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COASTAL ZONE MITIGATION AND ADAPTATION INFRASTRUCTURE: CAN ASSESSMENT OF *PROJECTS ON FEDERAL LANDS (POFL) HELP?*

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Consultation Acknowledgements* and References

* Kevin Blair & Celine Monfils, Legislation and Regulatory Affairs Division, IAAC (“Federal Lands” team)

* Jamie Kneen (Mining Watch)

Jamie Kneen, Stephen Hazell, Anna Johnston (respective chapters in Doelle and Sinclair (2021) *Next Generation of Impact Assessment: a critical review of the Canadian Impact Assessment Act*)

IAAC, **Guidance document on Sections 81 to 91 of the *Impact Assessment Act***

<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/projects-federal-lands-outside-canada/guidance-sections-81-to-91-impact-assessment-act.html#fig002>

IAA (2019)

IAAC Registry

Sections 81-91 of IAA (2019), “Duties of Certain Authorities in Relation to Certain Projects”

A federal authority has to carry out a “determination” under sections 81-91 of the IAA when that authority:

- is the proponent of the project and seeks to carry out the project;
- provides financial assistance for the purpose of enabling the project to be carried out, in whole or in part; or
- exercises any power or performs any duty or function under another Act of Parliament (i.e. issues a permit, authorization, etc.) that could permit the project to be carried out, in whole or in part.

Note: the noun “determination” and the verb “determine” are used throughout, consistently and intentionally...

ie: “determination” ≠ “assessment”

- A Minister of the Crown in right of Canada;
- an agency of the Government of Canada or a parent Crown Corporation, as defined in subsection 83(1) of the *Financial Administration Act*, or any other body established by or under an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs;
- any department or departmental corporation that is set out in Schedule I, I.1 or II to the *Financial Administration Act*; and
- any other body that is set out in Schedule 1 of the IAA.

What is a “Project” in a POFL undertaken by a FA?

Figure 2: Project Criteria—Physical Activity in Relation to a Physical Work or Inclusion List



► Long description

Physical Activity	A physical activity includes the carrying out of tasks or actions that involve a degree of physical effort, such as construction, modification, operation, expansion, abandonment and decommissioning.
Physical Work	A physical work includes structures that have been built by humans and that have a defined area and fixed location (i.e. has a local permanence). A “project” includes physical activities not in relation to a physical work that are designated by ministerial order (inclusion list) under section 87.
Federal Lands	A project is proposed to be carried out, in whole or in part, on <u>federal lands</u> , as defined by section 2 of the <u>IAA</u> (e.g. national parks, military bases, First Nation reserves, etc.), or outside Canada.

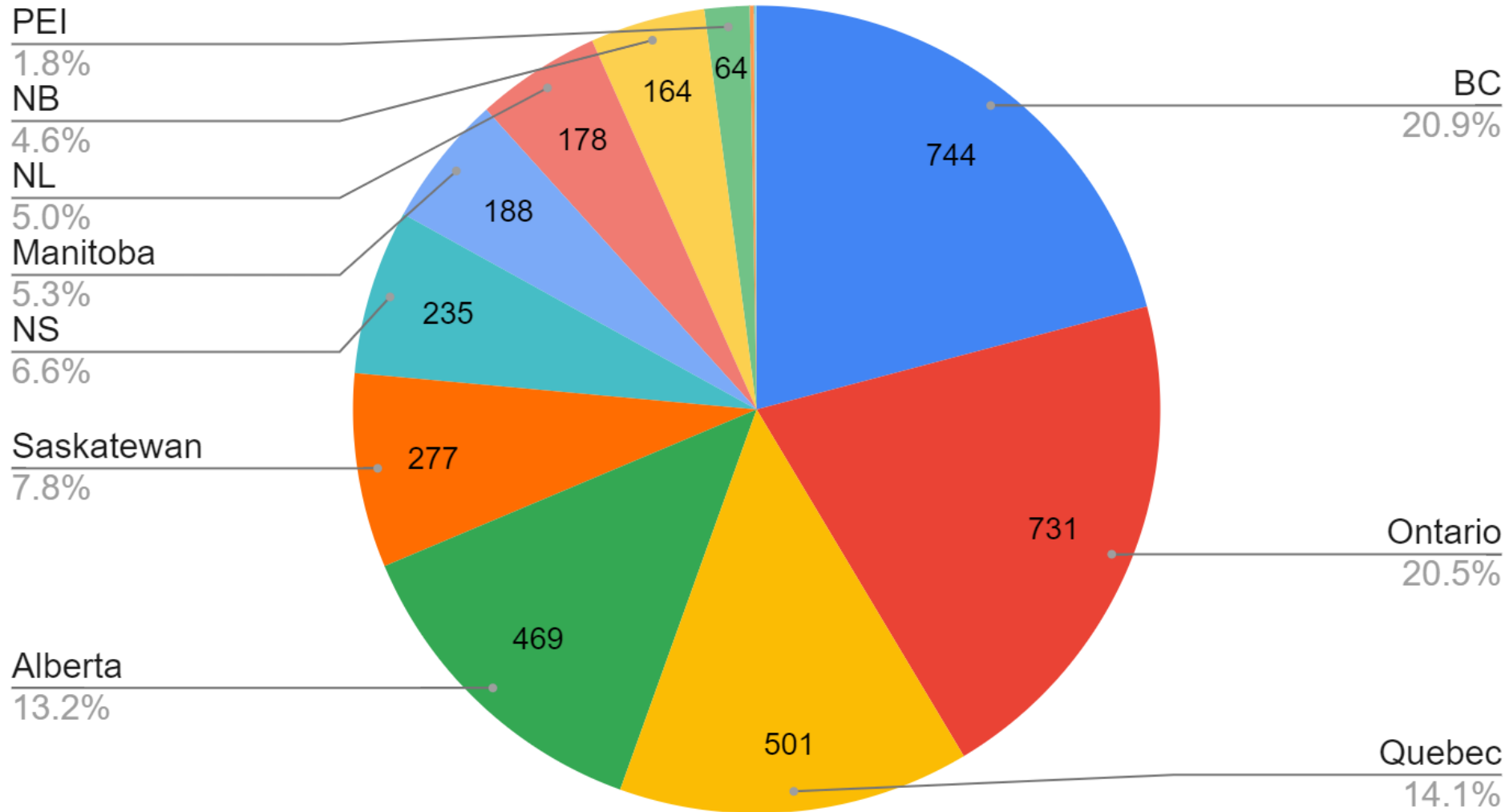
Source: Guidance document on Sections 81 to 91 of the *Impact Assessment Act*

