



Evaluation of the Environmental Damages Fund



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List of acronyms and abbreviations

CEPA	<i>Canadian Environmental Protection Act, 1999</i>
CNLAIA	<i>Canada-Newfoundland and Labrador Atlantic Accord Implementation Act</i>
CNPA	<i>Canada National Parks Act</i>
CWA	<i>Canada Wildlife Act</i>
EDF	Environmental Damages Fund
ECCC	Environment and Climate Change Canada
EVAMPA	<i>Environmental Violations Administrative Monetary Penalties Act</i>
FA	<i>Fisheries Act</i>
FTE	Full-time equivalents
FY	Fiscal year
GBA+	Gender-based analysis plus
G&C	Grants and contributions
MBCA	<i>Migratory Birds Convention Act, 1994</i>
NEDFO	National Environmental Damages Fund Office
SARA	<i>Species at Risk Act</i>
WAPPRIITA	<i>Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act</i>

Executive summary

Context

This report presents the results of an evaluation of the design and delivery of the Environmental Damages Fund (EDF) in Environment and Climate Change Canada (ECCC). Conducted from June 2020 to April 2021, the evaluation examined design and delivery aspects of the EDF in ECCC from April 1, 2014 to March 31, 2020. It was based on a review of EDF program documents and answers to questions put to key interviewees (see [Appendix A](#): Evaluation approach).

Established in 1995, the EDF is a specified purpose account administered by ECCC. It directs funds received from fines, court orders, voluntary payments and payments made from international funds (collectively defined as “awards”) to priority projects that support restoration of damage to the natural environment and wildlife conservation. At the time of the evaluation, 14 federal statutes automatically directed awards to the EDF, and 5 federal statutes contain discretionary clauses to do so (see [Appendix B](#) for a list of legislation directing funds to the EDF).

Findings

Program design

Overall, the EDF is designed to support the achievement of its intended outcomes. Key elements of the program’s design contribute to the achievement of the EDF’s outcomes. These include the program’s flexibilities, a relevant set of program categories, definition of eligible funding recipients, and an effective process for applicants to apply for available funding. Funds are managed within the parameters of a specified purpose account and approved Terms and Conditions.

The EDF Terms and Conditions specifically include First Nations and Aboriginal organizations as eligible funding recipients, but consideration of this in the design and delivery of the EDF is limited and do not include specific requirements and guidance for Indigenous engagement

Consideration of government priorities other than those specified within the Terms and Conditions in the design and delivery of the EDF are limited, and the Terms and Conditions could be refined to enable consideration of evolving priorities within current program authorities.

Program delivery

Capacity to deliver

There has been an increase in the number and value of awards. As a result, existing capacity within the EDF is insufficient at the national level and in some regional offices to efficiently and effectively deliver the program.

The program design allows the EDF to use up to 5% of an award for administrative purposes. While the program has leveraged this feature, more consistent use could better support program operations.

Decision-making processes

The authorities and process for funding approval need to be clarified in the program procedures and policies. Due to the recent focus on large awards¹, the time between the call for proposals and disbursement of funding has increased.

Some of the procedures, guidance documents and tools used for the EDF program are no longer suited to efficient and effective program delivery.

Appropriateness of the governance and management structure

Accountability for the program is clear and connections with ECCC partners have increased, particularly through the development of allocation strategies for large awards. However, although the ECCC EDF DG Committee has met periodically, the Government of Canada EDF DG Committee has not met since 2017, which has resulted in missed opportunities for adopting a whole-of-government approach.

In the evolving context in which the EDF operates, there is a need to clarify the roles and responsibilities of the National Environmental Damages Fund Office (NEDFO) and the ECCC regions, to maintain a strong connection between national decision making and the capacity of the regions to deliver on program requirements.

Federal and provincial courts use different methods for payments and there are multiple stakeholders involved in the end-to-end process. As a result, while protocols have been established, the process for tracking awards remains a challenge.

Communications and reporting

General awareness of the EDF program could be strengthened, as could communications around calls for proposals and engagement with partners. The EDF program could also improve the mechanisms used to report results to Canadians.

The EDF logic model and framework for performance reporting consist of indicators included in the Community Eco-Action Performance Information Profile. The selected indicators are considered to be aligned with the program's mission. However, they are not reported on in a consistent manner and are not used to inform program decision-making. The evaluation found that the indicators could be used more effectively to highlight the EDF's successes and the impact of the projects that the program supports.

¹ EDF program defines a large award as an award equal to or greater than \$1 million.

Recommendations

The following recommendations were identified in light of the evaluation findings.

Recommendation 1: Ensure that the Environmental Damages Fund program, both in the regions and the National Environmental Damages Fund Office, have adequate capacity to respond to the growth in awards.

The evaluation noted that program capacity has not kept pace with the growth in the number and value of awards that are directed to the program. The need to support the regular business of the EDF while developing strategies to disburse large awards has stretched capacity at both the national and regional levels. As a result, the timing between awards received and funds disbursed has been growing. The program's annual closing balance is steadily increasing. In this context, there is a need to ensure that the EDF program has sufficient capacity to deliver on its mandate in the context of a growing demand. This will also allow the program to be in a better position to address areas identified in other evaluation recommendations.

While the EDF has been authorized since 2017 to direct up to 5% of the specified purpose account to administrative costs such as operation and maintenance and salaries, the use of this funding source has not been optimal. The program could increase its use of the flexibilities inherent in being a specified purpose account to support its operations. That being said, the amount of funding received by the EDF account depends on fines, court orders and voluntary payments provided in a given year. Therefore, the level of funding that can be allocated to administrative costs is unpredictable.

Recommendation 2: Revise select internal ECCC procedures, guidance documents and tools related to grants and contributions, to ensure that they are customized to the unique flexibilities of the Environmental Damages Fund and can support:

- **an efficient and timely disbursement of funds in a context where the program is growing**
- **enhanced engagement with Indigenous communities**

In 2018, ECCC moved to a generic approach to issuing calls for proposals for some of its G&C programs. Because the EDF is a specified purpose account, the more generic templates and processes used by other ECCC G&Cs are not necessarily adapted to the flexibility that a specified purpose account requires. As a result, some of the existing EDF procedures, guidance documents and tools have challenged the program's ability to effectively disburse funds and absorb the pressures created by the recent growth in the number and value of awards. In turn, this has created an unnecessary administrative burden for the EDF.

The threshold for activating the Policy on Large Awards, an EDF guidance document, is \$1 million. However, the number of awards exceeding \$1 million has increased in recent years. As a result, the EDF Policy on Large Awards, an intensive and robust approach to disbursing funds, has been triggered more often than anticipated and has put pressure on program

capacity. For the program to disburse funds in an efficient and timely manner, the threshold for activating the Policy on Large Awards should be reassessed.

Also, there needs to be more clarity in the procedure for project and funding approval to ensure consistency. ECCC G&C programs are subject to the Delegation of Spending and Financial Authorities²; however, the EDF, as a specified purpose account, is not required to adhere to the Delegation of Spending and Financial Authorities. Overall, there may be value in examining current procedures, guidance documents and tools to assess if alignment to the Delegation of Spending and Financial Authorities would improve program efficiency.

The evaluation also found that there are opportunities to integrate more guidance in program procedures, guidance documents and tools around engagements with Indigenous communities.

Recommendation 3: Ensure that roles and responsibilities are well-defined for the National Environmental Damages Fund Office and the regions, and engage more regularly and systematically with other federal departments and organizations that have legislation or interactions with the Environmental Damages Fund.

The roles and responsibilities of the National Environmental Damages Fund Office have not yet been formalized beyond draft documents. As well, the role of the National Environmental Damages Fund Office has been strongly influenced over the last 2 years by the increased involvement in program development for the large awards received by the EDF. The roles and responsibilities need to be clarified with regard to regular business practices, large award allocations and some other areas of the program, such as the disposition of small residual funds from awards and award tracking.

Due in part to program capacity challenges, the interdepartmental mechanism to engage with other departments that have legislation directing funds to the EDF has not met since 2017. Greater interdepartmental engagement with departments that have statutes directing funds to the EDF like Fisheries and Oceans Canada, Transport Canada and the Parks Canada Agency, as well as with the Public Prosecution Service of Canada, would foster more opportunities for the program to be informed by or contribute to addressing the priorities of these departments and organizations.

Recommendation 4: Continue outreach to prosecutors, enforcement officers and the Canadian public to foster their awareness of the Environmental Damages Fund and its benefits and improve reporting to Canadians.

