

# **Climate Change and the new *Impact Assessment Act***



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University of Calgary

**Saturday Morning at the Law School**  
June 27, 2020

# Carbonated Project Assessment: Climate Change and the new *Impact Assessment Act*

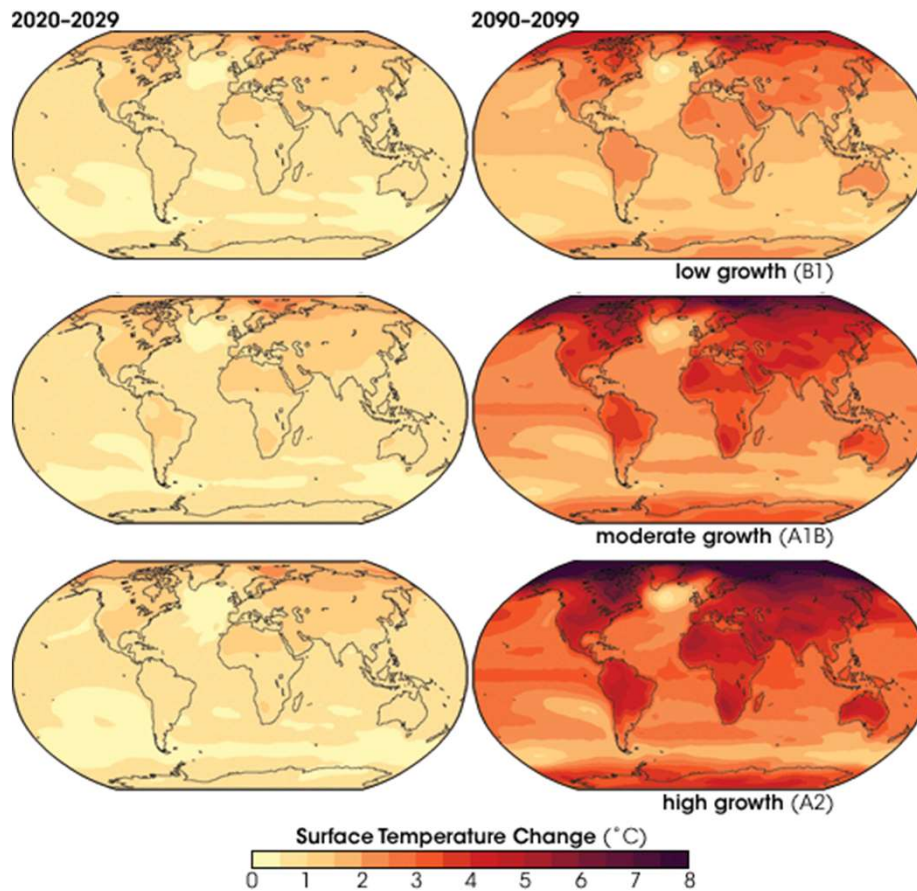
## Outline

- 1. Canadian climate law & policy**
- 2. *Impact Assessment Act***
- 3. Climate change in the new *Impact Assessment Act***
- 4. Guidance (“Strategic Assessment of Climate Change”)**
- 5. Missing pieces**
- 6. Implementation / Issues to watch**

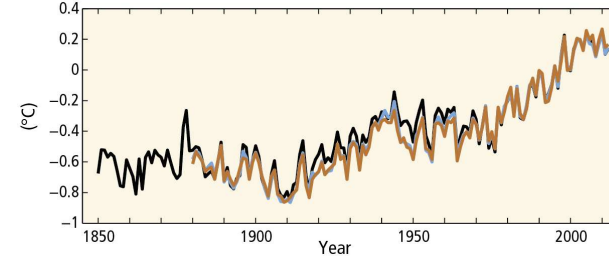


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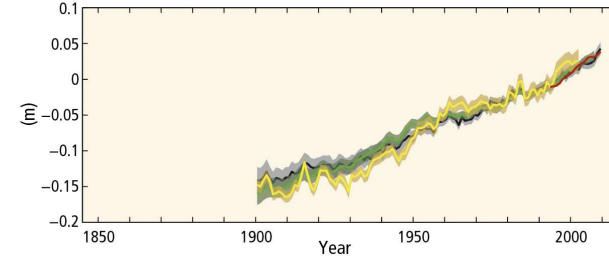
## ■ Climate Change



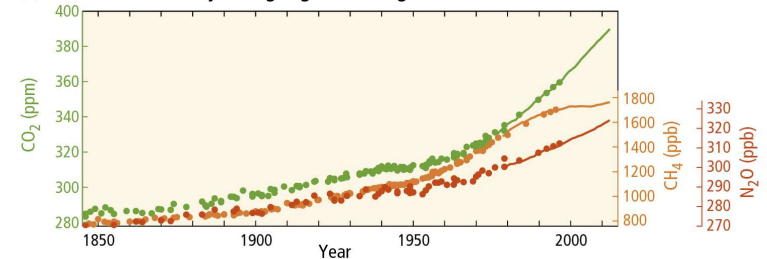
(a) Globally averaged combined land and ocean surface temperature anomaly



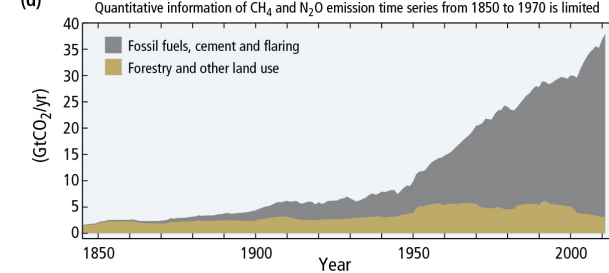
(b) Globally averaged sea level change



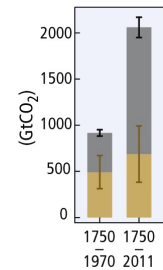
(c) Globally averaged greenhouse gas concentrations



