for Impact Assessment (IAIA):

<https://www.iaia.org/modx/>

Kiev Protocol on Strategic Environmental Assessment, 2003

[United Nations Economic Commission for Europe (UNECE)]:

http://www.unece.org/env/eia/sea_protocol.htm

<http://ec.europa.eu/environment/eia/sea-legalcontext.htm>

Organisation for Economic Co-Operation and Development (OECD) Development Assistance Committee Guidelines on Applying Strategic Environmental Assessment:

<http://www.oecd.org/dataoecd/4/21/37353858.pdf>

Strategic Environmental Assessment Information Service [SEA-info.net]:

<http://www.sea-info.net/>

APPENDIX “C”

Integrating Environmental Considerations in Policy Formulation: Lessons from Policy-Based SEA Experience. Report No. 32783, Environment Department, Environmentally and Socially Sustainable Development Vice Presidency, The World Bank, Washington, DC USA, 86 pp.

EXCERPTS [FROM EXECUTIVE SUMMARY]

A. ON SEA FRAMEWORK

...”a more effective framework for SEA of policies is one that:

- “Is a continuous process, in which the SEA process is integrated within the policy formulation process itself
- “Focuses not just on the policy formulation process itself, but also focuses on policy implementation
- “Uses SEA as a tool to take advantage of windows of opportunity in policy-making that occur when there is a concurrence of issues, problems, solutions, and people
- “Utilizes analytical tools to establish environmental priorities as well as participatory approaches, particularly to obtain the perspective of the more vulnerable groups who disproportionately bear the burden of environmental degradation and who have less of a voice in policy formulation
- “Frames environmental issues in the language of the key policymaker, i.e., in economic terms
- “Seeks to take a continuous improvement approach in line with adaptive management and the realization that progress is incremental for the most part
- “Seeks to build long-term constituencies and transparent processes that allow for the voice of the most vulnerable (i.e., those most affected by environmental degradation) to be heard and government to be accountable for acting on the needs of vulnerable groups.”

B. FOUR MAJOR ELEMENTS

“This implies a continuous effort, by a country, to incorporate the following four elements:

1. “Prioritization of environmental issues in terms of their effect on economic development and poverty reduction, using both quantitative and participatory techniques, in order to select themes or sectors for which there is a definite recognition of the severity of environmental problems.
2. “Mechanisms that bring together different viewpoints during the policy formulation and implementation process, particularly the viewpoint of the most vulnerable groups, i.e., those most affected by environmental degradation, who typically have less representation in the policymaking process. Establishing institutional mechanisms that do not disproportionately favor one stakeholder above another, as in the case of regulatory capture, is also important.
3. “Mechanisms that ensure social accountability in the context of environmental issues, such as passage of legislation to allow for greater transparency in decisionmaking and outcomes, advocacy through a free press, and strengthening of recourse measures linked to, for example, environmental quality outcomes or licensing processes, such as complaints systems or the judiciary.
4. “Mechanisms through which social learning can occur, so that key environmental priorities are given attention and continuously brought to the policy agenda so that incremental improvement can occur over time.

...”these elements operate throughout the policy design and implementation period. The emphasis is on sustaining a process rather than on output for a [specific] policy at a design stage.

“Bringing forward institutional and governance dimensions more directly means advocating that public participation in the policy-based SEA process move far beyond a simple public consultation process to instead strengthening the mechanisms of social accountability.”