Communication activities are key to the success of the EDF. Raising awareness among the enforcement and prosecution communities with regard to the impact of EDF-funded projects has helped ensure that the program is seen as a credible sentencing option, particularly in cases

² In a G&C context, this document indicates that projects requesting less than or equal to \$50,000 are approved by the ADM; projects requesting more than \$50,000 and less than \$100,000 are approved by the Deputy Minister; and projects requesting more than \$100,000 are approved by the Minister.

where the contravened legislation provides discretionary authority to direct a monetary penalty to the EDF.

Public awareness encourages community-based organizations to respond to the calls for proposals to disburse EDF funds by proposing projects that support restoration of damage to the natural environment and wildlife conservation. Progress has been made since the 2014 evaluation to improve the communications activities that promote the program. Improving and strengthening outreach activities remains necessary to ensure that the EDF and its successes are widely known. Among other things, evaluation evidence shows that awareness of the EDF among community-based environmental organizations could be improved and that reporting to Canadians could be strengthened.

Recommendation 5: Conduct analyses to determine whether current program authorities allow the Environmental Damages Fund to remain effective and efficient moving forward.

The context in which the EDF is operating has changed since program authorities were renewed in 2009. The revenue from awards and thus, the funds available for disbursement, have increased significantly in the last 10 years. Policy requirements have also changed. For example, there are stronger requirements for federal government programs to take into account the various needs of population groups in program design or to address the differential impacts experienced by these groups as a result of environmental conditions. In this context, the program should assess the extent to which current Terms and Conditions allow the EDF to adapt moving forward.

1. Context

This report presents the results of an evaluation of the design and delivery of the EDF in ECCC. Conducted from June 2020 to April 2021, the evaluation examined design and delivery aspects of the EDF in ECCC from April 1, 2014 to March 31, 2020. Evaluation questions focussed around the strengths and limitations of the program's design, capacity, decision-making processes, governance, and communications and reporting. The evaluation did not examine the achievement of program results.

Lines of evidence for the evaluation included:

- a review of publicly available and internal program documents and administrative data
- key informant interviews, including 23 interviews with 27 individuals representing program management and staff, internal ECCC and federal partners and EDF funding recipients

[Appendix A](#) provides a description of the evaluation approach, including its strengths and limitations.

1.1 Program profile

Overview

Established in 1995, the EDF is a specified purpose account³ administered by ECCC, which directs funding received from fines, court orders, voluntary payments and payments made from international funds⁴ to priority projects that support restoration of damage to the natural environment and wildlife conservation (see [Appendix B](#) for a list of legislation directing funds to the EDF). The EDF's ultimate outcome is that degraded environments are restored or enhanced as a result of community-based action. [Appendix C](#) presents the program logic model. The EDF Terms and Conditions were last renewed in 2009.

ECCC administers the EDF, and a National Environmental Damages Fund Office (NEDFO) was established in January 2019 to be responsible for national administration of the program. Fisheries and Oceans Canada (DFO), Transport Canada (TC), Natural Resources Canada (NRCan), and the Parks Canada Agency (PCA) have federal statutes directing awards to the EDF or statutes with discretionary clauses providing authority to direct awards to the EDF.

Program components and activities

³ As defined in the [Directive on Accounting Standards: GC 4100 Specified Purpose Accounts](#), a specified purpose account is "a classification of accounts established in the Accounts of Canada used to record revenues deposited into, and money payable out of, the Consolidated Revenue Fund (CRF) under statutory authorities for specified purposes."

⁴ Funding can be directed to the EDF through national and international liability funds such as Canada's Ship-source Oil Pollution Fund and the International Oil Pollution Compensation Fund. The evaluation did not assess how much funding the EDF received from these international liability funds.

The purpose of directing compensation to the EDF, whether court-ordered or voluntary, is to achieve restoration of damage to the natural environment and wildlife conservation in a cost-effective way. The EDF supports the polluter pays principle, which places responsibility on those who pollute the environment to pay for the damage they have caused. The EDF does so by funding projects to achieve restoration of damage caused to the natural environment with money received as penalties assessed against the responsible parties. For projects to be funded, the outcomes must align with the use restrictions specified in the relevant legislation (see [Appendix B](#) for more details). As well, the courts may make specific recommendations related to the fines levied, and the program endeavours to align projects with these recommendations (for example, when a court recommends the use of funds in certain geographic locations).

Project proposals submitted must be consistent with the EDF goals of environmental damage restoration, environmental conservation and related research, education and awareness activities. Accordingly, projects successful in receiving funding will have outcomes that clearly align with 1 of the 4 project categories defined by the EDF program Terms and Conditions:

- Restoration – restore the same type of natural resources lost, of the same quality and value in the locale in which the incident occurred or restore same type of natural resources lost, of the same quality and value in another locale; or restore same type of natural resource, but of different quality in the locale where the incident occurred
- Environmental quality improvement – improve or enhance different natural resources in the locale in which the incident occurred; improve or enhance different natural resources in a different locale; or improve or enhance environments previously degraded by pollutant discharges or other human induced alterations (for example, tidal barriers and dike lands)
- Research and development – undertake the assessment or research of environmental damage in support of restoration planning including the long-term effects and cumulative impacts of pollutant discharges or for increased understanding of limiting factors for migratory birds populations; or develop environmental damage assessment and restoration methods including techniques for the valuation of damage; restoration alternatives (for example, environmental management plans).
- Education and awareness – promote education related to environmental damage restoration including training for the assessment and restoration of damage, or for increased awareness and compliance with environmental regulations; or promote community capacity building and environmental stewardship in support of environmental damage restoration.

To achieve these goals, the EDF applicant guide indicates that projects that address the original incident that resulted in the EDF award are given priority. However, in cases where restoration projects are not possible, the program will first seek to fund environmental quality improvement projects and then consider research and development work to support restoration initiatives, and finally, education and awareness.

Projects are selected following a call for proposals or direct application process. Regional Funding Program Offices manage the project review process. They receive the proposals and undertake an administrative review that determines project eligibility and alignment with EDF Terms and Conditions and criteria. Proposals that pass the administrative review proceed for a technical review. Technical reviewers can include ECCC experts, as well as subject matter experts from other federal government departments. Reviewers comment on the relative merit of proposals and viability of approach using a standard technical review form.

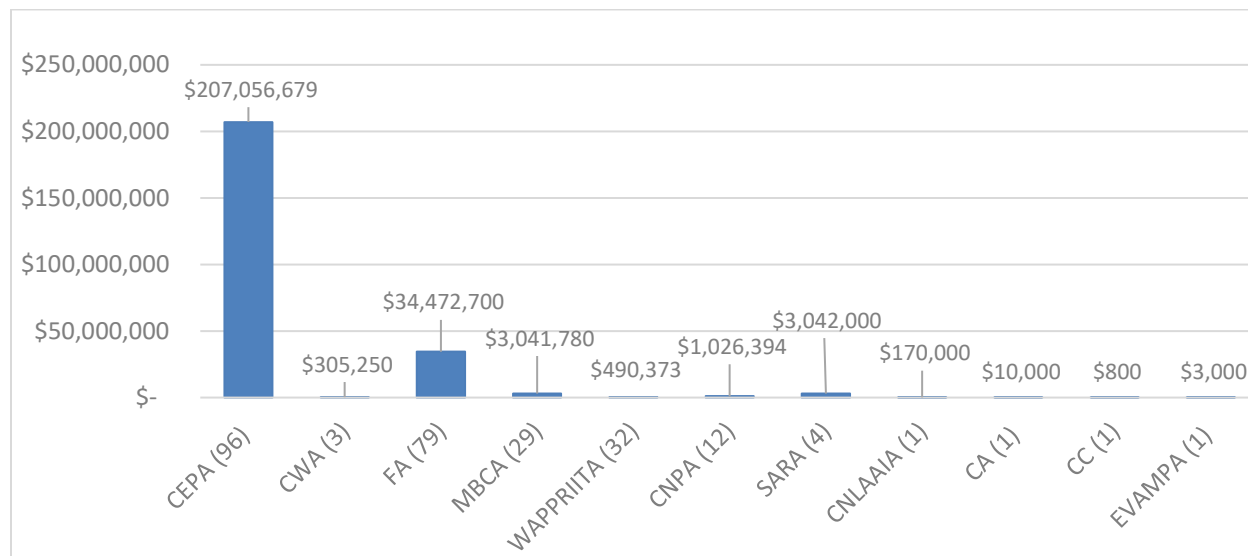
Regional Offices then host a final evaluation meeting, including the EDF regional manager and staff, as well as any relevant technical experts, in order to determine which projects should be recommended for funding. For “national-scope” projects (i.e. from the Climate Action and Awareness Fund⁵), a committee composed of senior ECCC officials (that is, DGs) may be convened to review proposals and provide recommendations for funding. The NEDFO then creates a summary form accompanied by project backgrounders for project approval by the Program Authority (Regional Director General Atlantic and Quebec Region), who then forwards the documents to Assistant Deputy Minister, Strategic Policy Branch, for final approval.