(d) Global anthropogenic CO<sub>2</sub> emissions



Cumulative CO<sub>2</sub> emissions







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# ■ The Climate is Changing

## CLIMATE DESTABILISATION

The average  
temperature rise  
across the globe

4°C

The arctic  
rise will be  
as much as

16°C

Coastal areas of Britain  
and New Zealand will  
see temperatures rise by

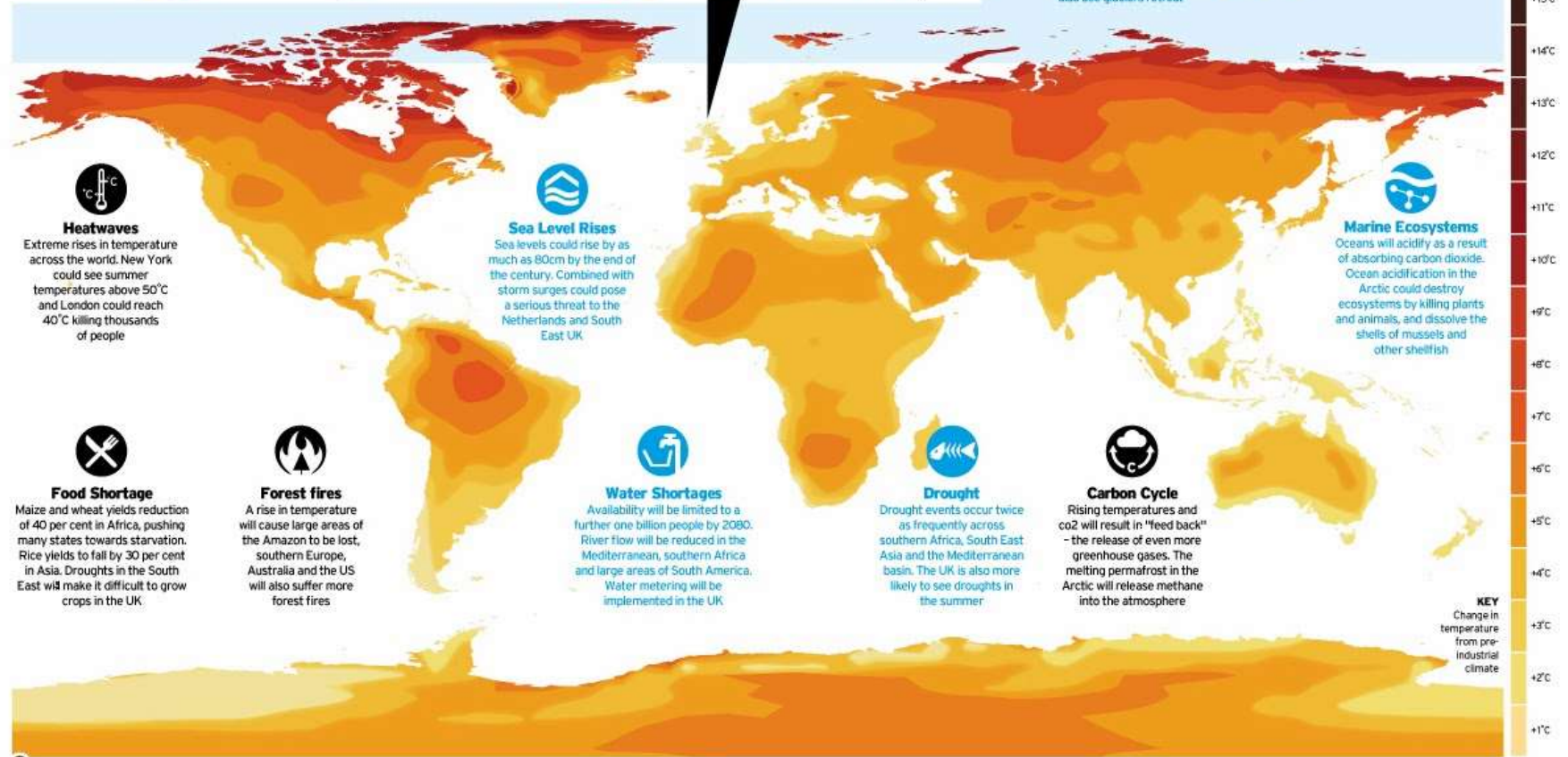
2°C

### Affects on the UK



### Melting Glaciers

Himalayan glaciers will be significantly reduced by 2050 putting the water source of billions of people at risk. South America and the Alps will also see glaciers retreat



SOURCE MET OFFICE AND HM GOVERNMENT

# ■ Climate Change



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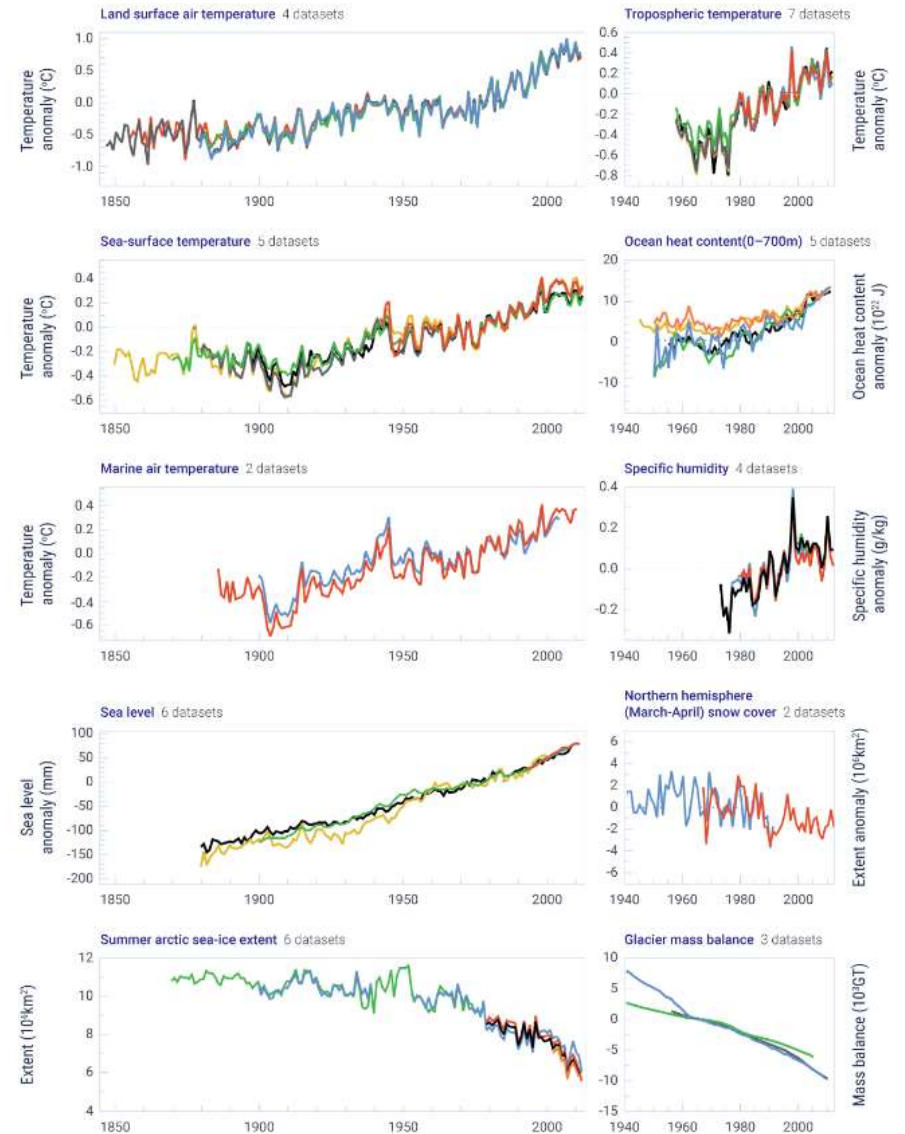
## January 2020 was Earth's hottest January on record

The long-term trend of above-average temperatures continues

Climate Satellites | climate analyses and statistics

SHARE |    

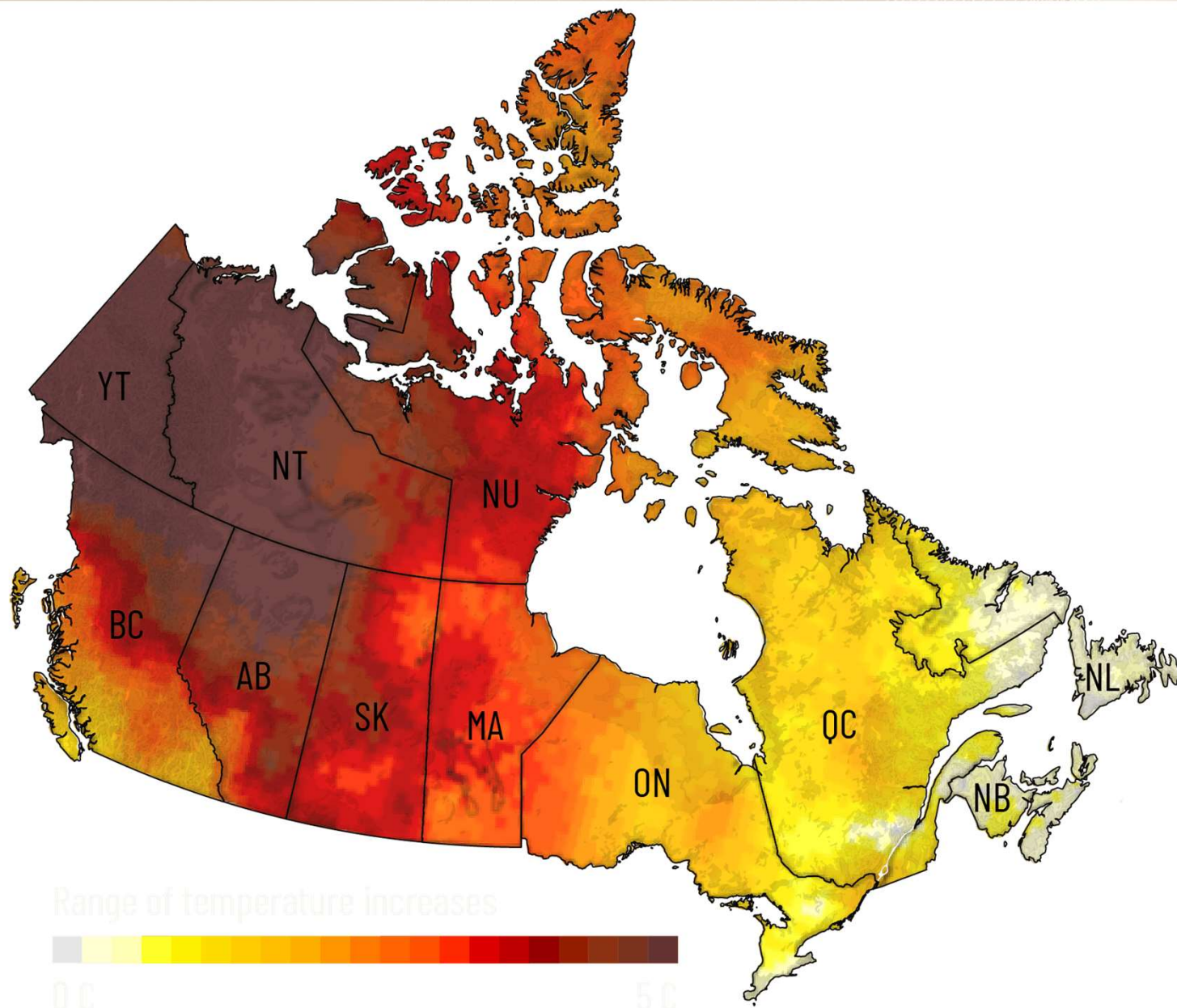
February 13, 2020 — In the span of 141 years of climate records, there has never been a warmer January than last month, according to scientists at NOAA's National Centers for Environmental Information.







