

NORTHERN REGULATORY IMPROVEMENT INITIATIVE WORKSHOP

March 18th – 19th, 2008
Yellowknife, NWT

Final Summary Report
Prepared for Neil McCrank



Prepared by Terriplan Consultants
April 2008

T e r r i p l a n
CONSULTANTS

Table of Contents

<u>1.0</u>	<u>EXECUTIVE SUMMARY</u>	<u>1</u>
<u>2.0</u>	<u>INTRODUCTION</u>	<u>3</u>
2.1	PURPOSE AND OBJECTIVES	3
2.2	REPORT CONTENTS	4
<u>3.0</u>	<u>BUILDING A COMMON UNDERSTANDING</u>	<u>4</u>
3.1	OPENING REMARKS BY NEIL MCCRANK	4
3.2	OPENING REMARKS BY WORKSHOP PARTICIPANTS	11
<u>4.0</u>	<u>WHAT HAS NEIL MCCRANK HEARD TO DATE?</u>	<u>20</u>
4.1	PRESENTATION BY RICKI HURST	20
<u>5.0</u>	<u>TAKING A CHANCE ON THE FUTURE</u>	<u>26</u>
5.1	RED BREAKOUT GROUP – TAKING A CHANCE	26
5.2	BLUE BREAKOUT GROUP – COORDINATION	29
5.3	GREEN BREAKOUT GROUP – CONSULTATION	31
5.4	YELLOW BREAKOUT GROUP – TIMELINES	34
<u>6.0</u>	<u>ONE RECOMMENDATION TO MR. MCCRANK</u>	<u>36</u>
<u>7.0</u>	<u>CLOSING REMARKS</u>	<u>42</u>
APPENDIX A	- WORKSHOP AGENDA	43
APPENDIX B	- PARTICIPANTS LIST	46
APPENDIX C	- REGULATING RESOURCES IN NORTH	49
APPENDIX D	- GUIDANCE QUESTIONS	53
APPENDIX E	- WORKSHOP VISUALS	55
APPENDIX F	- SUMMARY OF OAG REPORT	61

List of Figures

Figure 1.	Workshop Day 1	5
Figure 2.	Plenary Discussion	9
Figure 3.	Katimavik Room	40

1.0 Executive Summary

The Northern Regulatory Improvement Initiative Workshop was a gathering of northern stakeholders held at the Explorer Hotel in Yellowknife, NWT on March 18th & 19th, 2008. The workshop preparations and implementation were contracted to Terriplan Consultants and sponsored by Indian and Northern Affairs Canada. The client for this work was Neil McCrank, Ministerial representative to the Honourable Chuck Strahl, Minister of Indian and Northern Affairs Canada (INAC).

Over 80 participants from federal and territorial government agencies, industry, environmental non-governmental organizations, and Aboriginal communities attended to offer their views on the future of the regulatory system in the north, with a specific focus on the Northwest Territories. The meeting was chaired by Mr. Neil McCrank who serves as the direct representative of Minister Strahl. Over the course of the two-day workshop, participants were provided the opportunity, both orally and in writing, to provide suggestions on how to refine and improve the current regulatory process.

A number of visual displays were made available throughout the workshop venue, PowerPoint presentations were made, and folders supplied to all participants contained a number of handouts. All of these materials are provided in this report.

Participants discussed a number of potential changes that could be made in the regulatory process, ranging from minor tweaking to substantive shifts in the regulatory approach and framework. All suggestions were recorded and taken into consideration in drafting this report, including minority opinions, where consensus was not achieved.

Following an opening prayer by Gabrielle Mackenzie-Scott (chair of the MVEIRB), the Northern Regulatory Improvement Initiatives Workshop began with opening remarks by Mr. Neil McCrank (Section 3.1). He began by expressing his appreciation for both the feedback received in the months prior to the workshop, as well as the effort made by all participants to attend this workshop. Following this introductory presentation, participants were invited to make their own opening remarks on the northern regulatory process. Several participants offered their insights and opinions on the current system, as well as their interpretation of the changes that need to take place (Section 3.2).