Note: all POFLs are by definition projects NOT on the ‘designated list’ (*Physical Activities Regulations* SOR /2019-285) for which the ‘standard type’ of IA applies

of POFL Determinations are disproportionately found in coastal provinces (2 – 5 X proportion of total population)

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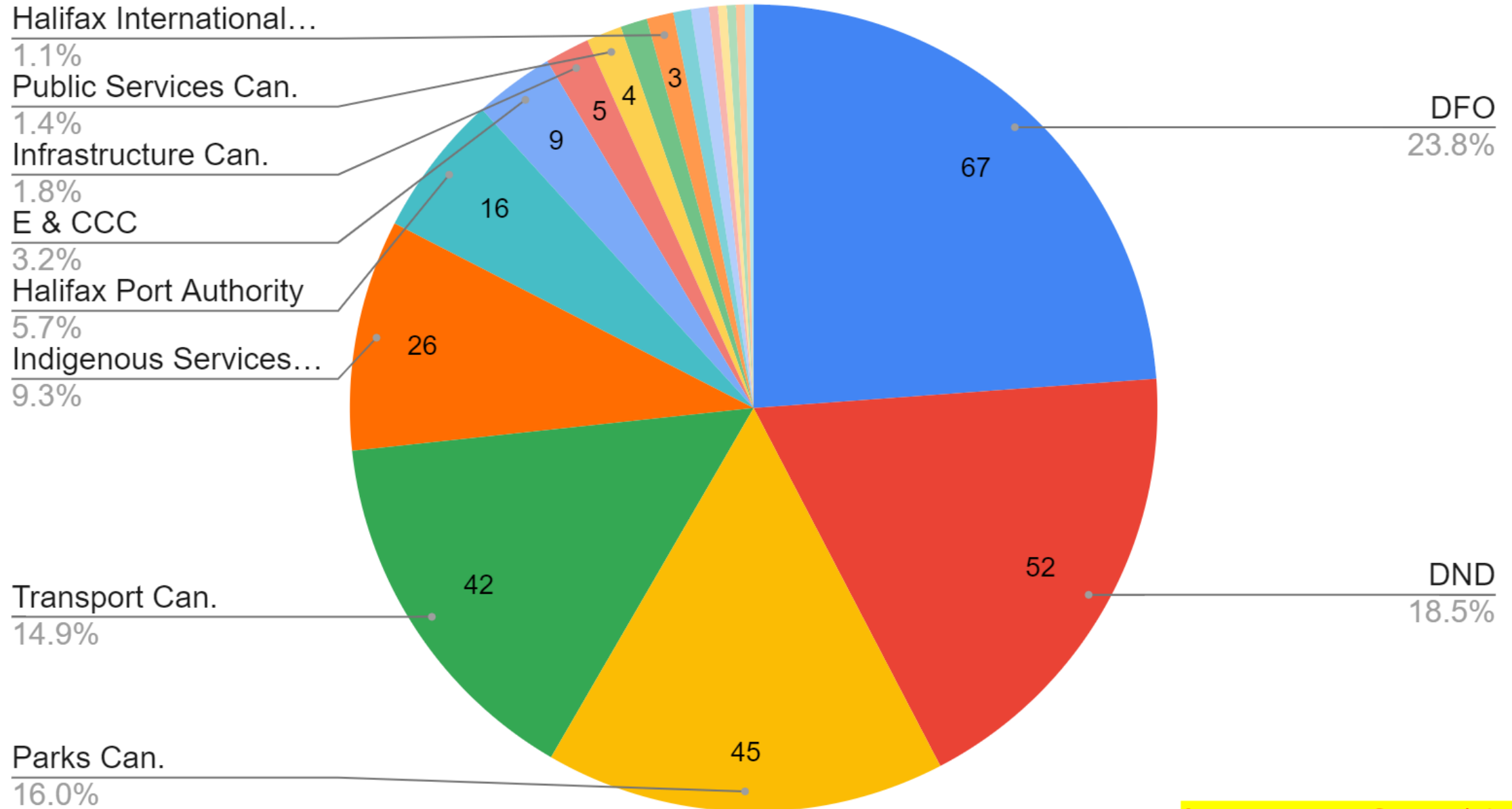
Assessments by Province



Source: IAAC Registry

Breakdown of POFL determinations by Authority (for Nova Scotia)