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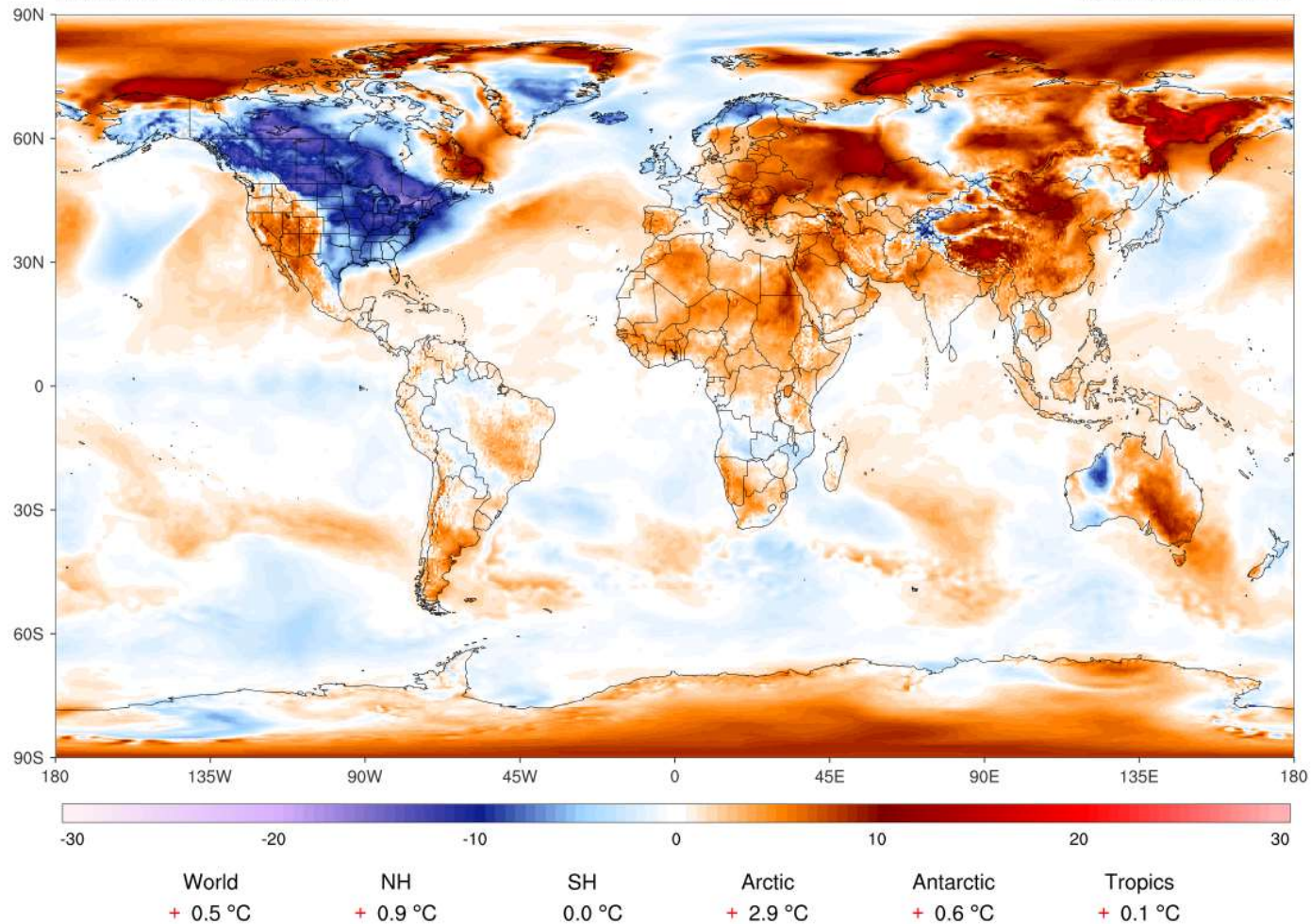
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## ■ Climate Change (polar vortex)

ClimateReanalyzer.org  
University of Maine | Climate Change Institute

GFS/CFSR 1-day Avg 2m T Anomaly (°C) [1979-2000 base]