Program resources

Funds are allocated to the EDF from fines, court orders, voluntary payments and payments made from international funds. The term used to refer to all types of funding allocated to the EDF is an “award”. The awards to the EDF vary considerably in 3 ways: the amount (that is, from several hundred to hundreds of millions of Canadian dollars), the number of awards received annually, and also the timing of when the award is received (for example, some awards are paid in full immediately while other awards are paid into the fund over multiple months or years).

⁵ Environmental Damages Fund funding (\$196.5 million Volkswagen fine minus administrative costs) was combined with contributions from the Climate Action Fund (\$15 million), and was branded as the Climate Action and Awareness Fund. Under the specified purpose account, the EDF and the Climate Action Fund will invest up to \$206 million over 5 years to support Canadian-made projects that help to reduce Canada’s greenhouse gas emissions. The specified purpose account supports projects that build capacity for climate action in Canada under 3 main priorities: youth climate awareness and engagement and community-based climate action; support to Canadian think-tanks and academia; and advancing science and technology.

Figure 1: Total number and amount of the awards received by the Environmental Damages Fund from legislation, April 2014 to March 2020

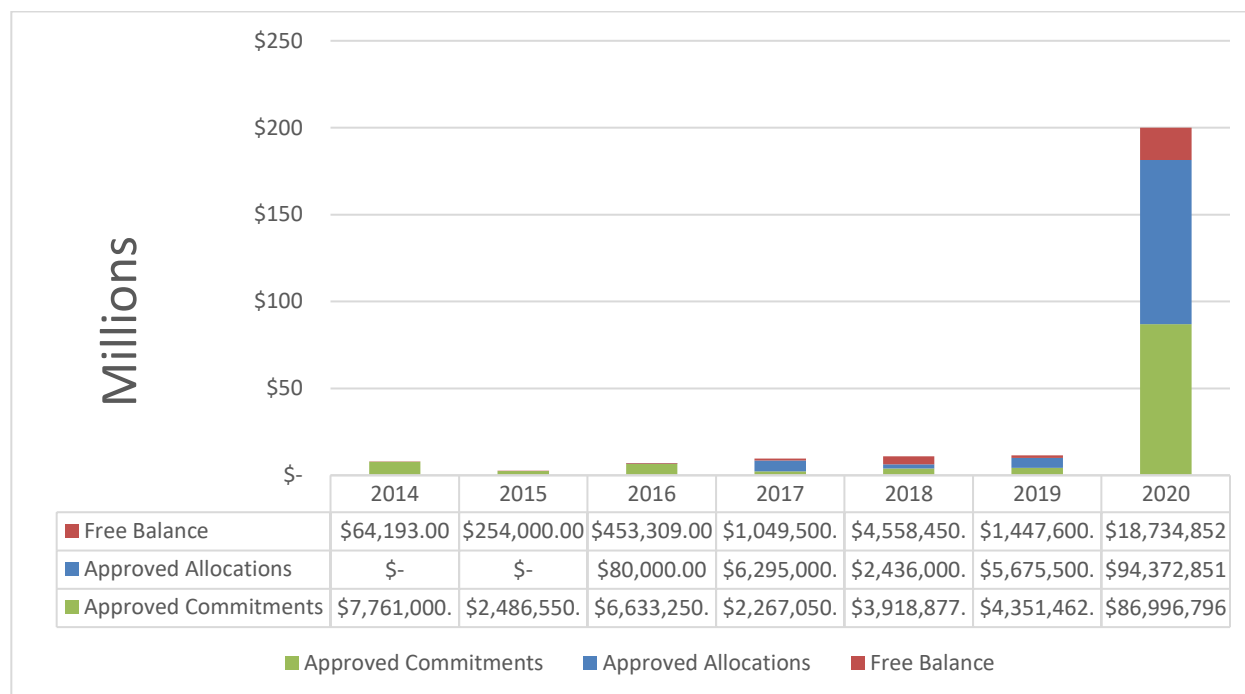


Source: Program data showing awards from April 2014 to March 2020.

Figure 1 shows awards received by the EDF from legislation with discretionary clauses, such as the [Canada-Newfoundland and Labrador Atlantic Accord Implementation Act](#) (CNLAAlA), and from legislation with non-discretionary clauses, such as the [Canadian Environmental Protection Act, 1999](#) (CEPA), the [Canada Wildlife Act](#) (CWA), the [Fisheries Act](#) (FA), the [Migratory Birds Convention Act, 1994](#) (MBCA), the [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#) (WAPPRIITA) and the [Canada National Parks Act](#) (CNPA). Discretionary awards from the [Species at Risk Act](#) (SARA), the [Customs Act](#) (CA), and the [Criminal Code](#) (CC) were directed to the EDF at the discretion of the judiciary. There are no specific clauses or provisions in those legislation that direct funds to the program. In April 2018, the EDF began receiving Administrative Monetary Penalties (AMPs) under the [Environmental Violations Administrative Monetary Penalties Act](#) (EVAMPA).

In January 2020, the automaker Volkswagen AG was ordered to pay a \$196.5 million fine for violating CEPA. This fine was directed to the EDF. The administration of the Volkswagen AG fine provides an important context for this evaluation. The unprecedented size of the fine created unique demands on the program during the evaluation period. Overall, there has been a significant increase in the number and the amount of awards, that is, a larger number of small awards as well as a larger number of awards with larger values. Figure 2 illustrates the allocations of funds over the period of the evaluation and the increase in free balances year over year.

Figure 2: Annual allocation summary and free balance for the Environmental Damages Fund, from 2014 to 2020



Source: Program data presented by calendar year from 2014 to 2020, based on internal reporting of signed funding agreements by program officers. Approved commitments are Minister/ADM/Program Authority-approved funding for projects. Approved allocations are funds that are being included in large award allocation strategies (approved and in development) and future calls for proposals.

2. Findings

2.1 Appropriateness of the Environmental Damages Fund program design

Findings: Overall, the EDF is designed to support the achievement of its intended outcomes. Key elements of the program’s design contribute to the achievement of the EDF’s outcomes. These include the program’s flexibilities, a relevant set of program categories, definition of eligible funding recipients, and an effective process for applicants to apply for available funding. Funds are managed within the parameters of a specified purpose account.

Strengths of program design

Evidence indicates that the EDF design supports the achievement of its intended outcomes and that the principles and goals of the program are well regarded. Program data from a sample of completed EDF projects indicates that, for most of these projects, the disbursement of court awards was aligned with the prioritized geographic location. For most sampled projects, the court awards were disbursed consistently with court recommendations.

Interviewees mentioned that various elements of the program’s design contributed to the achievement of program outcomes and described some of them as strengths.

The status of the EDF as a specified purpose account gives the program **flexibility**. Funding balances of a specified purpose account can be carried forward across fiscal years at the program and project level. As a result, funds do not lapse and the program is afforded the time to ensure that funds are allocated to projects that will give the best outcomes. Pooling of unencumbered funds (the ability to combine several small awards into one) is also an effective flexibility that allows the program to ensure that funding is allocated to high-impact projects.

The program is structured around a **relevant set of program funding categories**, namely restoration, environmental quality improvement, research and development and public education and awareness. Internal key interviewees see the program's 4 categories as appropriate. As well, the consistent focus on funding restoration projects is aligned with the purpose of the program. According to internal key interviewees, the broad and adaptable nature of the 4 categories has allowed the program to be responsive to the conditions of new awards (for example, a recent increased focus on education and awareness) and to new government priorities, including climate change.

The program's regular **process to inform the public of funding available and invite proposals** includes regional involvement and expertise leveraged from within ECCC and other government departments in the regions, and feedback indicates that this process works well. Community-based projects are funded through a call for proposals twice a year. The process includes an analysis of available funds and associated legislative requirements and recommendations by the court. A fund use requirement statement is posted with the call for proposals. All the funding recipients who were canvassed during the evaluation were very satisfied with the process.