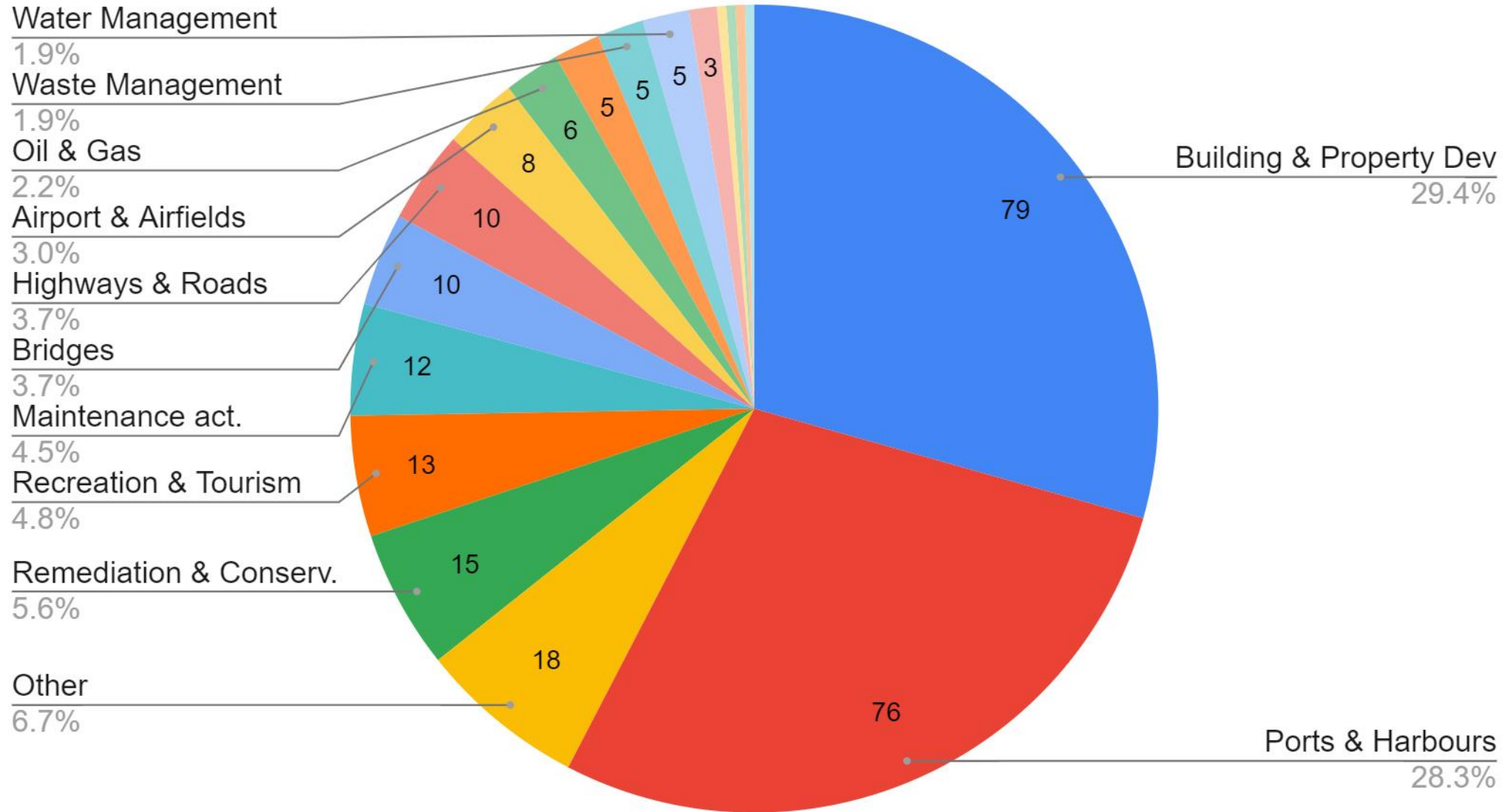
Authorities



Source: IAAC Registry

Breakdown of type of POFL assessment (for Nova Scotia)

Nature of Activity

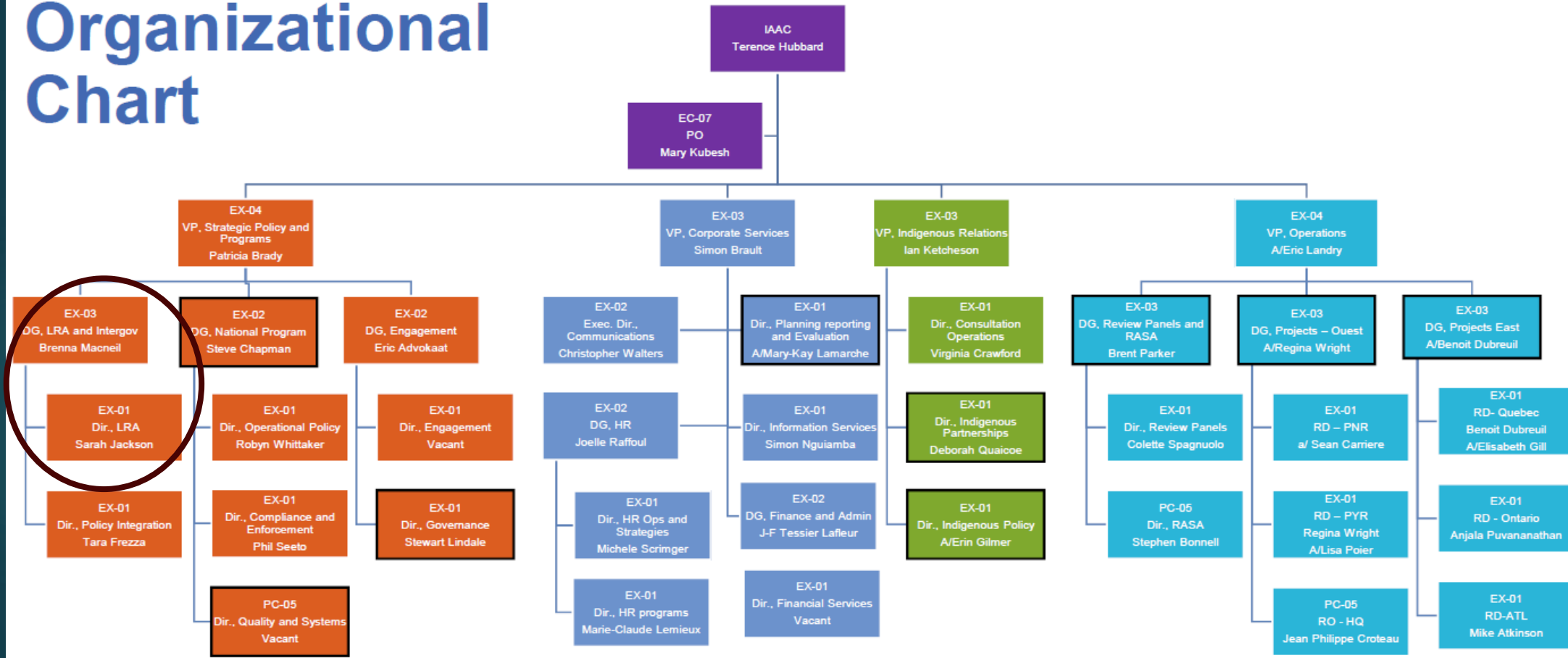


Source: IAAC Registry

Where POFLs fit within IAAC....