Thursday, Dec 28, 2017

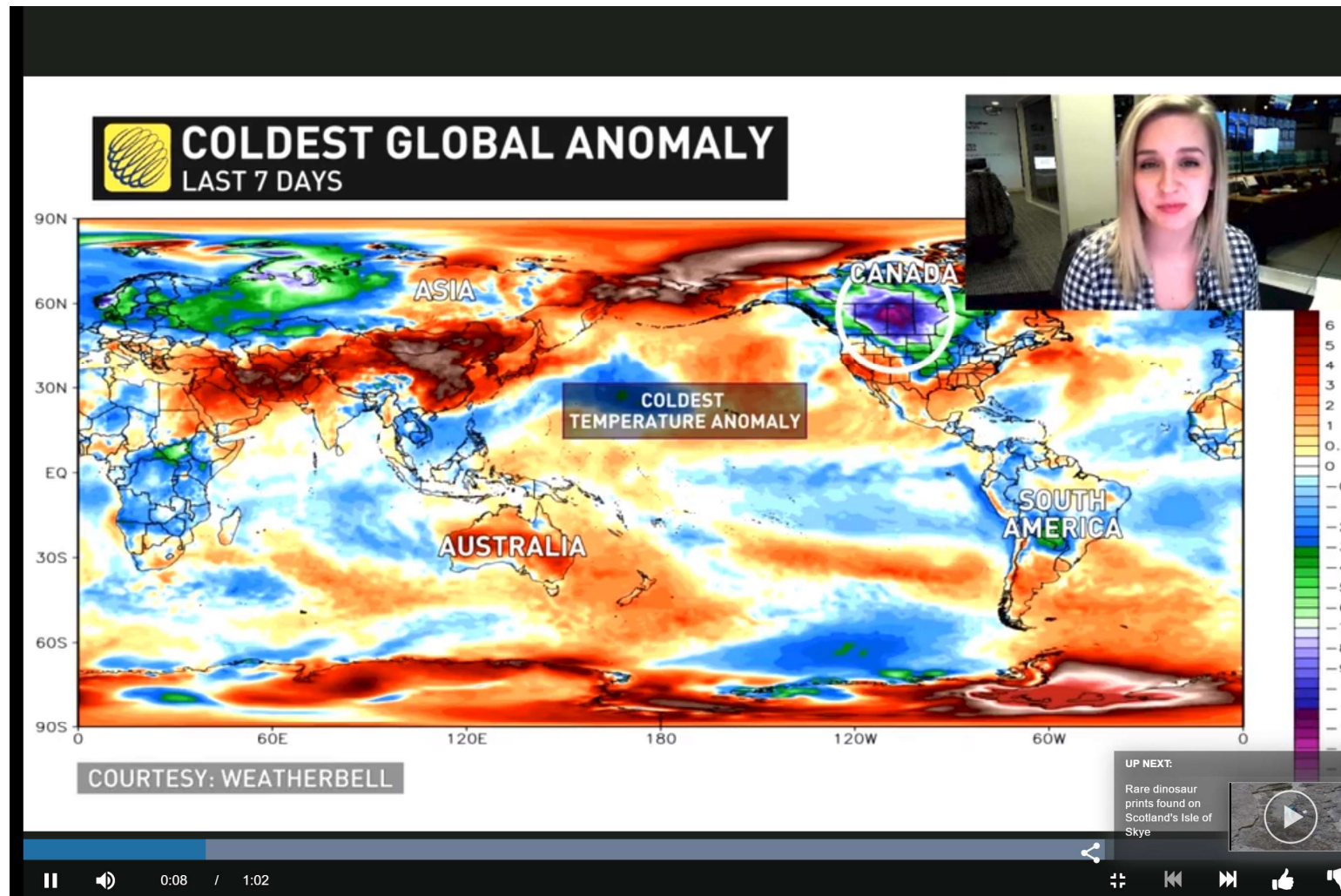






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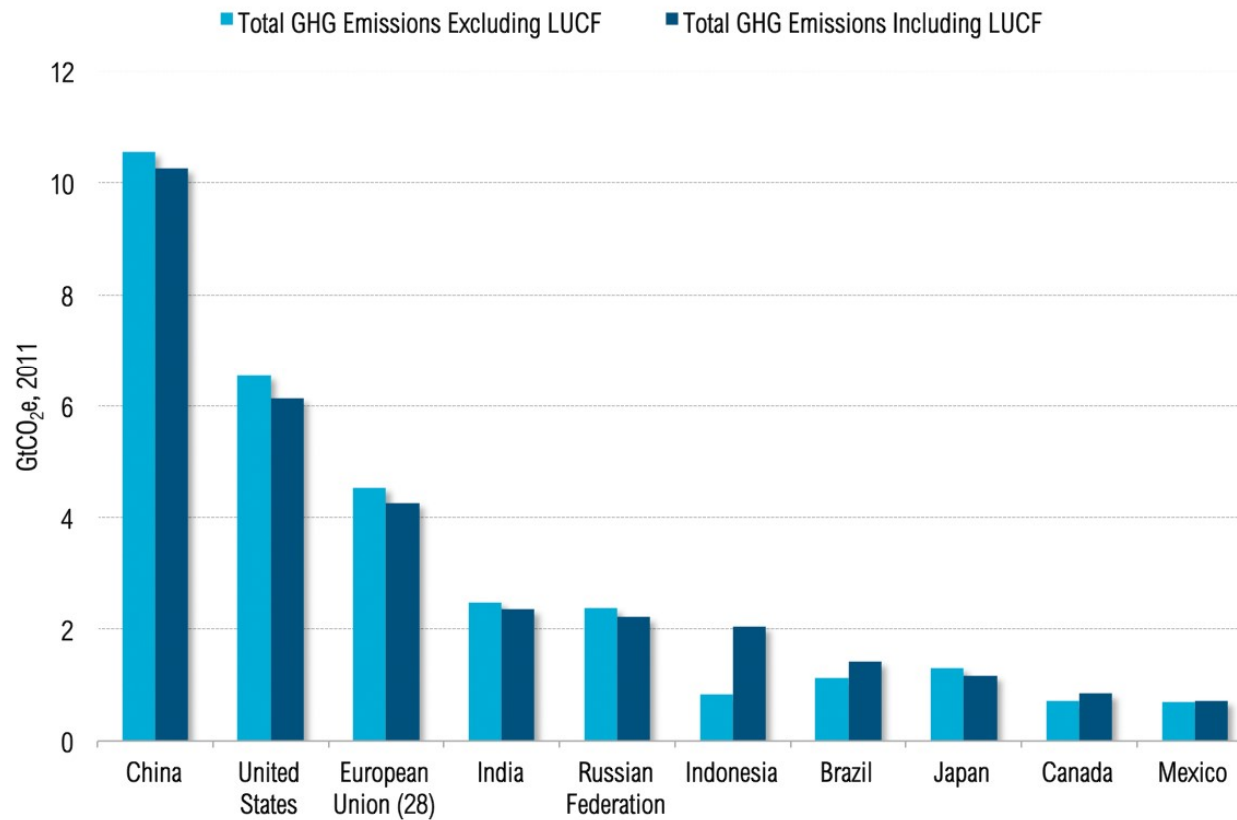
## ■ Climate Change (polar vortex)





## Global absolute emissions

### Top 10 Emitters



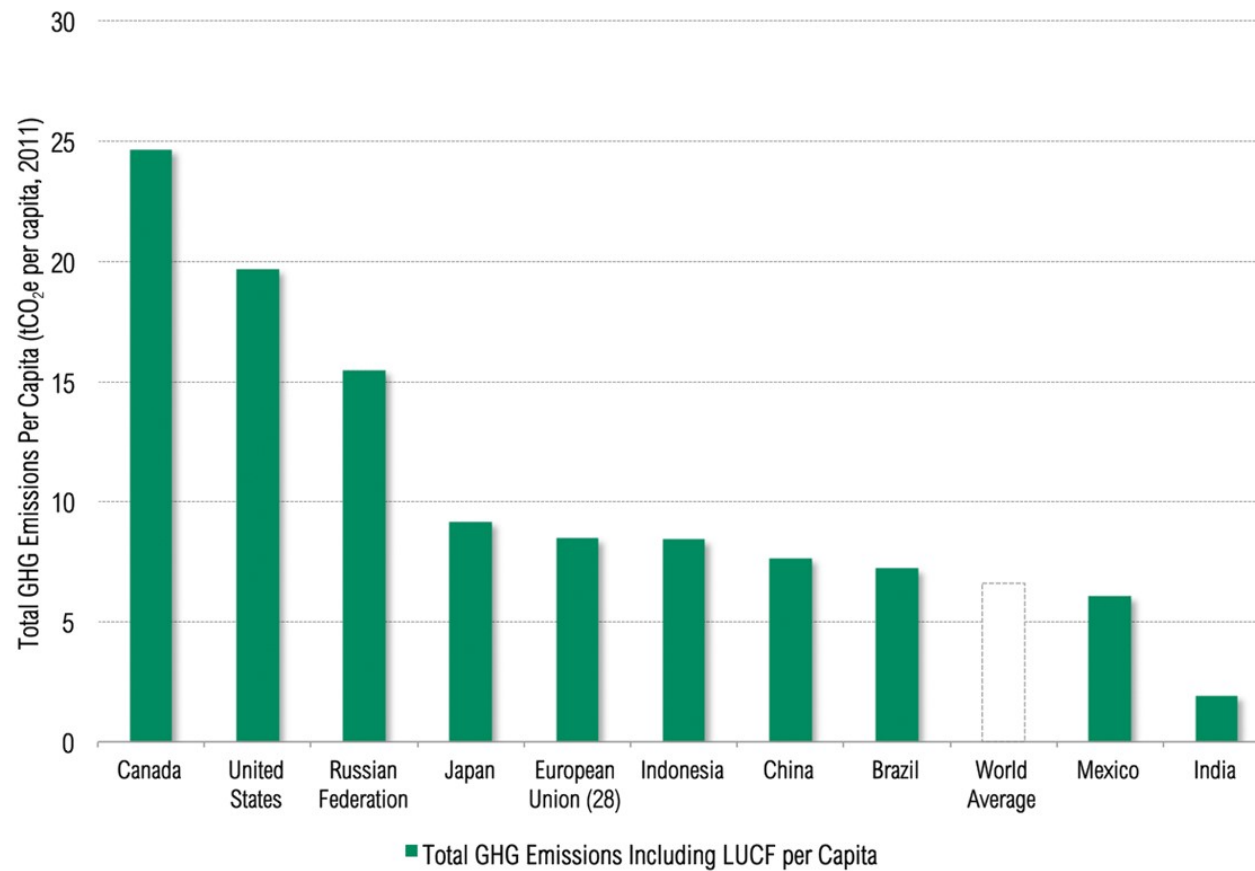
## 2016 rankings by per capita emissions

Rank	Country	CO <sub>2</sub> emissions (per capita)
1	Saudi Arabia	16.3T
2	Australia	16.2T
3	United States	15.0T
4	Canada	14.9T
5	South Korea	11.6T
6	Russian Federation	9.9T
7	Japan	9.0T
8	Germany	8.9T
9	Poland	7.7T
10	South Africa	7.4T
11	Islamic Republic of Iran	7.1T
12	China	6.4T
13	United Kingdom	5.6T
14	Italy	5.4T
15	France	4.5T

source: <https://www.ucsusa.org/resources/each-countrys-share-co2-emissions>

## Global per capita emissions

### Per Capita Emissions for Top 10 Emitters





- **Climate Change: International**
  - UNFCCC (1992)
  - Kyoto Protocol (1997)
  - Copenhagen Accord (2009)
  - Paris Agreement (2015)



## CANADA

### Summary of pledges and targets



#### PARIS AGREEMENT

Ratified	Yes
2030 unconditional target(s)	30% below 2005 by 2030 [7-14% below 1990 by 2030 excl. LULUCF] [20-25% below 2010 by 2030 excl. LULUCF]
Coverage	Economy wide, incl. LULUCF
LULUCF	Will use LULUCF accounting based on the reference level approach to meet its target

#### COPENHAGEN ACCORD

2020 target(s)	17% below 2005 by 2020 [4-7% above 1990 by 2020 excl. LULUCF] [7-10% below 2010 by 2020 excl. LULUCF]
Condition(s)	None

