



Decision Statements under CEAA 2012

Presentation to the Milton Logistics Hub Project Review
Panel (July 11, 2019)

Purpose

- Provide an overview of federal EA conditions and decision statements under CEAA 2012
- Discuss how information generated during the Panel process informs the development of conditions

Legislative Foundation

- Sections 52, 53 and 54 in CEAA 2012 provide the legislative basis for the Minister to:
 1. Decide on the significance of environmental effects (s.52)
 2. Consider mitigation measures in reaching her decision (s.52)
 3. Establish conditions (s.53)
 4. Issue a decision statement (s.54)
- Conditions must include the implementation of mitigation measures taken into account by the Minister in making the EA decisions and the implementation of a follow-up program

Legislative Foundation (cont'd)

Conditions must address potential adverse environmental effects within areas of federal jurisdiction, as set out in s. 5 of CEAA 2012:

1. fish and fish habitat
2. marine plants
3. migratory birds
4. federal lands
5. transboundary effects
6. effects of changes to the environment on Indigenous peoples
7. changes to the environment that are directly linked to or necessarily incidental to a federal decision about a project

Key Mitigation Measures

Considering the legislated requirements:

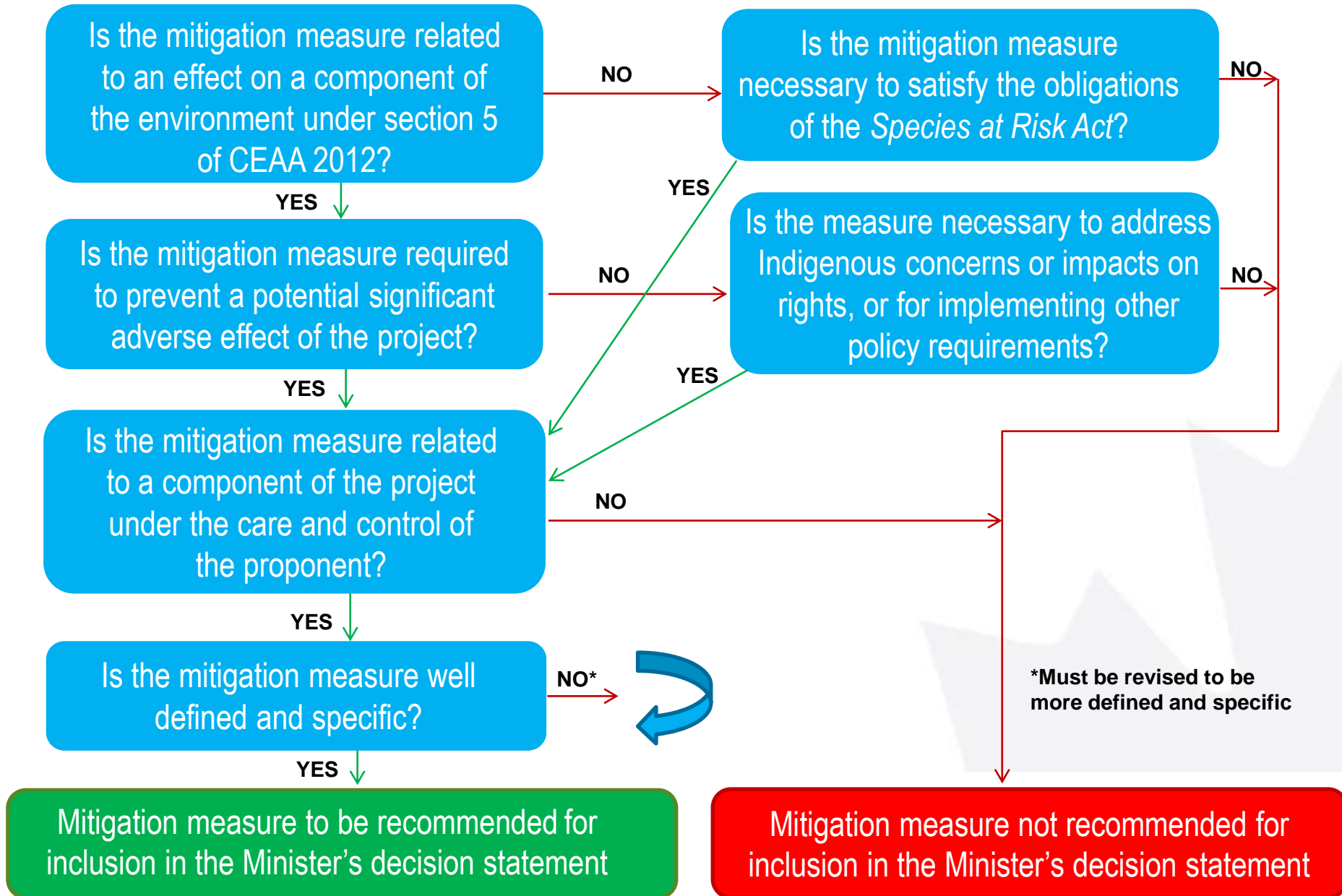
- The Minister must know what mitigation measures to take into account when making the EA decisions
- If, in the absence of a mitigation measure, a significant adverse environmental effect is likely to occur, this mitigation measure **must** be included as a condition



Key
Mitigation
Measures

Need a thorough understanding of the relationships between environmental effects, key mitigation measures and follow-up requirements in order to develop enforceable conditions

Determining if a mitigation measure should be recommended for inclusion as a condition in the Minister's decision statement



Developing Enforceable Conditions

- **Clarity:** what is required for the proponent to successfully fulfill the condition
- **Certainty:** Proponent must know that, once it has fulfilled the condition, it is in compliance with the decision statement
- **Level of detail:** dependent on information available and potential overlaps with other jurisdictions

Developing Enforceable Conditions (cont'd)

- Careful use of “plans”
 - Minister must know what mitigation measures to take into account when making the EA decisions
 - Conditions referring to plans cannot be used to defer the identification of mitigation measures to after the EA decisions
 - Decision statements must include conditions that have an adequate level of specificity to know that the desired outcomes will be achieved ➤ same principle applies to plans

Process Steps for Developing Conditions

1. Joint Review Panel submits Report to the Minister of Environment and Climate Change
2. Agency develops draft conditions
3. Agency consults on recommended mitigation measures and follow-up requirements addressed through conditions
4. Agency revises draft conditions following consultation, to the extent possible
5. Agency submits final potential conditions to the Minister
6. If the Project is approved, Minister issues a Decision Statement to the Proponent that includes decisions and legally-binding conditions

Indigenous Interests

- Conditions can be accommodation measures for impacts on Aboriginal and Treaty rights
 - ✓ Must be linked to environmental effects under s. 5 of CEAA 2012
- Many conditions require proponents to consult Indigenous groups during development and implementation of conditions
 - ✓ Requirements for proponents to consult Indigenous groups do not replace the Crown's Duty to Consult and accommodate