Executive Organizational Chart

Effective November 7, 2022



Project carried out on federal lands

82 An authority must not carry out a project on federal lands, exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless

(a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or

(b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.

A POFL cannot be carried out by the Authority unless...

“Environmental Effects” mean something distinct for POFLs (as per sections 81-91 of the IAA (2019):

biophysical

environmental effects means changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social or economic conditions. (81b)



- Indigenous peoples of Canada
- Health...
- Social... conditions
- economic ...

i.e. NOT the same as 'biophysical' in definitions of 'factors' (section 22)

(d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; and

(e) any change to a health, social or economic matter that is within the legislative authority of Parliament that is set out in Schedule 3. (*effet relevant d'un domaine de compétence fédérale*)

For determinations for POFL, the standard logic applies:
“significant adverse effects” as pivoting on mitigation

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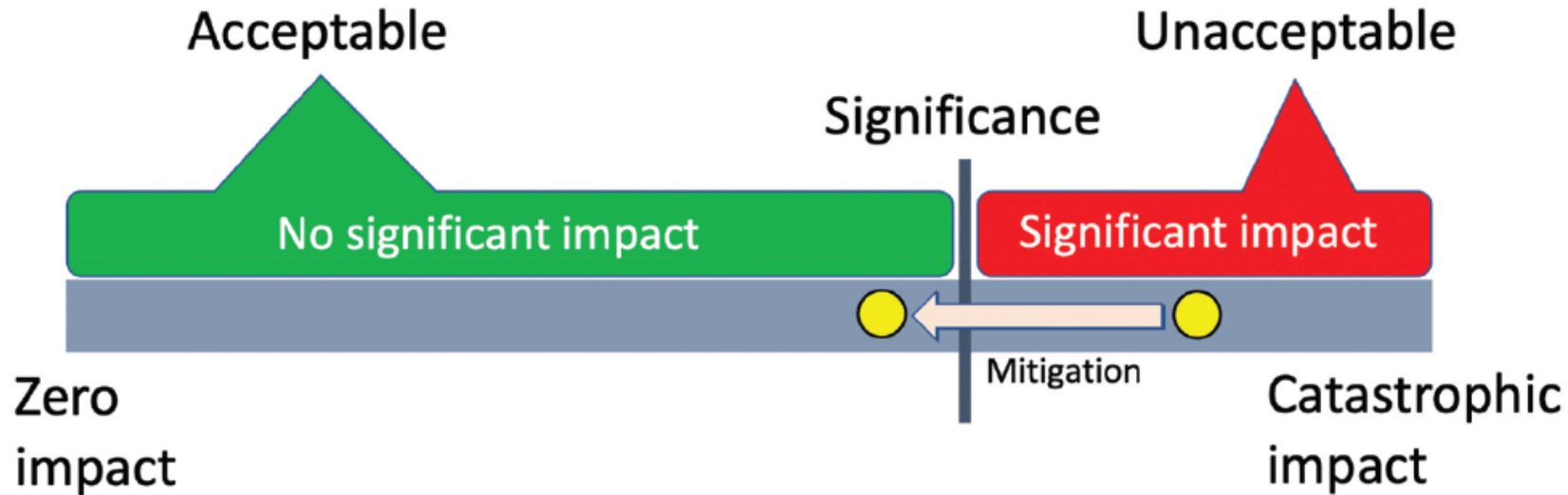
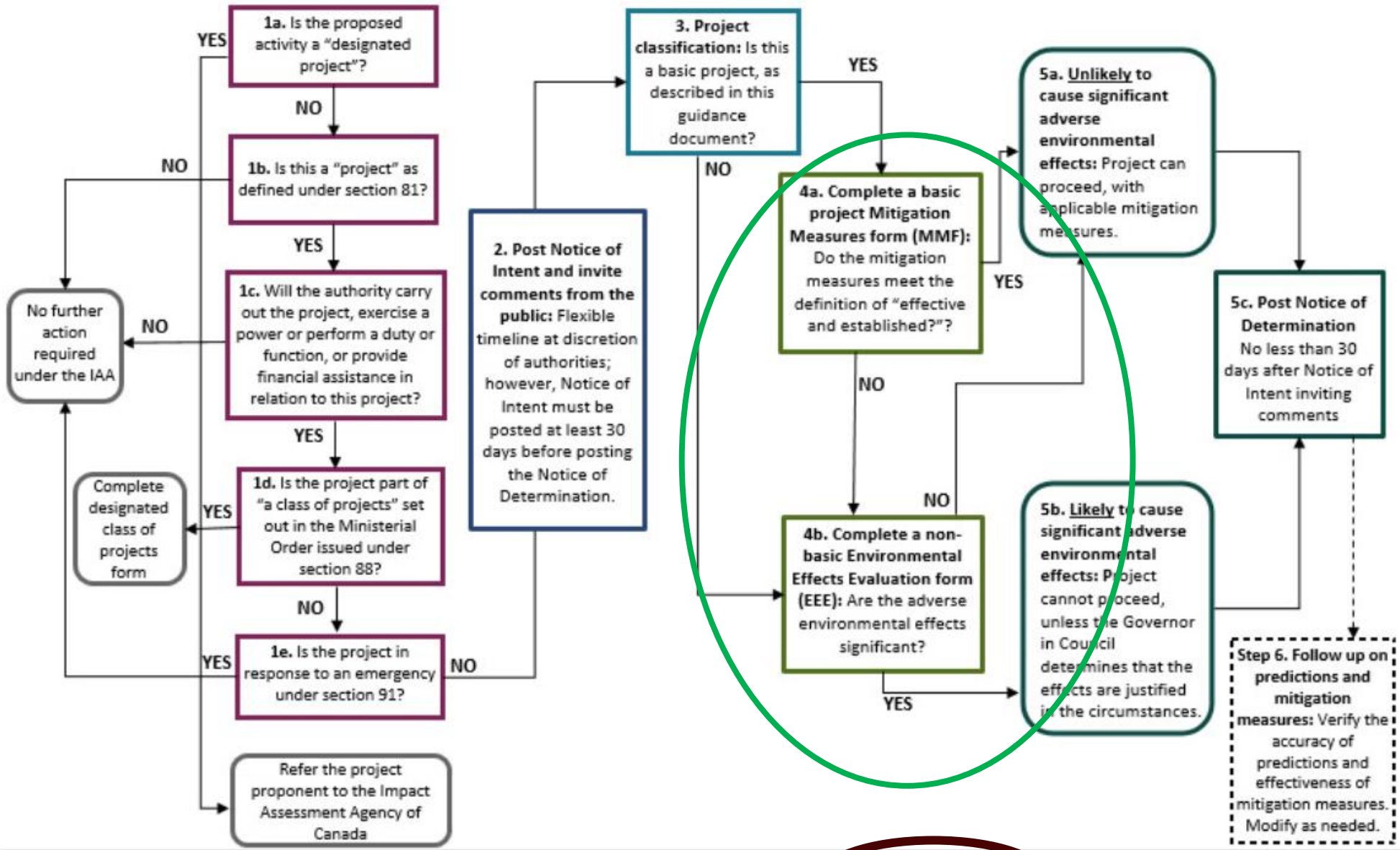
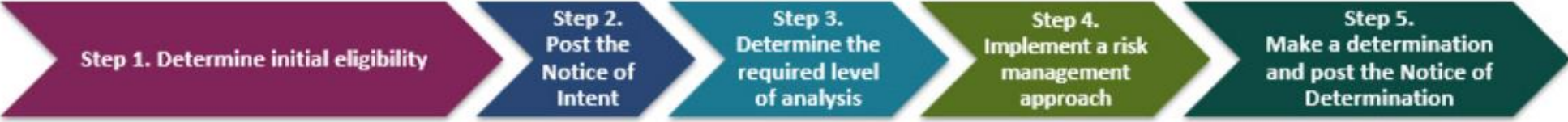