#### KYOTO PROTOCOL (KP)

Member of KP CP1 (2008–2012)	Withdrawn
Member of KP CP2 (2013–2020)	No
KP CP1 target (below base year)	6% below 1990
KP CP2 target (below base year)	None

## ■ Climate Change: Canada's International Commitments

DECISION CANADA 2019

Results

News

Promise tracker

Issues

Find your riding

Real

### Liberals pledge Canada will have net-zero emissions by 2050 — but details are scarce



By [Amanda Connolly](#) • Global News

Posted September 24, 2019 8:45 am · Updated September 24, 2019 6:24 pm

Global National

Federal Election 2019: Trudeau announces Liberal plan to push Canada to net-zero emissions by 2050



WATCH: Trudeau announces Liberal plan to push Canada to net-zero emissions by 2050



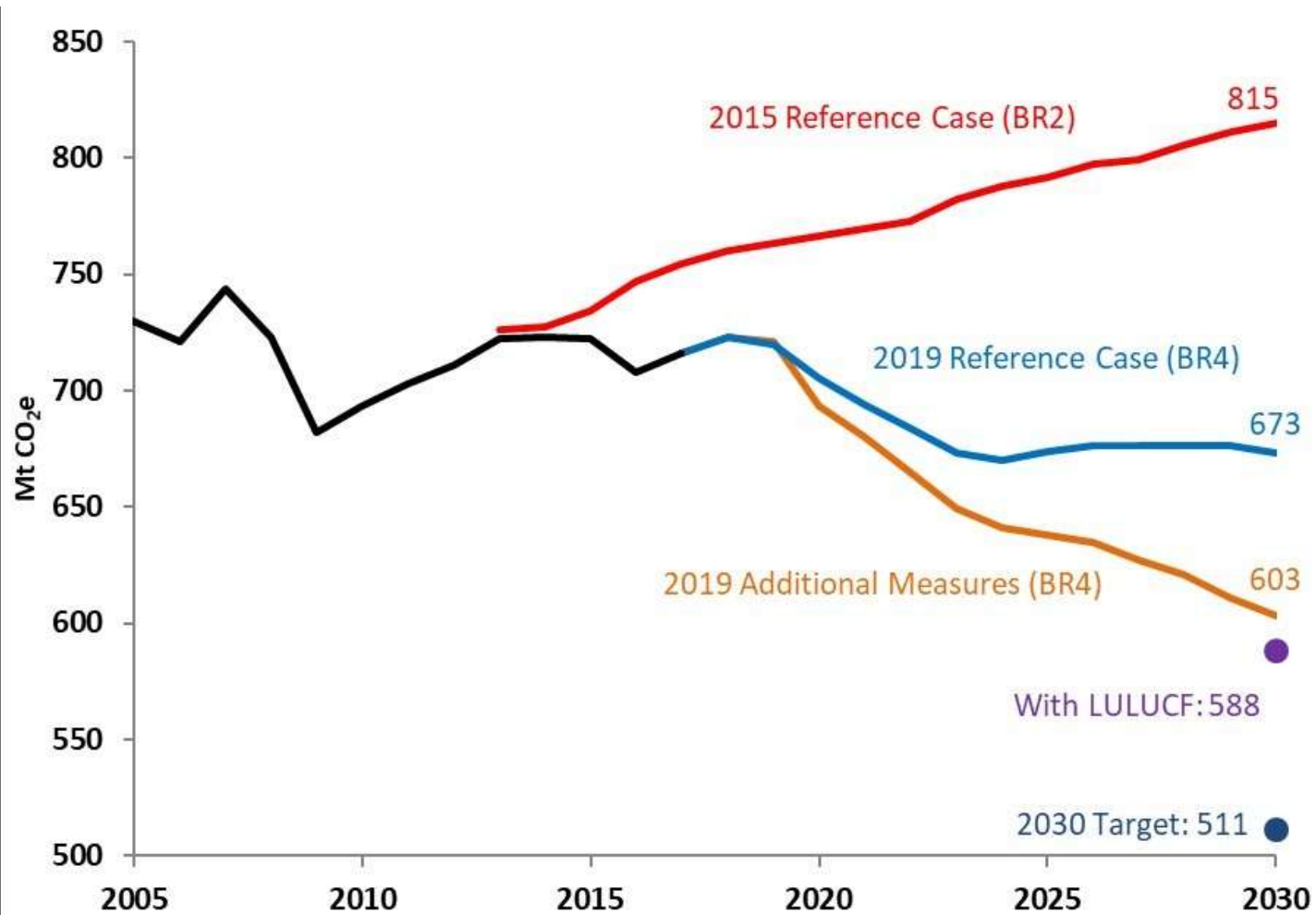


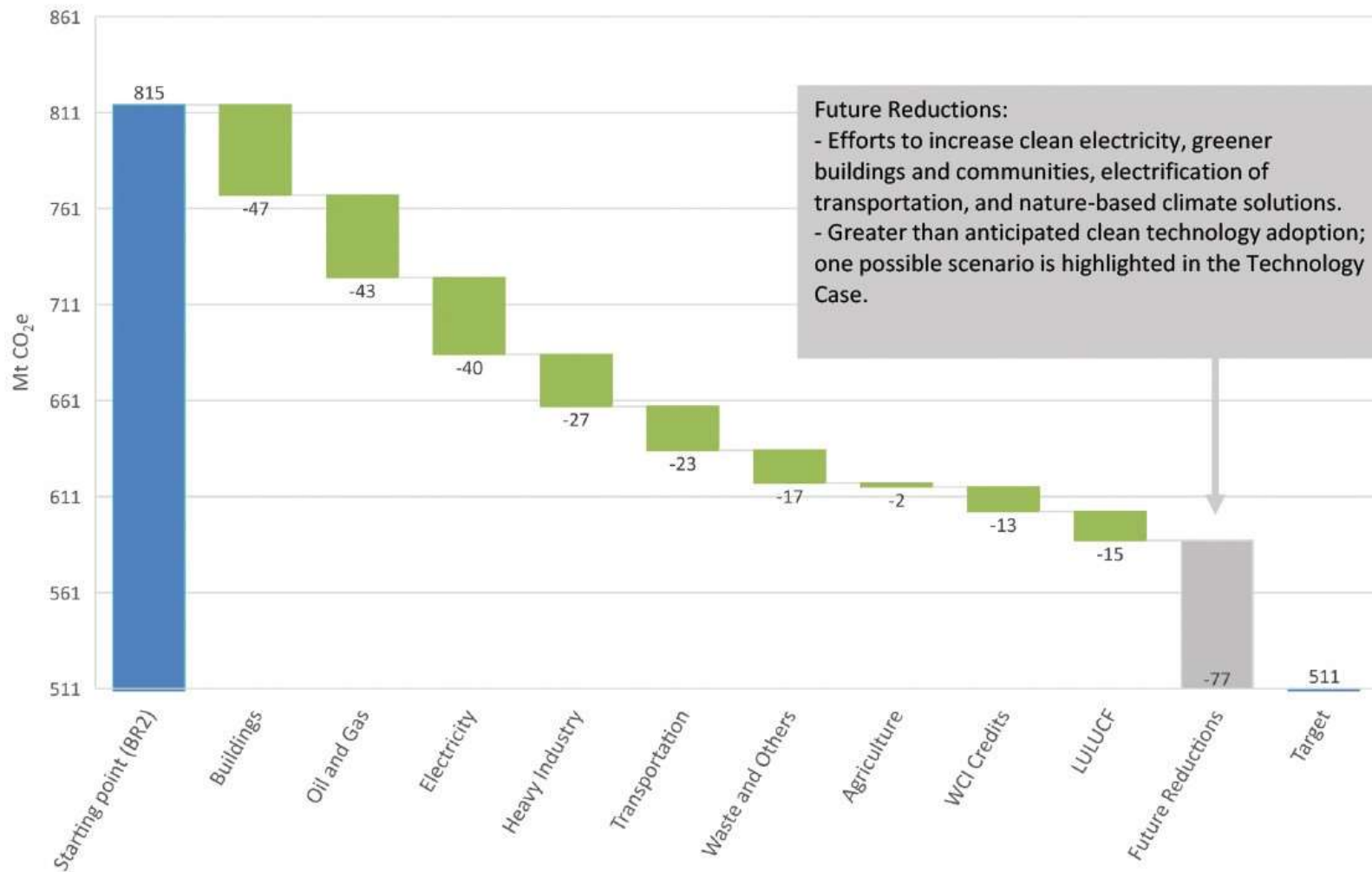
## Emissions (missed) targets across canada