A few interviewees remarked that the program's **ability to allocate directed funding under specific circumstances** is an advantage. Directed funding is a mechanism used by the EDF to allocate funding to a fully-evaluated proposal outside the request for proposals process. The parameters of court recommendations can sometimes be challenging through open calls for proposals for many reasons.

According to program data, only about 7% of funds are used as directed funding. An internal program policy indicates that, in most cases, EDF funds assessed for directed funding may be no more than \$10,000. This may explain why a relatively small portion of funds are used as directed funding. A few respondents noted that directed funding could be used more often to quickly match funding that is subject to a court recommendation with a qualified proponent. That said, interviewees also made it clear that they agreed with the direction that the EDF should never fund departmental activities and that the process for allocating directed funding should be guided by evidence, a scientific approach and in the spirit of the court's ruling.

As a specified purpose account, the EDF is distinct from ECCC's G&C programs in that program funding comes from awards (that is, from fines, court orders, voluntary payments and payments made from international funds). Unlike a grant or contribution that has specific annual funding, EDF program funding is unpredictable and can be complex (for example, court ordered

awards may be accompanied by recommendations on how the EDF should use the funds or payment of an award can be over multiple months or years).

The majority of funding recipients agreed that the design of the EDF enables the program to achieve its outcomes and highlighted the synergy between projects' objective(s) and the objective of the EDF. However, several recipients noted that the amount of funding available from the EDF did not correspond to the needs of their projects. They explained that many of the projects involved long-term monitoring over a period that extends beyond the duration of the project funding provided under the EDF.

To enable the collection and disbursement of funds, the EDF design has adopted many of the elements and practices of ECCC G&C programs and policies. This has introduced challenges to the administration of the EDF that are presented later in this report.

Indigenous engagement

Findings: The EDF Terms and Conditions specifically include First Nations and Aboriginal organizations as eligible funding recipients, but consideration of this in the design and delivery of the EDF is limited and does not include specific requirements and guidance for Indigenous engagement.

The EDF Terms and Conditions include 4 categories of eligible funding recipients, including First Nations and Aboriginal organizations⁶. The EDF also has the ability to direct funding to Indigenous communities. However, the document review showed that current program procedures (such as fund assessment forms) do not include specific requirements or guidance with regard to consulting or engaging with Indigenous communities.

Most program representatives interviewed noted that more could be done to strengthen engagement with Indigenous communities, but noted at the same time that more Indigenous engagement has been fostered under the Climate Action and Awareness Fund, which received a significant investment from the EDF. In particular, the Climate Action and Awareness Fund calls for proposals included a targeted focus on Indigenous communities, to make sure that these partners were engaged and opportunities for funding were effectively communicated.

Evolving government priorities

Findings: Consideration of government priorities other than those specified within the Terms and Conditions in the design and delivery of the EDF are limited, and the Terms and Conditions may need to be refined to enable consideration of evolving priorities within current program authorities.

Evidence suggests that consideration of other government priorities were built into the EDF's original program design, but these priorities have evolved over time. An example is the

⁶ Other categories include non-government organizations (such as environmental community groups), universities and academic institutions and provincial, territorial and municipal governments.

consideration of gender-based analysis plus (GBA+). Notwithstanding that the EDF's funded projects will be beneficial to both men and women, the guidance provided does not indicate how the EDF could help address the specific needs of various population groups or the differential impacts that some groups may experience as a result of the environmental conditions in which they live.

A review of the EDF internal procedures, guidance documents and tools also suggests that government priorities may not be explicitly considered in program delivery (for example, call for proposals or project selections). In this regard, a few program representatives noted that they are working towards better incorporating current government priorities more practically in their work.

The evaluation did not reveal information that would help assess the extent to which consideration of government priorities can be integrated within the EDF design and delivery without changing program authorities, and while also always considering any court recommendations.

2.2 Program capacity

Findings: With an increase in the number and value of awards, the EDF has experienced a lack of capacity both at the national level and in some regional offices.

While the overall design of the EDF has remained relatively unchanged since 2009, the broader context in which the program operates has evolved. During the evaluation period, data shows that awards to the program have increased significantly in size, albeit unsteadily, since its inception. This is due to a number of factors such as:

- the establishment of minimum penalties
- increases in the number of Acts automatically directing awards to the EDF
- the addition of Administrative Monetary Penalties⁷ in 2018

In 2020, the \$196.5 million Volkswagen AG fine was an unprecedented award to the EDF. The increasing value of court awards is expected to continue.

Internal interviewees raised concerns regarding the lack of capacity to deliver the EDF's activities. The number of FTE remained somewhat steady during the period evaluated (from 2015 to 2020, see Table 1). Program data indicated that this is not sufficient to keep up with program growth. As a result, the EDF lacks the capacity to allocate funds at the pace of awards received. Awards have been increasing since 2015, but the gap between awards received and funds disbursed has also been growing. As demonstrated in Figure 2, the program's annual free balance is increasing.

⁷ To deter any recurrence of non-compliance, ECCC enforcement officers may impose Administrative Monetary Penalties. These are monetary penalties issued through a Notice of Violation under the authority of subsection 10(1) of the [Environmental Violations Administrative Monetary Penalties Act](#), without court proceedings, for the violation of legislative requirements. Administrative Monetary Penalties are directed unconditionally to the EDF.

Table 1: Expenditures and FTE for the Environmental Damages Fund, from FY 2015 to 2016 to FY 2019 to 2020

Category	FY 2015 to 2016	FY 2016 to 2017	FY 2017 to 2018	FY 2018 to 2019	FY 2019 to 2020
Salaries	\$291,294	\$266,800	\$268,787	\$281,144	\$443,559
EBP	\$58,259	\$53,360	\$53,757	\$56,229	\$119,761
Operation and maintenance	\$48,550	\$30,093	\$53,263	\$16,401	\$22,432
Accommodations	\$37,868	\$34,684	\$34,942	\$36,549	\$57,663
Total administrative cost¹	\$435,971	\$384,937	\$411,111	\$390,322	\$643,414
Total funds disbursed²	\$868,924	\$1,871,895	\$1,983,387	\$3,590,370	\$3,418,963
Total program expenditures	\$1,304,895	\$2,256,832	\$2,394,397	\$3,980,692	\$4,062,377
Ratio of administrative costs to program expenditures	33.4%	17.1%	17.2%	9.8%	15.8%
Program FTE	5.1	4.8	5.9	4.5	6.5

¹ Administrative costs cover salaries, employee benefit plan, operation and maintenance and accommodations.

² Include project funding and excludes administrative costs charged to the specified purpose account.

Source: EDF Administrative Data and Public Accounts of Canada.

According to most internal program respondents, the program lacks sufficient capacity in both the national office, which has been impacted by changes in reporting structure and the management of new calls for proposals, as well as in some regional offices. Capacity within the NEDFO has been stretched to support the program's regular business, while developing strategies for large awards. Regional staff reported challenges in recruiting new staff in a timely manner to manage the first and second calls for proposals under the Climate Action and Awareness Fund.

Findings: Program features that contribute to the EDF's capacity include the ability to use up to 5% of an award for administrative purposes. While the program has leveraged this feature, more consistent use could better support program operations.

The 14 federal statutes that direct awards to the EDF provide the necessary authority for the cost of administration to be charged to the program. Furthermore, in 2017 the EDF implemented a policy allowing the use of up to 5% of the specified purpose account funds to fund administrative costs, such as operation and management and salaries. Over the period of this evaluation, administrative costs charged to the specified purpose account represented less than 1.2% of specified purpose account funds. This data shows that the EDF program has made minimal use of the flexibility provided by the specified purpose account to fund its operations.

Senior management interviewees noted that the ability to allocate up to 5% of an award for administration generally works well, but remarked that there is a significant variation in the cost of managing the funds. The disbursement of some awards may require more extensive processes than others (for example, when consultations are taking place with local stakeholders or Indigenous communities).

2.3 Decision-making processes

Findings: The authorities and process for funding approval need to be clarified in the program procedures and policies. Due to the recent focus on large awards, the time between the call for proposals and disbursement of funding has increased.

Internal program procedures and policies set out the responsibility for approval of EDF project funding. As previously noted, an initial list of projects that are recommended for funding is prepared once applications for funding have undergone eligibility and technical review in their respective region. The approval process includes the following steps:

- The regional Strategic Policy Branch Regional Director General Office Funding Programs manager recommends proposals for funding to the Regional Director General.
- NEDFO aggregates the recommendations forwarded by the Regional Directors General from all regions into a recommended projects package.
- The recommended projects package is provided to the EDF Program Authority (Regional Director General, Atlantic and Quebec Region) for approval.