Figure 1. Significance spectrum model (adapted from Ehrlich and Ross 2015). The significance determiner decides where on the spectrum a predicted impact (shown as the yellow dot) falls and weighs the effect of mitigation measures (shown as the arrow) on impact significance.

Source: Retief *et al.* 2023 Gaining a deeper understanding of the psychology underpinning significance judgements in environmental impact assessment (EIA). *Impact Assessment and Project Appraisal*, DOI: 10.1080/14615517.2023.2181248



'Basic Project Mitigation Measures' template

Environmental effect:	B	IP	H	S	E	Effective and established mitigation measure:
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	



Taking into account the implementation of mitigation measures outlined in Section F (if applicable), and the section 84 factors under the IAA, outlined in Section D, this project:

- Is not likely to cause significant adverse environmental effects – *Complete section H.*
- Requires further analysis – *Complete section H and **EEE (form called Non-Basic Project Environmental Effects Evaluation)**.*
- Is likely to cause **significant** adverse environmental effects*.

* *If the project is likely to cause significant adverse environmental effects, the federal authority may not make any decision or take any action that may permit or enable the project to be carried out unless the Governor in Council determines that those effects are justified in the circumstances under subsection 90(3) of the IAA.*

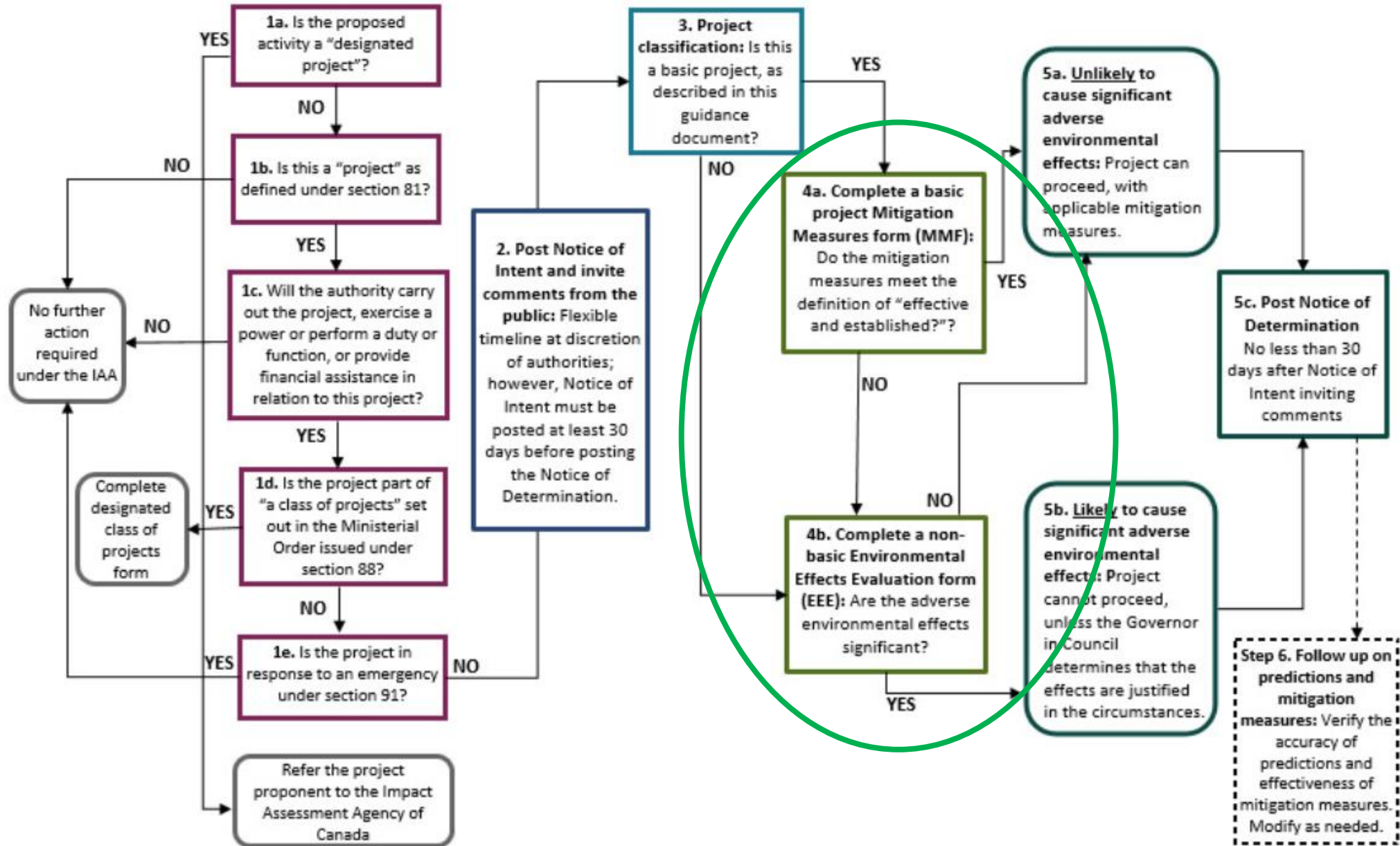
Step 1. Determine initial eligibility

Step 2. Post the Notice of Intent

Step 3. Determine the required level of analysis

Step 4. Implement a risk management approach

Step 5. Make a determination and post the Notice of Determination



Mitigation determination template in the *Non-Basic Env'al Effects Evaluation*

Potential adverse environmental effect:			B	IP	H	S	E
Description of the potential effect:			Proposed mitigation measure description:				
Magnitude of residual effects	Geographic extent of residual effects	Frequency of occurrence	Timing of occurrence				
<input type="checkbox"/> Low amount <input type="checkbox"/> Medium amount <input type="checkbox"/> High amount	<input type="checkbox"/> Small area <input type="checkbox"/> Medium area						
Potential risk							
Describe residual effects							
Describe how the mitigation measures will be implemented							
Comments:							

Of the 155 completed POFL determinations in NS:

- zero projects note significant adverse effects,
- 37 of these mention mitigation measures as contributing to the “no significant adverse effects” determination
- But...with no specification of how measures contribute to “no significant adverse effects” determination

Posting a 'determination' on the Registry (a big improvement on CEAA 2012)

- Mandatory 30-day window for public comments (after posting on Registry the intent to make a determination)