Exhibit 2—Governments in Canada were aiming at different greenhouse gas emission targets, and few governments were on track to meet their targets

Jurisdiction <sup>1</sup>	Overall emission target for 2020	On track to meet 2020 reduction target <sup>2</sup>	Overall emission target for 2030
Canada	17% below 2005 emissions	✗	30% below 2005 emissions
Alberta	None <sup>3</sup>	N/A	None <sup>3</sup>
British Columbia	33% below 2007 emissions	✗	None
Manitoba	None	N/A	None <sup>4</sup>
New Brunswick	14.8 megatonnes of emissions (equivalent to 10% below 1990 emissions)	✓	10.7 megatonnes of emissions (equivalent to 35% below 1990 emissions)
Newfoundland and Labrador	10% below 1990 emissions	✗	None
Northwest Territories	66% above 2005 emissions	N/A <sup>5</sup>	0% above 2005 emissions
Nova Scotia	10% below 1990 emissions	✓	<sup>6</sup>
Nunavut	None	N/A	None
Ontario	15% below 1990 emissions	<sup>7</sup>	37% below 1990 emissions
Prince Edward Island	None	N/A	None
Saskatchewan	None	N/A	None
Yukon	None <sup>8</sup>	N/A	None

## Canada's emissions trajectories



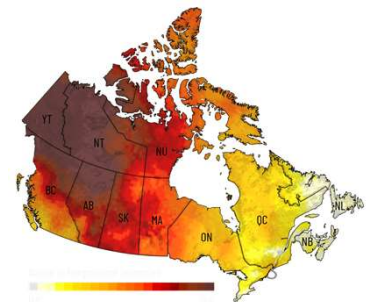
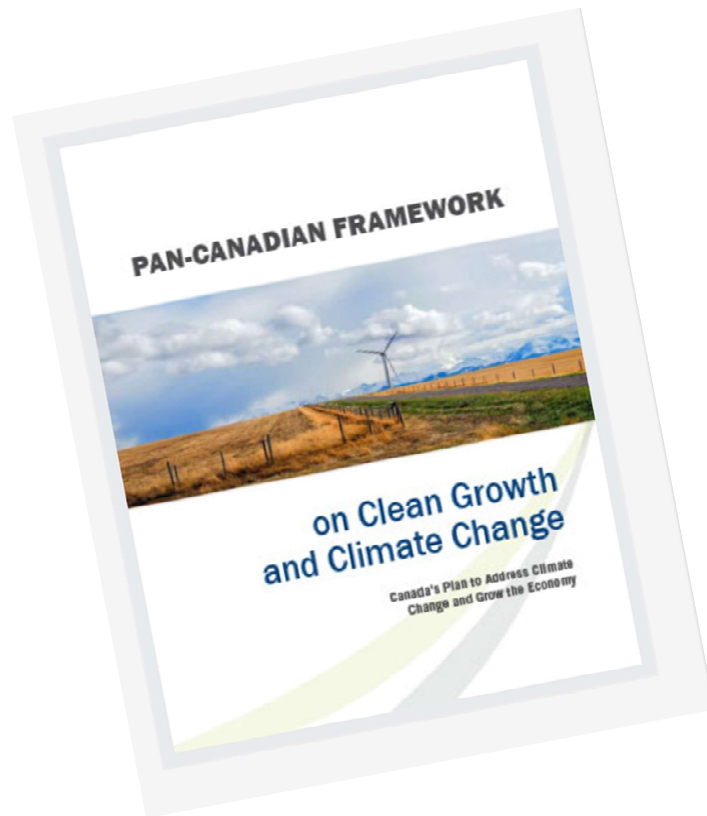






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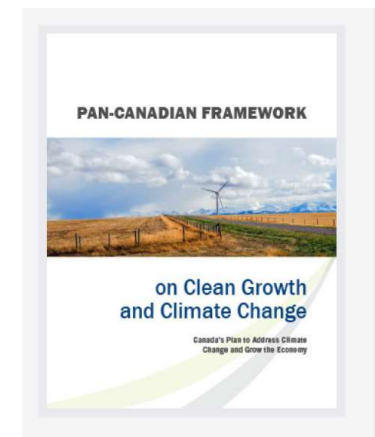
# Canadian Climate Change Law & Policy: Pan-Canadian Framework on Clean Growth and Climate Change



## **Canadian Climate Change Law & Policy: Pan-Canadian Framework on Clean Growth and Climate Change**

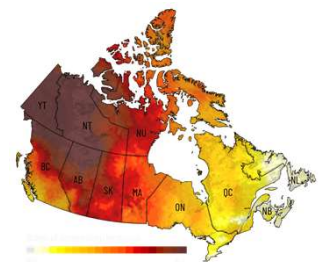
Four pillars:

1. pricing carbon pollution
2. complementary measures to further reduce emissions across the economy (e.g. direct regulation)
3. measures to adapt to the impacts of climate change and build resilience
4. actions to accelerate innovation, support clean technology, and create jobs.



## Federal Climate Law & Policy Snapshot

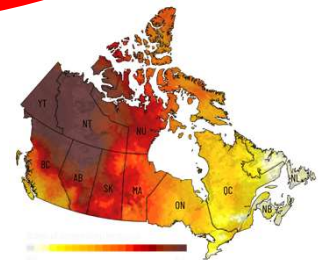
- **National emissions-reduction targets:**  
target (30% below 2005 by 2030) is the floor of ambition
- **Pan-Canadian framework:** ‘all of the above’ approach
- **Direct regulation:** vehicles, coal-fired gen, methane, etc
- **Carbon price – Federal “backstop” legislation:**  
carbon pricing mechanisms adapted to each province's and territory's specific circumstances
- **Impact assessment process [?]:** include analysis of ghgs emissions from designated projects
- **Provincial initiatives:** e.g. Nova Scotia cap & trade, Alberta Technology Innovation Emissions Reduction system for large emitters, Yukon residential renewable energy rebates





## Federal Climate Law & Policy Snapshot

- **National emissions-reduction targets:**  
target (30% below 2005 by 2030) is the floor of ambition
- **Pan-Canadian framework:** no one size fits all plan, partner with provincial and territorial leaders
- **Direct regulation:** vehicles, coal-fired gen, methane, etc
- **Carbon price – Federal “backstop” legislation**
  - carbon pricing mechanisms adapted to each province's and territory's specific circumstances
- **Impact assessment process [?]:** include analysis of ghgs emissions from designated projects
- **Provincial initiatives**



## **Climate Change in the new IAA: past, present, future**

Question to consider...

- What is the role of impact assessment be in measuring and reducing ghg emissions?

## What is EA/IA?

- “Environmental impact assessment is, in its simplest form, a planning tool... as a planning tool it has both an information-gathering and a decision-making component which provide the decision-maker with an objective basis for granting or denying approval for a proposed development...

- *Friends of the Oldman River Society v. Canada*, [1992] 1 SCR 3

## Climate Change in EA: past

“Change to the project caused by the environment”...

- See Site C (2014) climate change could impact the project but project design accommodates for changing environmental factors predicted from climate change... effects could be positive (at 240)
- See Mackenzie Gas (2009) thawing permafrost could from climate change could impact a northern pipeline; project should be designed accordingly (113-114)



# Climate Change in EA: past

***Pembina Institute for Appropriate Development v. Canada, 2008 FC 302***



- ***Pembina Institute for Appropriate Development v. Canada, 2008 FC 302***
  - JRP recommended approval of Imperial's Kearl Oil Sand Project, finding not likely to cause SAAE
  - Pembina Institute filed for Judicial Review
  - Federal Court found one reviewable error: JRP gave no rationale to support its conclusion that no SAAE regarding air quality
  - **“Panel dismissed as insignificant the ghg emissions without any rationale as to why the intensity-based mitigation would be effective...”**
  - **Court remitted matter back to Panel, directing it to provide additional rationale**
  - Court said Panel consideration of ghgs would not put Panel into realm of policy recommendations; also, deference to Panel expertise not triggered because there was zero rationale provided

## ***Pembina Institute for Appropriate Development v. Canada, 2008 FC 302***

- JRP Addendum
  - “0.51 per cent of national GHG emissions and about 1.7% of Alberta’s”
  - “While the Joint Panel acknowledges that the projected GHG emissions of 40kg of CO<sub>2</sub> per barrel for the project represent considerable GHG, there was very little evidence before the Joint Panel to suggest that this release will result in significant adverse environmental effects”
  - “While Imperial did not develop a significant GHG management plan for the project, the Joint Panel finds that Imperial’s corporate energy efficiency program, as well as specific measures proposed by Imperial, are an effective surrogate”
  - “The Joint Panel also relied upon the pending implementation of comprehensive new GHG emissions requirements in Alberta when arriving at its conclusion...”