The Terms and Conditions authorize the Program Authority (Regional Director General, Atlantic and Quebec Region) to approve EDF funding for projects. However, most funding decisions are currently made only after receiving the approval of the Assistant Deputy Minister, Strategic Policy Branch. In exceptional cases, approval is sought from the Minister, as was the case with the Climate Action and Awareness Fund project approvals. Some ECCC interviewees noted confusion with procedures, and indicated the need for more clarity in the process for project and funding approval to make the application of the rules more consistent. A small number of internal interviewees noted that there is also room to better align the EDF's practices with ECCC's Delegation of Spending and Financial Authorities.

ECCC moved to a generic approach to issuing calls for proposals for some of its G&C programs in 2018, which included the EDF. Some regional interviewees further observed that recent calls for proposals had resulted in a lengthier time between the call for proposals and disbursement of funding since the new procedures were adopted.

Findings: Some of the procedures, guidance documents and tools required by the Department and applied to the EDF program are not suited to efficient and effective program delivery.

Another challenge related to the program delivery is that the EDF does not have its own customized documents (for example, a custom funding agreement template) or processes for

disbursing funds to recipients. As a historically small program, there was no compelling rationale for the EDF to create tailored administrative processes suited to a specified purpose account. Rather, it leveraged ECCC's processes and templates for G&Cs. The EDF has been using the Department's G&C agreement templates and seeking review for agreements from the ECCC G&C Centre of Expertise (though this is not required by the program's Terms and Conditions). The use of non-specific templates and processes for disbursement of all EDF awards has been described as burdensome. For example, the specified purpose account flexibility to carry over funds across fiscal years cannot be used without manual customization and frequent amendments to agreements.

With the increasing number of EDF funding agreements, some key departmental officials indicated that updated and specific templates and processes are now necessary and would be more appropriate for a specified purpose account and its associated authorities and flexibility. This would enable the program to work more efficiently and effectively.

Another process that needs to be reviewed is the EDF Policy on Large Awards. This policy was established in June 2017 to provide consistency in disbursing funds from awards \$1 million and over, with complex requirements (for example, sensitive communications, public expectations and public affairs considerations) and levels of approval. It requires the regional director general of the region in which the offence occurred to develop an award implementation strategy. This is done with the support of NEDFO and in consultation with multiple stakeholders, orders of government and partners. The strategy identifies the intended objectives and desired outcomes resulting from the investment of the funding and the methods that will be used to allocate the funds. The strategy is submitted to ECCC's EDF Director General Committee for review. Final approval of an implementation strategy is granted by the EDF Program Authority (Regional Director General, Atlantic and Quebec Region), after receiving the support of the Assistant Deputy Minister of the Strategic Policy Branch.

Before 2017, awards of \$1 million and over were rare (that is, 1 award each year between 2014 and 2016 inclusively). Since then, however, there have been 3 large awards in each of 2017, 2018 and 2019. As a result, this intensive process has been triggered more frequently than anticipated, but the capacity to implement the process remains limited. There was a consensus among program management that the threshold for implementation of this policy should be examined.

2.4 Appropriateness of governance and management structure

Findings: Accountability for the program is clear and connections with ECCC partners have increased, particularly through the development of large award allocation strategies. However, the Government of Canada's EDF Director General Committee has not met since 2017, which has resulted in missed opportunities for adopting a whole-of-government approach.

Accountability and governance within ECCC

Accountability for the EDF rests with the EDF Program Authority (Regional Director General, Atlantic and Quebec Region) and the Assistant Deputy Minister of the Strategic Policy Branch. In addition to ensuring national consistency of program implementation and delivery, the Regional Director General, Atlantic and Quebec Region, in administering awards under \$1 million, coordinates and oversees obtaining the approval of the Assistant Deputy Minister of the Strategic Policy Branch for the projects recommended for funding.

Governance of the program is supported by ECCC's EDF Director General Committee that includes EDF program representatives (regional directors general and NEDFO), as well as directors general from partner branches such as the Canadian Wildlife Service, the Corporate Services and Finance Branch, the Science and Technology Branch, the Environmental Protection Branch and the Climate Change Branch, with ex-officio representation from the Enforcement Branch. The role of this committee is well explained in its terms of reference.

According to key officials, ECCC's EDF Director General Committee operates in alignment with its terms of reference, although the meeting schedule has been irregular (e.g. twice a year, not quarterly). Interviewees indicate that the committee appears to be functioning effectively and fulfilling its objectives for information sharing and discussing shared priorities.

For large awards, partnerships between the NEDFO and other areas of the department have strengthened over the course of developing award allocation strategies. For instance, new connections were established with the Climate Change Branch and the Public Indigenous Affairs and Ministerial Services Branch in ensuring program alignment with evolving climate change policies and Indigenous reconciliation.

Interdepartmental governance structure

In administering the EDF, ECCC is meant to work closely with Fisheries and Oceans Canada, the Parks Canada Agency and Transport Canada, which have federal statutes directing awards to the EDF or statutes with discretionary clauses providing authority for directing awards to the EDF. The Government of Canada EDF Director General Committee is governed by a terms of reference. It is composed of representatives from Fisheries and Oceans Canada, the Parks Canada Agency and Transport Canada, with ex officio representation from the Public Prosecution Service of Canada. This committee is required to meet at least annually and provides oversight and direction for the administration of the EDF. The Government of Canada EDF Director General Committee has not met since 2017. Key officials attributed this to a lack of capacity, rather than a component of governance that should be reconsidered or abandoned. ECCC officials noted that this lack of governance has likely resulted in missed opportunities to obtain input on EDF priorities, and for the EDF to contribute to addressing departmental priorities and best practices. 1 caveat is that the evaluation only included a few interviews with representatives from other government departments. Therefore, the views of the representatives from other government departments on the perceived value of a more active Government of Canada EDF Director General Committee are not well known.

Collaboration with other government departments is taking place at the staff and regional level. In particular, Fisheries and Oceans Canada staff is regularly engaged as subject-matter experts

in the technical review of proposals, although less so in the project wrap up and evaluation of EDF-funded projects.

Clarity of roles and responsibilities

Findings: In the evolving context in which the EDF operates, there is need to clarify the roles and responsibilities of the NEDFO and the regions and to maintain a strong connection between national decision making and the capacity of the regions to deliver on program requirements.

The NEDFO is responsible for overseeing the administration of the EDF. It supports consistent program delivery through policy development, provides assistance to the regional directors general, provides quality assurance and program promotion to national stakeholders and reports on overall program performance. The NEDFO Program Manager regularly consults with program managers in the regions.

There is a clear and long-standing regional role in the delivery of the EDF. This is particularly important given that the geographic area connected with an award is often a significant element in the disbursement of the award. Regional Funding Program managers are responsible for developing management plans, overseeing the funding disbursement and agreement process⁸, promoting the EDF to, and coordinating with, interested regional parties (such as courts, prosecutors, enforcement officers, other government departments and potential recipients) and tracking and reporting on regional program results.

A review of program documents shows that the roles and responsibilities of the NEDFO have not yet been formalized beyond draft documents. As well, the role of the NEDFO has been strongly influenced by the increased involvement in program development for the large awards received by the EDF. Furthermore, given the additional complexity of administering the EDF in the COVID-19 pandemic, regional staff would welcome discussions to clarify roles and responsibilities around regular business, large award allocations, and some other areas of the program, such as the disposition of small residual funds from awards. A few interviewees also mentioned the importance of ensuring that there is a strong connection between national decision making and the capacity of the regions to deliver on program requirements.

According to key internal interviewees, the role of other ECCC partners (for example, the Enforcement Branch and the Science and Technology Branch) are clear because of the regular engagement through the ECCC EDF Director General Committee.

Findings: While protocols have been established, the process for tracking awards remains a challenge because federal and provincial courts use different methods for payments and there are multiple stakeholders involved in the end-to-end process.

⁸ This process includes calls for proposals, reviewing funding applications, providing advice on project proposals, coordinating technical reviews and evaluations of proposals, recommending projects for funding, developing funding agreements and monitoring approved projects.

1 aspect of program roles and responsibilities that should be noted for further clarification is the tracking of awards. This unique element of the EDF has been identified in the past as a challenging aspect of program design. The 2014 evaluation, for instance, recommended that protocols and roles and responsibilities for the transfer and tracking of court-ordered awards be put in place or clarified. As part of the 2015 revision of the EDF Management Framework and Operational Guidelines, new protocols were developed, communicated and adopted.