- Although an FA must “consider” Indigenous knowledge, community knowledge, comments received from public, what is prescribed by sect. 86 of the IAA is that the FA must post:

- **The determination (significant or non-significant adverse effects**
- **Mitigation measures it took into consideration**



Basin Dredging and Disposal at Sea at Stoney Island Small Craft Harbour, Shelburne County, NS



This is a non-designated project on [federal lands or outside Canada](#). The listed authorities are responsible for the project assessment.

The Small Craft Harbours Branch of Fisheries and Oceans Canada proposes to undertake basin dredging and disposal at sea at Stoney Island Small Craft Harbour, located in Shelburne County, Nova Scotia. The proposed project involves a combination of maintenance and capital dredging of the Stoney Island harbour basin and entrance channel to remove accumulated marine sediments and improve navigation. These marine sediments are to be disposed at a proposed ocean disposal site located approximately 3 km east of Stoney Island Harbour.

The method of dredging would be determined by the successful contractor however it will likely involve an excavator working off a floating barge as well as land-based dredging from an excavator working off the shoreline or marginal service area or from an excavator working off a temporary rock access road which would be removed at the end of the project. The total area to be dredged is approximately 19,000 m². The total volume to be dredged and ocean disposed is approximately 26,500 m³.

- ⚙️ **Location**
Cape Sable Island (Nova Scotia)
- ⚙️ **Nature of Activity**
Ports and Harbours
- ⚙️ **Assessment Status**
Completed
- ⚙️ **Start Date**
2020-08-12
- ⚙️ **Proponent**
Fisheries and Oceans Canada- Small Craft Harbours (DFO-SCH)
- ⚙️ **Authorities**
Fisheries and Oceans Canada
- ⚙️ **Assessment type**
Project on federal lands
- ⚙️ **Reference Number**
80925

Notice of Determination

June 16, 2021 – Fisheries and Oceans Canada - Small Craft Harbours has issued its Notice of Determination after evaluation of the project and has determined that the project is not likely to cause significant adverse environmental effects with mitigation measures as outlined in their evaluation and can therefore proceed.

Takeaways and considerations:

1. The return to an older definition of “environment” in POFL determinations: is this advisable, even for “well understood” “small” undertakings?



2. Following the “logic of mitigation” as impacting “no significant adverse effects”, is a “better record” of the causal story advised?...
3. ...including for the enabling of cumulative effects assessment (important even for “well understood” and “small” projects.)?
4. A great deal of responsibility is placed on FAs to carry out IA, and coordination between FAs and with IAAC is (merely) “encouraged”. Can there be cross-gov’t forum for analysis FA methods?
5. What about larger projects that snuggle up close to the boundary separating POFLs from “designated list” (standard) IAs?

Regarding #4...