## *Canadian Environmental Assessment Act, 2012*





# Climate Change in the new IAA: present

## Road to Bill C-69

- Expert Panel
- Consultation process
- Expert Report
- Discussion paper
- Bill C-69 readings
- Senate Review
- *Impact Assessment Act* and initial regs
- Regulations and guidance (still underway)



# Climate Change in the new IAA: present

## Road to Bill C-69

- Expert Panel
- Consultation process
- Expert Report
- Discussion paper
- Bill C-69 readings
- Senate Review
- *Impact Assessment Act* and initial regs
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First Session, Forty-second Parliament,  
64-65-66-67 Elizabeth II, 2015-2016-2017-2018

HOUSE OF COMMONS OF CANADA

## BILL C-69

An Act to enact the Impact Assessment Act  
and the Canadian Energy Regulator Act, to  
amend the Navigation Protection Act and to  
make consequential amendments to other  
Acts

---

**AS PASSED**

BY THE HOUSE OF COMMONS



## ■ Climate Change in IAA: present



CONSOLIDATION

CODIFICATION

Impact Assessment Act

Loi sur l'évaluation d'impact

S.C. 2019, c. 28, s. 1

L.C. 2019, ch. 28, art. 1

**NOTE**

[Enacted by section 1 of chapter 28 of the Statutes of Canada, 2019, in force August 28, 2019, see SI/2019-86.]

**NOTE**

[Édictée par l'article 1 du chapitre 28 des Lois du Canada (2019), en vigueur le 28 août 2019, voir TR/2019-86.]

Current to June 17, 2020

Last amended on August 28, 2019

À jour au 17 juin 2020

Dernière modification le 28 août 2019

 Government of Canada / Gouvernement du Canada

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MENU

# Impact Assessment Agency of Canada

CANADA.CA/IAAC

⚠ While the Impact Assessment Agency of Canada's offices are still closed to the public due to COVID-19, our team continues to work remotely to serve Canadians and advance project assessments. Please feel free to reach out to us by [email](#) or [telephone](#), but take note our response times may be a little slower than usual. Your cooperation and patience are appreciated.

Updates to assessments or consultation plans will be posted to the Agency's website and the Canadian Impact Assessment Registry as soon as they are available.

Impact assessment



[Impact assessments process](#)

Learn about the purpose and steps of impact assessments under the *Impact Assessment Act*.

[Canadian Impact Assessment Registry](#)

How to get involved



[Public](#)

Learn how the public can participate in impact assessments.

[Indigenous](#)

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# ■ Climate Change in IAA: present

## Impact Assessment Act Regulations

[Home](#) → [Physical Activities Regulations](#)

### Physical Activities Regulations



#### The new *Physical Activities Regulations*

The *Physical Activities Regulations*, also known as the Project List, that support the *Impact Assessment Act* – will be published in the *Canada Gazette*, Part II on August 21, 2019, and come into force on August 28, 2019. This regulation establishes clear criteria for when a project may be subject to a federal impact assessment.

Click [here](#) to read the unofficial version of the *Physical Activities Regulations* prior to publication in *Canada Gazette*, Part II.

#### Consultations leading to the development of the new *Physical Activities Regulations*

The Canadian Environmental Assessment Agency sought public comments until **May 31, 2019** on the types of projects that may be subject to impact assessment (known as designated projects) under the Regulations Designating Physical Activities (also known as the Project List).

Read the Discussion Paper on the Proposed Project List available below and the feedback received through comments and submissions.

READ THE  
DISCUSSION PAPER



READ  
THE COMMENTS



READ  
THE SUBMISSIONS



An HTML version of this Discussion Paper is available [here](#).



## ■ Climate Change in IAA: present

### ***Impact Assessment Act* – climate change considerations**

- s.22(i) “must take into account”
- s.63 (e) “must include a consideration of”
  - “...the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;”

## Impact Assessment Process Overview

Overview

[Phase 1](#)

[Phase 2](#)

[Phase 3](#)

[Phase 4](#)

[Phase 5](#)

PDF version - 356 kb



### KEY PARTICIPANTS IN THE IMPACT ASSESSMENT SYSTEM



### Factors — public interest

**63** The Minister's determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors:

- (a) the extent to which the designated project contributes to sustainability;
- (b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are significant;
- (c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;
- (d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
- (e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.

### Conditions — effects within federal jurisdiction

**64 (1)** If the Minister determines under paragraph 60(1)(a), or the Governor in Council determines under section 62, that the effects that are indicated in the report that the Minister or the Governor in Council, as the case may be, takes into account are in the public interest, the Minister must establish any condition that he or she considers appropriate in relation to the adverse effects within federal jurisdiction with which the proponent of the designated project must comply.





## Policy Context: Considering Environmental Obligations and Commitments in Respect of Climate Change under the Impact Assessment Act

"Commitments in respect of climate change" are set out in **legally binding and non-binding domestic and international instruments**. This document will use the term "instruments" to jointly refer to the various legislation, regulations, policies, targets, plans and frameworks to which Canada is a party.

### Analysis

Analysis will be conducted by the Agency and relevant federal expert departments using a two step approach:

1. determining *whether* a project's effects could hinder or contribute to the Government of Canada's ability to meet an environmental obligation or climate change commitment and
2. determining *the extent to which* these effects could hinder or contribute to the Government of Canada's ability to meet the applicable obligation or commitment.

The type and extent of analysis will depend on the project context. In some cases, a straightforward rationale describing why the project contributes to meeting climate change commitments may be needed. In other cases, a more detailed analysis may be needed. The level of analysis will depend on the specifics of predicted effects and the environmental obligation or commitment in respect of climate change under consideration.



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**DRAFT**

# STRATEGIC ASSESSMENT OF CLIMATE CHANGE



Canada

## Timeline

- **Discussion Paper Released**  
July 2018
- **Discussion Paper Comment Period**  
July - September 2018
- **Multi-Stakeholder Meeting**  
February 20, 2019
- **Terms of Reference Published**  
March 11, 2019
- **Provincial/Territorial Working Group**  
February - April 2019
- **Publication of the Draft Strategic Assessment of Climate Change**  
August 8, 2019
- **Draft Strategic Assessment of Climate Change Comment Period**  
Closed August 30, 2019
- **Final Drafting of the Strategic Assessment of Climate Change**  
Currently in progress
- **Final Strategic Assessment of Climate Change Released**  
Early 2020

## Impact Assessment Act - Draft SACC

MENU ▾

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> [Review of Environmental and Regulatory Processes](#) > [Get Involved](#)

### Draft strategic assessment of climate change



[Draft strategic assessment of climate change](#)  
[\[PDF - 662KB\]](#)

### Executive summary

A strategic assessment is intended to address public policy discussions beyond the scope of a single project assessment by providing guidance on how policies, plans, and programs will be considered in impact assessments. This strategic assessment of climate change provides guidance on how federal impact assessments will consider a project's greenhouse gas (GHG) emissions and its resilience to climate change impacts.

The strategic assessment of climate change will apply to projects that undergo a federal impact assessment under the *Impact Assessment Act*. It will also be applicable to environmental reviews by the Canadian Energy Regulator in accordance with their guidance or filing requirements, and may also apply to environmental reviews by other federal lifecycle regulators.