Enforcement officials inform the Public Prosecution Service of Canada of potential violations, who in turn are responsible for approving the laying of charges and seeking penalties through sentencing/plea deals. The Public Prosecution Service of Canada then ensures the courts direct the awards to the Receiver General, who in turn directs the payments to ECCC to administer. Continued effort and collaboration between government of Canada departments is required to ensure the integrity of this tracking process.

2.5 Environmental Damages Fund communications and reporting

Findings: General awareness of the EDF program could be strengthened, as could communications around calls for proposals and engagement with partners. Reporting of results to Canadians could also be strengthened.

The 2014 EDF evaluation recommended that the program improve its promotion and communications to enhance awareness and understanding of the program. The EDF Communications Plan was approved in 2018. It aims to improve communications with enforcement and judicial communities, internal ECCC and external federal partners and other clients and stakeholders. According to program documents, the increase in the number and value of EDF awards could be partly attributed to the increased engagement of prosecutors.

Communication about EDF awards occurs through a variety of channels and methods such as the ECCC website and social media. Calls for proposals are posted on the EDF website and the important details of these calls for proposals are also specifically delivered to regionally-based organizations (via email distribution lists) so as to notify potential applicants of funding opportunities.

In September 2020, the Climate Action and Awareness Fund was created with contributions from the existing Climate Action Fund managed by the Climate Change Branch, as well as a significant investment from the EDF. The resulting joint call for proposals was disseminated widely across Canada. Despite the popularity of this call for proposals, some funding recipients believe that the EDF is still not well known among community-based environmental organizations and that communications could be strengthened.

Building on this success, program partners and stakeholders who were interviewed identified a need for the EDF to strengthen its engagement with stakeholders and to showcase better the successes of the program. It is deemed particularly important to provide up-to-date information to partners in the enforcement and judicial communities, such as prosecutors and enforcement officials, regarding the disbursement of funds and the impact of supported projects. Such

information sharing can help ensure that the program is known, showcase the EDF as a credible sentencing option and promote a reasonable balance between court recommendations and the EDF's ability to respond to these recommendations. A few internal interviewees also recommended that communications with enforcement officials be strengthened so that the program is more consistently made aware of the awards that have been issued.

Performance reporting

Findings: The EDF logic model and framework for performance reporting consist of indicators included in the Community Eco-Action Performance Information Profile. The selected indicators are considered to be aligned with the program's mission, but are not reported on in a consistent manner and are not used to inform program decision-making. Internal program respondents noted that mechanisms should be updated to "tell the story" more effectively about the EDF's successes and the impact of supported projects.

The EDF is a component of the Community Eco-Action Performance Information Profile, with its own logic model (see [Appendix C](#)). Internal program respondents view the EDF logic model as outdated, given the program's recent growth and expansion into new areas such as supporting projects related to air pollution and climate change.

The program has a suite of performance indicators that are anchored to the program's logic model, including:

- the annual number of court orders directing payment to the EDF via non-directed legislation
- the percentage of eligible proposals received (number of proposals that pass administrative review divided by total number of proposals received)
- the percentage of EDF projects completed that meet the terms and conditions of their respective funding agreements, including court-imposed conditions
- the area (in hectares) where natural environments of comparable geographic location, quality or value to those affected by environmental damage are restored
- the area (in hectares) where the environmental quality of natural environments of different geographic locations, quality or value to those affected is improved
- the number of methods developed or applied to assess, reduce or restore environmental damage
- the number of Canadians engaged in environmental restoration or the prevention of environmental damage

Selected key performance indicators, such as the number of hectares restored, are used to report on the program's impact at a high level (for example, in departmental reports and ministerial briefing packages). However, internal program interviewees agreed that performance monitoring could be improved. Indicators are not reported on in a consistent way. As noted previously, clearer project results reporting is required.

According to internal program key interviewees, performance measurement information has played a limited role in informing decision making or practices at the working level. Interviewees recommended improving the type of impact information that is collected, including the use of a narrative approach to be able to “tell the program’s story” more clearly and more broadly.

Some internal program interviewees also believed that there is a gap in reporting to Canadians and tools such as an annual report should be explored.

3. Conclusions, recommendations and management response

3.1 Conclusions

The evaluation found that the EDF design has a number of strengths and good practices. However, the growth in the number and size of awards that are directed to the EDF has put additional pressure on the program. The EDF team is experiencing challenges in addressing the increased number of awards due to its limited internal capacity. Some internal procedures, guidance documents and tools are not well suited to this changing requirement for the timely disbursement of larger awards. These procedures, guidance documents and tools also include limited information to help guide engagement with Indigenous communities.

Considerations around other government priorities were factored into the EDF’s program authorities, which date from 2009. However, the considerations identified at that time do not fully reflect the current priorities, such as requirements to account for the different needs of various population groups and how environmental conditions can impact some groups disproportionately.

Accountability for the EDF is clear. There is positive engagement of internal ECCC partners through ECCC’s EDF director General Committee and consultations on specific allocation strategies. The Government of Canada EDF Director General Committee has not met since 2017, although the program receives awards from Transport Canada, the Parks Canada Agency, Natural Resources Canada and Fisheries and Oceans Canada legislation.

The funding approval process has been inconsistent over time which is, in part, attributable to the unique circumstances around the allocation of 1 large new award.

For the most part, the roles and responsibilities of those involved in the EDF are clear. However, the roles and responsibilities of the National Environmental Damages Fund Office and the regions could be formalized, particularly with regard to the tracking of awards.

Raising awareness among PPSC and provincial prosecutors about the EDF and communicating the impact of funded projects to enforcement officials and legal partners is a priority, as is improving reporting to Canadians.

The current performance measurement strategy would benefit from an updated logic model and performance indicators to reflect the program’s expansion and to better demonstrate results.

3.2 Recommendations and management response

The following recommendations are addressed to ECCC's Assistant Deputy Minister of the Strategic Policy Branch, as the senior departmental official responsible for the EDF, and the Assistant Deputy Minister of the Corporate Services and Finance Branch, who is responsible for the G&C process (calls for proposals, tools and reports) and supporting ECCC programs, such as the EDF, in the allocation and sound management of funds.

Recommendation 1

Ensure that the Environmental Damages Fund program, both in the regions and the National Environmental Damages Fund Office, have adequate capacity to respond to the growth in awards.

Discussion: The evaluation noted that program capacity has not kept pace with the growth in the number and value of awards that are directed to the program. The need to support the regular business of the EDF while developing strategies to disburse large awards has stretched capacity at both the national and regional levels. As a result, the gap between awards received and funds disbursed has been growing. The program's annual closing balance is steadily increasing. In this context, there is a need to ensure that the EDF program has sufficient capacity to deliver on its mandate while addressing a growing demand. This will also allow the program to be in a better position to address areas identified in other evaluation recommendations.

While the EDF has been authorized since 2017 to direct up to 5% of the specified purpose account to administrative costs such as operation and management and salaries, the use of this funding source has not been optimal. The program could increase its use of the flexibilities inherent in being a specified purpose account to support its operations. That being said, the amount of funding received by the EDF account depends on fines, court orders and voluntary payments provided in a given year. Therefore, the level of funding that can be allocated to administrative costs is unpredictable.

Statement of agreement or disagreement: The Assistant Deputy Minister of the Strategic Policy Branch agrees with the recommendation.

Management response: In light of the departmental review of G&Cs and in consideration of ongoing overall G&C program delivery capacity in the Strategic Policy Branch, the EDF program, in collaboration with the Human Resources Branch, is in the process of finalizing an organizational structure, followed by preparing and executing a staged staffing plan, including workload analysis and staffing strategy. The staffing plan will optimize the use of the 5% of the specified purpose account permitted for administrative purposes to support staffing initiatives. With these staffing actions in place, an effective balance of necessary resources can be achieved to ensure capacity to deliver on the full scope of the program's mandate, including delivery of funds to recipients in a timely manner and addressing the evaluation recommendations.