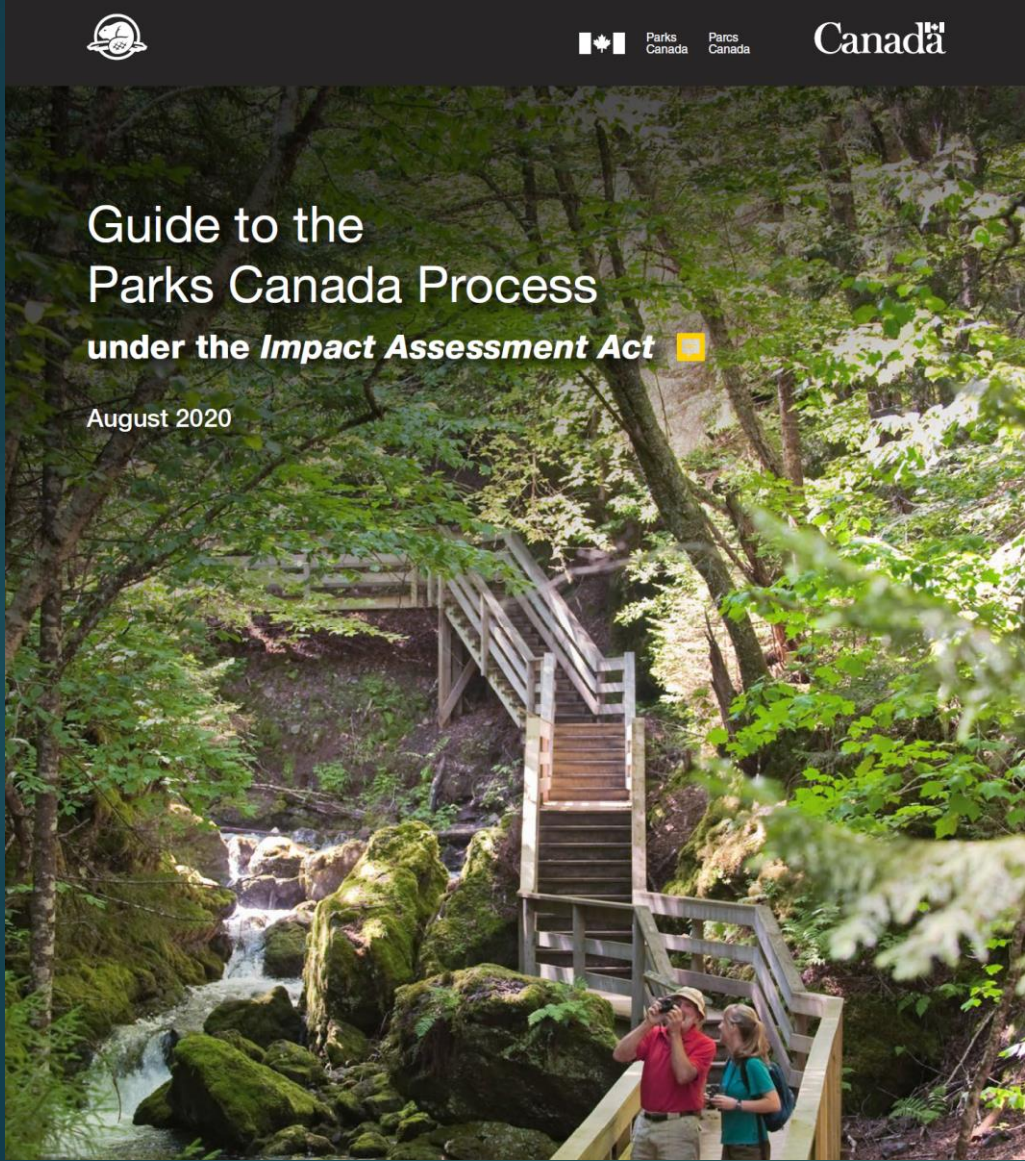
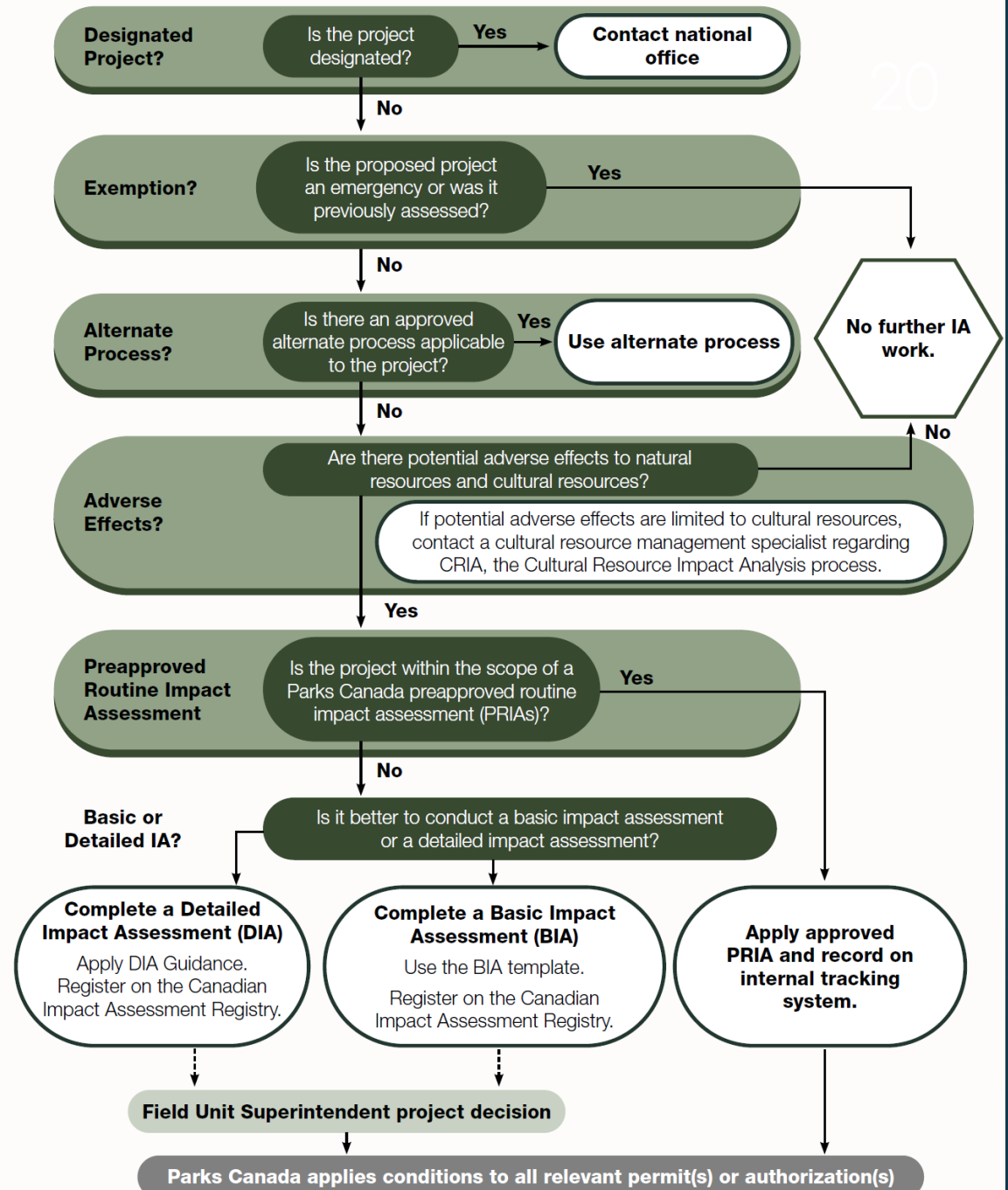