The strategic assessment of climate change provides an approach to quantifying the GHG emissions of projects. This includes:

- outlining the approach to be used to estimate net and upstream GHG emissions;
- clarifying that downstream emissions will not be assessed; and

## ***Impact Assessment Act - Draft Guidance***

- Proponent must provide initial ghg estimate in PD during planning phase
- Type and level of detail determined on a case-by-case basis
- Threshold-based approach – key threshold 500 kt/yr

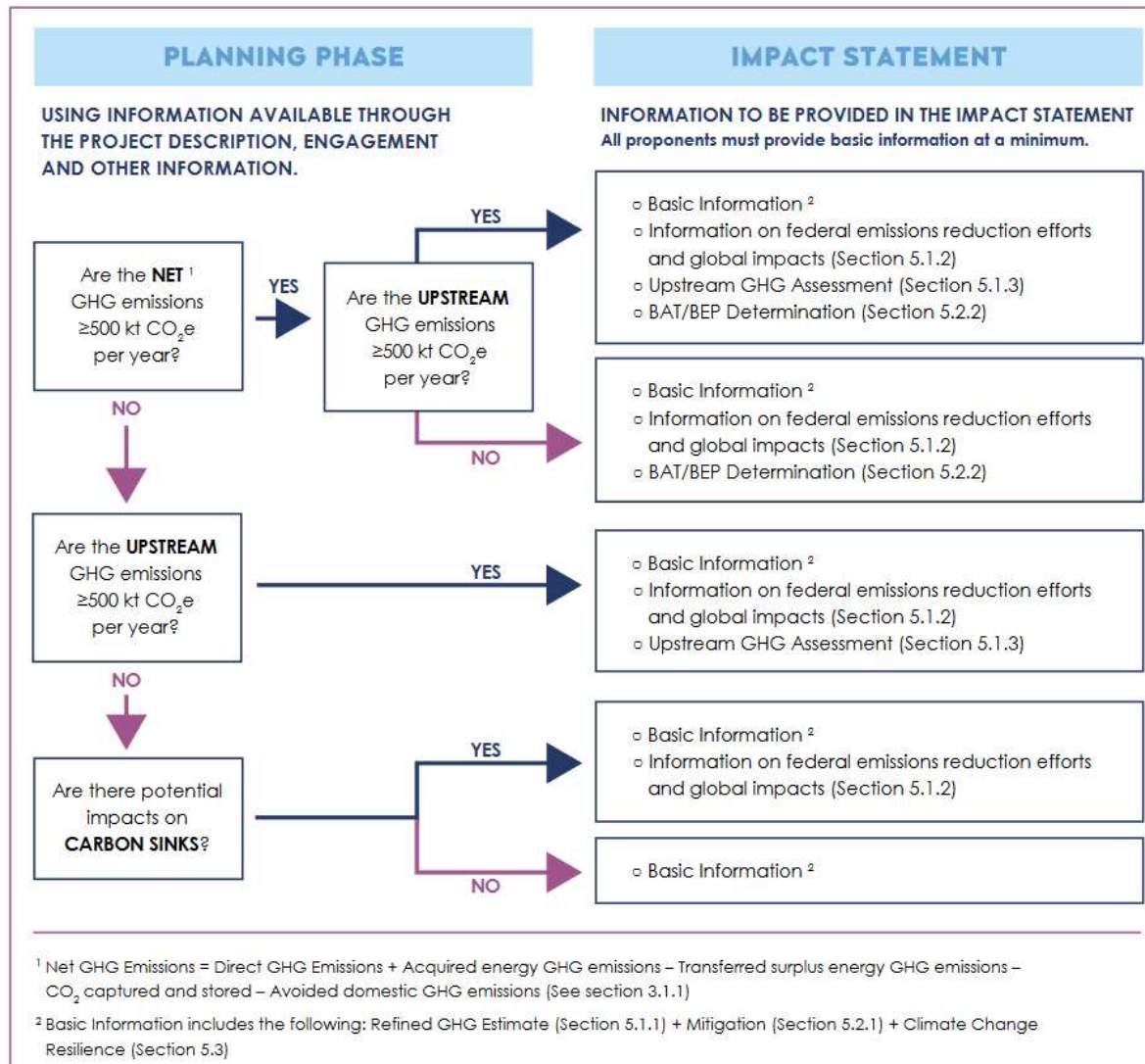
### Examples:

- Project below 500 kt/yr? Just “basic information” required
- Project result in upstream emissions >500 kt/yr? “Upstream assessment” required
- Project result in net emissions >500kt/yr and upstream emissions >500kt/yr?  
Basic information, info on federal emission reduction efforts and global impacts, upstream assessment and a ‘best available technology’ determination required
- Further technical guidance forthcoming...



## Impact Assessment Act - Draft SACC

Figure 1: Determining The Information To Be Provided In The Impact Statement



## ***Impact Assessment Act - Draft Guidance***

- Features of note:
  - Offsets – may generate, may obtain
  - Emissions intensity for comparison purposes
  - Downstream emissions – No
  - “Displaced Emissions Internationally” – Yes
  - Agency analysis of how project emissions relate to climate targets/policies

## **Key missing pieces?**

- 1. Projects/triggers not on the list (because no ghg “climate trigger”)**
- 2. Making project ghg info meaningful and contextualized**
- 3. Proper, broad strategic assessment of climate change**

## **Key missing pieces?**

- 1. Projects/triggers not on the list (because no ghg “climate trigger”)**
- 2. Making project ghg info meaningful and contextualized**
  - How would the project affect decarbonization?**
  - How would the project affect Canada’s ability to meet 2030, 2050 targets?**
  - How do social costs of emissions from the project affect its viability?**
  - How does the project relate to regional or sectoral carbon budgets?**
  - How would the project affect emissions in other countries?**



## Making ghg assessment info meaningful...

### 5.4 Review and analysis of information provided in the Impact Statement

The Agency or lifecycle regulators, with the support of expert federal authorities, will also provide supplemental analysis, such as describing the project's GHG emissions in the context of Canada's 2030 emissions targets and forecasts, including Canada's 2030 emissions targets and Canada's Mid-Century Long-Term Low-Greenhouse Gas Development Strategy. This may include considering, for example, whether the project's emissions are built into the sector projections in ECCC's national forecast in Canada's National Communications and Biennial Reports submitted to the United Nations Framework Convention on Climate Change.

## 6. Climate change in decision-making and conditions

Under the *Impact Assessment Act*, the Minister or Governor in Council <sup>16</sup> must decide whether the project is in the public interest, accounting for any adverse effects that are within federal jurisdiction or that are directly linked or incidental to other federal decisions about the project.

The *Impact Assessment Act* also requires that the Minister or Governor in Council consider, among other factors, the extent to which the effects of the project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change. The information provided by project proponents pursuant to the guidance in this strategic assessment of climate change, together with the analysis of that information by the Agency or lifecycle regulators, will ensure that assessment decisions account for a project's likely climate change-related effects. Decision-makers will be provided with analysis, including but not limited to, the project's GHG emissions in the context of Canada's emissions targets and forecasts, such as Canada's 2030 emissions targets and Canada's Mid-Century Long-Term Low-Greenhouse Gas Development Strategy.

# Making ghg assessment info meaningful...

## Social Cost of Carbon

### What is it?

- Estimated dollar figure representing the value of damages per unit of carbon emission (monetary value of externality)

### Where did it come from?

- U.S. court decisions → U.S. Working Group → U.S. cost-benefit

### How is it generated?

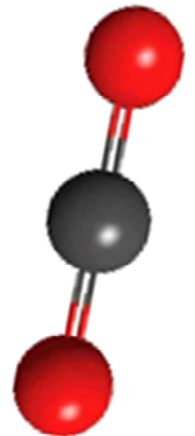
- Integrated Assessment Models; many inputs; discount rate

### Why use it?

- Quantitative value of carbon emission reductions needed to inform regulatory decision-making

### Applications?

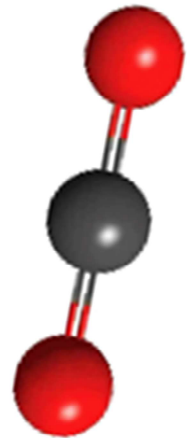
- Regulatory cost-benefit analysis, impact assessment??



# Making ghg assessment info meaningful...

## Social Cost of Carbon

- Options for SCC in IAA:
  - “Economic conditions”
  - Cumulative effects
  - Climate change commitments
  - ‘Contribution to sustainability’



# Making ghg assessment info meaningful...

## Social Cost of Carbon

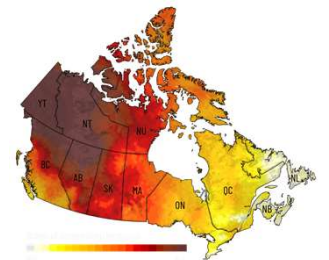
- Options for SCC in IAA:
  - “Economic conditions”
  - Cumulative effects
  - Climate change commitments
  - ‘Contribution to sustainability’
- So far not yet meaningfully considered for IAA despite being used in regulatory impact analysis





## What to watch:

- Final SACC / Guidance
- Technical guidance, including downstream/intl dimensions
- Analyses of project emissions in relation to climate targets and policies
- “Reasons” provided with final IAA decisions
- Reference cases re IAA and GGPPA
- Offset regimes
- “Net-Zero Legislation”
- A ‘real’ strategic assessment on climate change?



## Conclusions

- Significant developments for IA/EA
- Very modest progress for climate change
- Another instance of environmental law implementation gap?
- Many more legal developments to come
- Missed opportunity to take stock of Canadian climate law and policy and build coherence across regulatory regime, but perhaps not too late...

# Questions & Discussion

Thank you

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