Deliverable(s):

- 1. In collaboration with HRB, finalize organizational structure needed to deliver the EDF.**
 - a. Timeline: by September 2022
 - b. Responsible party: National Environmental Damages Fund Office
- 2. In collaboration with HRB, develop and fully implement a staffing strategy (Fill vacant positions on a priority basis, create positions as necessary, staff)**
 - a. Timeline: by January 2023
 - b. Responsible party: National Environmental Damages Fund Office

Recommendation 2

Revise select internal ECCC procedures, guidance documents and tools related to grants and contributions, to ensure that they are customized to the unique flexibilities of the Environmental Damages Fund and can support:

- **an efficient and timely disbursement of funds in a context where the program is growing**
- **enhanced engagement with Indigenous communities**

Discussion: In 2018, ECCC moved to a generic approach to issuing calls for proposals for some of its G&C programs. Because the EDF is a specified purpose account, the more generic templates and processes used by other ECCC G&Cs are not necessarily adapted to the flexibility that a specified purpose account requires. As a result, some of the existing EDF procedures, guidance documents and tools have challenged the program's ability to effectively disburse funds and absorb the pressures created by the recent growth in the number and value of awards. In turn, this has created an unnecessary administrative burden for the EDF.

The threshold for activating the Policy on Large Awards, an EDF guidance document, is \$1 million. However, the number of awards exceeding \$1 million has increased in recent years. As a result, the EDF Policy on Large Awards, an intensive and robust approach to disbursing funds, has been triggered more often than anticipated and has put pressure on program capacity. For the program to disburse funds in an efficient and timely manner, the threshold for activating the Policy on Large Awards should be reassessed.

Also, there needs to be more clarity in the procedure for project and funding approval to ensure consistency. ECCC G&C programs are subject to the Delegation of Spending and Financial Authorities; however, the EDF, as a specified purpose account, is not required to adhere to the Delegation of Spending and Financial Authorities. Overall, there may be value in examining current procedures, guidance documents and tools to assess if alignment to the Delegation of Spending and Financial Authorities would improve program efficiency.

The evaluation also found that there are opportunities to integrate more guidance in program procedures, guidance documents and tools around engagements with Indigenous communities.

Statement of agreement or disagreement: The Assistant Deputy Minister of the Strategic Policy Branch and the Assistant Deputy Minister of the Corporate Services and Finance Branch agree with the recommendation.

Management response: The EDF, in conjunction with the Corporate Services and Finance Branch where appropriate, will review and update current procedures, guidance documents, and tools to more effectively disburse funding and absorb pressures that result from large awards. The Assistant Deputy Minister of the Strategic Policy Branch will consider if the threshold for triggering the Policy on Large Awards should change. The Assistant Deputy Minister of the Corporate Services and Finance Branch and the Assistant Deputy Minister of the Strategic Policy Branch will recommend if the approval thresholds under the EDF should change to align with the departmental thresholds.

Deliverable(s):

- 1. Customize select EDF procedures, guidance documents, and tools to 1) provide the necessary flexibility to the EDF and 2) integrate engagement with Indigenous communities where appropriate.**
 - a. Timeline: by June 2023
 - b. Responsible party: National Environmental Damages Fund Office (lead), CSFB
- 2. Reassess the EDF Policy on Large Awards to determine if the threshold for activating the policy should change.**
 - a. Timeline: by June 2022
 - b. Responsible party: National Environmental Damages Fund Office
- 3. Based on a review of best practices regarding specified purpose accounts and any considerations vis-à-vis the EDF approved Terms and Conditions, determine whether EDF approval thresholds should change to align with the departmental thresholds (that is, the Delegation of Spending and Financial Authorities).**
 - a. Timeline: by August 2022
 - b. Responsible party: National Environmental Damages Fund Office (lead), CSFB

Recommendation 3

Ensure that roles and responsibilities are well-defined for the National Environmental Damages Fund Office and the regions, and engage more regularly and systematically with other federal departments and organizations that have legislation or interactions with the Environmental Damages Fund.

Discussion: The roles and responsibilities of the National Environmental Damages Fund Office have not yet been formalized beyond draft documents. As well, the role of the National Environmental Damages Fund Office has been strongly influenced over the last 2 years by the increased involvement in program development for the large awards received by the EDF. The

roles and responsibilities need to be clarified with regard to regular business practices, large award allocations and some other areas of the program, such as the disposition of small residual funds from awards and award tracking.

Due in part to program capacity challenges, the interdepartmental mechanism to engage with other departments that have legislation directing funds to the EDF has not met since 2017. Greater interdepartmental engagement with departments that have statutes directing funds to the EDF like Fisheries and Oceans Canada, Transport Canada and the Parks Canada Agency, as well as with the Public Prosecution Service of Canada, would foster more opportunities for the program to be informed by or contribute to addressing the priorities of these departments and organizations.

Statement of agreement or disagreement: The Assistant Deputy Minister of the Strategic Policy Branch agrees with the recommendation.

Management response: The program will document the roles and responsibilities of NEDFO and the regional offices. This documentation will include details on regular business practices (i.e. governance, policy development/maintenance, and public calls for proposals), program promotion, development and implementation of large award allocations, and financial and administrative practices. The program will engage the interdepartmental governance mechanism as per the terms of reference.

Deliverable(s):

- 1. Review and finalize documentation around the roles and responsibilities of NEDFO and the regional offices.**
 - a. Timeline: by July 2022
 - b. Responsible party: National Environmental Damages Fund Office
- 2. Review Government of Canada EDF DG Committee Terms of Reference, and update as appropriate, to ensure that the committee functions effectively.**
 - a. Timeline: by May 2022
 - b. Responsible party: National Environmental Damages Fund Office
- 3. Re-establish a regular Government of Canada EDF DG Committee schedule in alignment with updated terms of reference to ensure appropriate oversight and implementation of the program.**
 - a. Timeline: by June 2022
 - b. Responsible party: National Environmental Damages Fund Office

Recommendation 4

Continue outreach to prosecutors, enforcement officers and the Canadian public to foster their awareness of the Environmental Damages Fund and its benefits and improve reporting to Canadians.

Discussion: Communication activities are key to the success of the EDF. Raising awareness among the enforcement and prosecution communities with regard to the impact of EDF-funded projects has helped ensure that the program is seen as a credible sentencing option, particularly in cases where the contravened legislation provides discretionary authority to direct a monetary penalty to the EDF.

Public awareness encourages community-based organizations to respond to the calls for proposals to disburse EDF funds by proposing projects that support restoration of damage to the natural environment and wildlife conservation. Progress has been made since the 2014 evaluation to improve the communications activities that promote the program. Improving and strengthening outreach activities remains necessary to ensure that the EDF and its successes are widely known. Among other things, evaluation evidence shows that awareness of the EDF among community-based environmental organizations could be improved and that reporting to Canadians could be strengthened.

Statement of agreement or disagreement: The Assistant Deputy Minister of the Strategic Policy Branch agrees with the recommendation.

Management response: The EDF recognizes that improved outreach is critical to the continued success of the program. The program will continue to work in close coordination with Public Affairs and Communications Branch to update and implement the EDF Communications Plan and maintain appropriate messaging and information for Canadians. The program will prepare and implement an outreach strategy to deliver program funding information and outcomes to the enforcement and judicial communities on a periodic basis in order to foster awareness of the EDF and its benefits.

Deliverable(s):

1. **In collaboration with the Public Affairs and Communications Branch, update the EDF Communications Plan, which may include creating items such as; enhanced web presence, social media and potential collaboration with recipients, to improve awareness and understanding of the EDF, its funding opportunities and its results.**
 - a. Timeline: by September 2022
 - b. Responsible party: National Environmental Damages Fund Office
2. **In collaboration with the Public Affairs and Communications Branch, develop an outreach strategy specific to enforcement and prosecutor communities. The strategy will include information sessions, which will contribute to and support decision making and communications within these communities.**
 - a. Timeline: by December 2022
 - b. Responsible party: National Environmental Damages Fund Office

Recommendation 5

Conduct analyses to determine whether current program authorities allow the Environmental Damages Fund to remain effective and efficient moving forward.

Discussion: The context in which the EDF is operating has changed since program authorities were renewed in 2009. The revenue from awards and thus, the funds available for disbursement, have increased significantly in the last 10 years. Policy requirements have also changed. For example, there are stronger requirements for federal government programs to take into account the various needs of population groups in program design or to address the differential impacts experienced by these groups as a result of environmental conditions. In this context, the program should assess the extent to which current Terms and Conditions allow the EDF to adapt moving forward.

Statement of agreement or disagreement: The Assistant Deputy Minister of the Strategic Policy Branch and the Assistant Deputy Minister of the Corporate Services and Finance Branch agree with the recommendation.