Figure 1 – Decision framework for proposed projects under the *Impact Assessment Act*



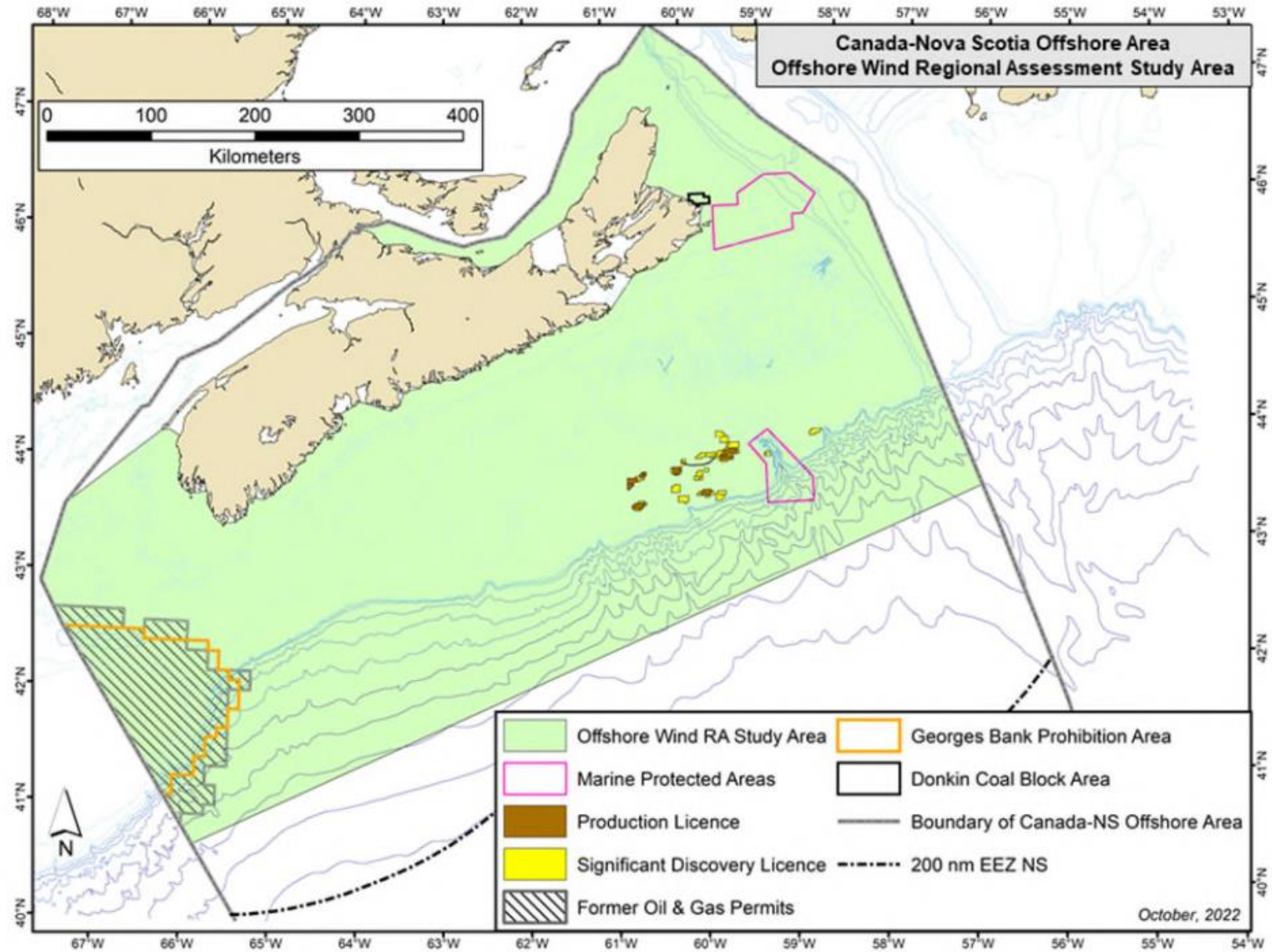
Regarding # 5....The Case of Offshore Wind

POFL determinations would apply to:

*projects <10 turbines

* “provincial” projects that include <10 turbines on federal lands

Figure 1.1: Regional Assessment Study Area (Nova Scotia)



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Thank you for your attention!

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