Ricki Hurst, of Terriplan Consultants, presented a summary of “*What Was Heard*” which was based on the notes that had been compiled throughout the past four months in over 100 meetings held by Neil McCrank with a wide array of stakeholders (Section 4.1). The advice and recommendations that Mr. McCrank received were summarized under the following six themes:

- Jurisdictions and Mandates
- Economic Development
- Timelines/Accountability
- Consultation
- Capacity and Resources
- Coordination Mechanisms

The first afternoon of the workshop involved the creation of four breakout groups, in which participants were asked to consider certain aspects of the northern regulatory process and mechanisms for its improvement (Section 5.0). The first group (Red Group) was tasked with discussing the future of the regulatory system and the pros and cons of making fundamental changes to it. The remaining three groups were each asked to consider what an ideal regulatory system for the Northwest Territories would look like and then to focus on an assigned topic area related to it. These included coordination (including discussion of the possibility of a northern Major Projects Management Office – Blue Group), consultation (Green Group), and timelines (Yellow Group).

The second day of the workshop began with brief opening remarks by Mr. McCrank, thanking participants for their insight and thoughtful contributions made during the opening statements and breakout groups throughout Day 1.

Following these opening remarks, the results of the breakout group discussions were presented to the plenary session (Section 5.0) to test the potential recommendations generated by each group. Willard Hagen (MVLWB) presented the ‘Changing the Future’ Red Group’s results; followed by Chuck Brumwell (EC) for the ‘Coordination’ Blue Group; Mike Hardin (PDAC) presented for the ‘Consultation’ Green Group; and finally Tim Goos (EC) presented the ‘Timeline’ Yellow Group’s results in plenary. Questions and discussion took place between presentations, and these are summarized in Section 5.0 of this report.

The floor was once again opened for plenary discussion of the question “*What’s the one recommendation you want to make to Neil McCrank?*” Several participants took the opportunity to further articulate some of the key messages brought forward at the workshop or to raise new issues and advice for Mr. McCrank.

Prior to closing remarks by Neil McCrank, the plenary group offered congratulations and heartfelt thanks to Bob Bailey (Deputy Minister of ENR-GNWT) who is retiring this week after 34 years of service to both the federal and territorial governments of the NWT; his influence and presence will be profoundly missed. Mr. McCrank again thanked all participants for their contributions and expressed the seriousness with which he will take his responsibilities from this point forward. Mr. McCrank noted that at this point in the process he acts not as Minister Strahl’s representative, but as the working group’s

representative to the Minister; acting in the capacity of a messenger of the goals and objectives of the workshop with the hope of setting in motion the tides of change in the northern regulatory system.

2.0 Introduction

The Northern Regulatory Improvement Initiative Workshop was a gathering of Northern stakeholders held at the Explorer Hotel in Yellowknife, NWT on March 18th & 19th, 2008. The workshop preparations and implementation were contracted to Terriplan Consultants and sponsored by Indian and Northern Affairs Canada (INAC). The client for this work was Neil McCrank, Ministerial representative to the Honourable Chuck Strahl, Minister of Indian and Northern Affairs Canada (INAC).

Over the four months prior to the workshop, Neil McCrank travelled throughout the north as well as cities in southern Canada to meet with stakeholders in recognition of the heightened interest and concerns expressed by NWT residents, Aboriginal groups, Boards, regulatory agencies, ENGOs, and industry with respect to the regulatory system north of 60°. Northerners have seen these concerns grow for the past several years, and recognition of these concerns has led the Minister to engage Mr. McCrank as his representative to lead a regulatory improvement initiative. To undertake this work, Mr. McCrank sought to understand the genesis and complexities of the existing regulatory system in the north and to gather information and recommendations from any other past regulatory initiatives.

A series of recommendations and comments were developed through the general workshop discussion and the assigned breakout group topics. The subsequent discussion provided some assessment and reactions to those propositions. It was noted throughout the workshop, and again in this report, that debate was encouraged, consensus was not a requirement for thoughtful suggestion, and each recommendation was included in this final workshop report for Mr. McCrank.

2.1 Purpose and Objectives

The purpose and objectives of the Northern Regulatory Improvement Initiative Workshop were to confirm the messages heard in the face-to-face meetings between Mr. McCrank and northern stakeholders during the past several months. As chair of the workshop, Mr. McCrank sought to bridge the gap between participant and facilitator and encourage discussion and debate about the existing regulatory system and potential changes. Furthermore, the workshop acted as a forum in which to test the potential of the generated recommendations for regulatory reform, including:

- Short-term Changes
- Long-term Changes
- Northern Major Projects Management Office (NMPMO)

Lastly, the workshop was designed to assess the willingness and ability of the participants (and their respective agencies) to consider and implement change.