Management response: In collaboration with the Corporate Services and Finance Branch and Legal Services, the National Environmental Damages Fund Office will examine EDF Terms and Conditions to identify any constraints on implementing the EDF in a manner responsive to ongoing and emerging Government of Canada priorities.

Deliverable(s):

1. **Provide advice to the Minister on whether a Treasury Board Submission would be recommended to update the Terms and Conditions of the EDF.**
 - a. Timeline: December 2023
 - b. Responsible party: Strategic Policy Branch (lead) with the support of the Corporate Services and Finance Branch

Appendix A: Evaluation approach

Evaluation questions

The scope of the evaluation focused on the issue of program design and delivery, given recent pressures on the program's Terms and Conditions, processes and capacity to deliver on more high-value awards. The evaluation did not examine the achievement of results or outcomes. Specifically, the following questions were addressed:

- To what degree is the EDF design appropriate for achieving the intended outcomes of the program and funded projects?
- To what extent is the governance structure clear, appropriate and efficient for achieving expected results? (including processes for prioritization and decision-making)
- Is the program undertaking specific activities and delivering products at the lowest reasonable cost? (Including the adequacy of program resources and capacity in light of intended outcomes.)
 - How could the efficiency of the program's activities be improved?
 - Are there alternative, more efficient or economical ways of delivering program outputs?
- Are performance data being collected and reported? If so, is this information being used to inform senior management making and to report to Canadians?

Evaluation methodology

Review of documentation and administrative data

The document and administrative data review involved a structured review of internal program documents and data produced by ECCC, pertaining to the EDF, including the following:

- program policies, frameworks and plans
- governance structures and the terms of reference for the Inter-Departmental DG Committee and the ECCC Intra-Departmental DG Committee
- program performance-related materials (logic model and performance indicators, previous evaluation and management response and action plans)
- operational guidelines
- presentation and briefing decks and summaries
- financial data on EDF administrative expenditures, awards received and funds disbursed for the period under study.

In addition to internal documents, the document review examined other similar programs in Canada at the national level (e.g. Ship-source Oil Pollution Fund) and at the provincial level (for example, Ontario Community Environment Fund; Alberta Creative Sentencing Regime).

Key informant interviews

In-depth interviews were conducted by telephone with key informants knowledgeable about the EDF. In total, 23 interviews were conducted with 27 individuals. Interviewees included senior ECCC managers (ADM/DG level), program representatives (EDF program managers and staff from regions and the NEDFO), internal ECCC partners, and other stakeholders such as EDF project leads, OGD representatives (9 interviewees at DG/senior legal counsel level). Tailored interview guides were developed for each respondent group, based on the evaluation questions of relevance.

Limitations

The evaluation team encountered the following limitations while conducting the evaluation and put in place strategies to mitigate their impact.

Limitations and mitigation strategies

- Most of the evidence is drawn from program documents and the observations of ECCC staff. External (that is from outside ECCC) perspectives from interviews with representatives of other government departments, literature, and program comparative analysis were limited.
 - **Mitigation strategies** :Where possible, the evaluation verified evidence from the documentary sources with interview evidence to establish findings.
- Data to assess the source of program operational resources (for example, use of the specified purpose account as a source of funding for EDF operations), and the timeliness of the disbursement of funding was limited.
 - **Mitigation strategies**: Some evaluation questions such as timely delivery were primarily assessed qualitatively.

Appendix B: Federal legislation and statutes providing funding to the EDF

Legislation providing for fines or monetary penalties to be credited to the Environmental Damages Fund

Department: ECCC

Legislation and clause attributing funding to the EDF:

- [Antarctic Environmental Protection Act](#)
 - **68.1 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the environment or for administering that Fund.**
- [Canada Wildlife Act](#)
 - **13.13 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the environment or for administering that Fund.**
- [Canadian Environmental Protection Act, 1999](#)
 - **294.1 (1)** Subject to regulations made under section 278, all fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the environment or for administering that Fund.**
- [Greenhouse Gas Pollution Pricing Act](#)
 - **251(1)** Subject to regulations made under section 241, all fines received by the Receiver General in respect of the commission of an offence under this Part or any amount received in accordance with an order under paragraph **249(1)(d)** are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the environment or for administering that Fund.**
 - **251(2)** For greater certainty, purposes related to protecting conserving or restoring the environment include **promoting the control or reduction of greenhouse gas emissions.**
- [International River Improvements Act](#)

- **44 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the environment or for administering that Fund.**
- [Migratory Birds Convention Act, 1994](#)
 - **13.2 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the environment or for administering that Fund.**
- [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#)
 - **22.11 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the environment or for administering that Fund.**
- [Environmental Violations Administrative Monetary Penalties Act](#)
 - Monetary penalty may be imposed by ECCC Enforcement Officers through the issuance of a Notice of Violation (NOV) under the authority of subsection 10(1) of the *Environmental Violations Administrative Penalties Act*, without court proceedings, for the violation of legislative requirements in order to deter any recurrence of non-compliance. Administrative Monetary Penalties are directed unconditionally to the EDF.

Department: DFO

Legislation and clause attributing funding to the EDF:

- [Fisheries Act](#)
 - **40(6)** All fines received by the Receiver General in respect of the commission of an offence under this section are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to the conservation and protection of fish or fish habitat or the restoration of fish habitat, or for administering that Fund.**
- [Oceans Act](#)
 - **39.66 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to the conservation,**

protection or restoration of marine protected areas, or for administering that Fund.

Department: Parks Canada

Legislation and clause attributing funding to the EDF:

- [Canada National Marine Conservation Areas Act](#)
 - **26.1 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring marine conservation areas or for administering that Fund.**
- [Canada National Parks Act](#)
 - **29.1 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring parks or for administering that Fund.**
- [Rouge National Urban Park Act](#)
 - **45 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and **used for purposes related to protecting, conserving or restoring the Park or for administering that Fund.**
- [Saguenay-St. Lawrence Marine Park Act](#)
 - **21.2 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the Contraventions Act, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used **for purposes related to protecting, conserving or restoring the park or for administering that Fund.**

Federal statutes that include discretionary clauses to direct penalties to the Environmental Damages Fund

Act and clause attributing funding to the EDF:

- [Canadian Energy Regulator Act](#)
 - **175 (1)** If a person is found guilty of an offence under this Act in relation to an actual or potential unintended or uncontrolled release of oil, gas or any other commodity from a pipeline, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any

other punishment that may be imposed under this Act, make an order that has any or all of the following effects:

- **(f)** directing the offender to pay to Her Majesty in right of Canada, for the purpose of promoting the conservation, protection or restoration of the environment, or to pay into the Environmental Damages Fund — an account in the accounts of Canada — an amount of money that the court considers appropriate;
- [Canada Oil and Gas Operations Act](#)
 - **65 (1)** If a person is found guilty of an offence under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any other punishment that may be imposed under this Act, make an order that has any or all of the following effects:
 - **(f)** directing the offender to pay to Her Majesty in right of Canada, for the purpose of promoting the conservation, protection or restoration of the environment, or to pay into the Environmental Damages Fund — an account in the accounts of Canada — an amount of money that the court considers appropriate;
- [Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act](#)
 - **201 (1)** If a person is found guilty of an offence under this Part, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any other punishment that may be imposed under this Part, make an order that has any or all of the following effects:
 - **(g)** directing the offender to pay to Her Majesty in right of Canada, for the purpose of promoting the conservation, protection or restoration of the environment, or to pay into the Environmental Damages Fund — an account in the accounts of Canada — an amount of money that the court considers appropriate;
- [Canada-Newfoundland and Labrador Atlantic Accord Implementation Act](#)
 - **196 (1)** If a person is found guilty of an offence under this Part, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any other punishment that may be imposed under this Part, make an order that has any or all of the following effects:
 - **(g)** directing the offender to pay to Her Majesty in right of Canada, for the purpose of promoting the conservation, protection or restoration of the environment, or to pay into the Environmental Damages Fund — an account in the accounts of Canada — an amount of money that the court considers appropriate;
- [Fisheries Act](#)

- **79.2** Where a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing any 1 or more of the following prohibitions, directions or requirements:
 - **(f)** directing the person to pay Her Majesty an amount of money the court considers appropriate for the purpose of promoting the proper management and control of fisheries or fish habitat or the conservation and protection of fish or fish habitat;

Appendix C: Environmental Damages Fund Logic Model

PROGRAM LOGIC MODEL – ENVIRONMENTAL DAMAGES FUND

Community Eco-Action – Environmental Damages Fund Component