2.2 Report Contents

Section 1	-	Executive Summary
Section 2	-	Introduction
Section 3	-	Building a Common Understanding
Section 4	-	What has Neil McCrank Heard to Date?
Section 5	-	Taking a Chance on the Future
Section 6	-	One Recommendation to Mr. McCrank
Section 7	-	Closing Remarks
Appendix A	-	Workshop Agenda
Appendix B	-	Participant List
Appendix C	-	Regulating Resources in the North
Appendix D	-	Guidance Questions proposed by McCrank
Appendix E	-	Workshop Visuals
Appendix F	-	Summary of OAG Reports and responses

3.0 Building a Common Understanding

Following the opening prayer led by Ms. Gabrielle Mackenzie-Scott, Mr. Neil McCrank gave his opening remarks. These are presented verbatim below.

3.1 Opening Remarks by Neil McCrank

Let me first of all thank everybody for being here this morning. I have probably met almost everybody in this room at some point during the last few months, and I know that every one of you is extremely busy. For you to take the time to come to this workshop at our request, at my request really, is I think a credit to what you believe is the true spirit of

the north and what can be done to try to make improvements, if there are any that can be made. So just let me start by saying thank you for being here.

And thank you as well for your hospitality during the last 4 months that I've been spending time in the north and meeting with you, and I have spent a lot of time up here, as I'm sure some of you know. On every occasion it has been, as somebody pointed out to me when I walked in, an adventure and it has been, but a very pleasant adventure. You are truly very great hosts and hostesses in this part of the world, and I've heard that of course from other people and had had some experience in the north before I took on this job, but I just wanted to make sure you knew that that continues to be my opinion. I'm sure I can't love the north like you do because I've not lived here long enough to do so, but I do love the north and it's been a great experience, so thank you very much.

The assignment that I was given really was encapsulated in Chairman Gabrielle Mackenzie-Scott's prayer, and that is to look at the regulatory system to see if there can be some jobs created at the same time as making sure the environment is totally and absolutely protected. If we accomplish what was said in the prayer this morning in the next couple of days, we will have accomplished a lot. Thank you for that prayer, Gabrielle – that was very nice – very well said.

You know that I've been given this job by Minister Strahl. He came up to the north in early November and introduced the issue of the northern initiative - part of which was for me to examine the entire structure of the three territories from a resource development/regulatory point of view, to determine whether or not improvements could be made. Now there are a lot of other ways that this has been described, and if you look at the specific document of engagement from the

Minister, there are different things that we talk about – capacity, we talk about northern federal government involvement on a go-forward basis, and a few other comments. What that really means to me - and I can only think in very simple terms - is whether or not there can be some improvements made to the system for the three territories, with an emphasis on the NWT. He also asked me to look at whether or not an office similar to the new office in the south, the Major Projects Management Office, would be of value



Figure 1. Workshop Day 1

Photo Credit: Gilles Binda, INAC

in the north. Throughout the discussions that I've had with people that has been a subject of debate, and I'm interested in your views today as well.

The process that I engaged in, as I'm sure all of you know, is to try to get around to as many people and places as I could over the last few months and meet with people individually, meet with boards individually, meet with Aboriginal groups, meet with industry, with government departments, the ENGOs. Anybody that wanted to meet, I was open to meeting with – I hope that didn't look like I was just sitting down for the sake of trying to meet with people, but everybody did have a contribution to make, and it was important to get that fixed in my mind for later purposes.

Then the idea of having this roundtable was conceived, and I think it's a good idea – when you hear ideas and you only hear them from one side, it might be helpful to have it debated with the other side at the table – so that was the purpose of having this roundtable today. At no time, when we first started to think about it, did we ever contemplate that we would have the kind of representation we have today. I'm really, really pleased to see that people are that interested in this very issue, as I think you should be frankly, because it's a very important issue.

Following this roundtable, and you'll hear a little more about this as we go through the next couple of days, it's up to me to do my work beyond consultation - that is to write the report and make some recommendations. The plan is for me to have those recommendations in the Minister's hands around the middle of April, which isn't very far away. Some might say that we're doing this too fast; my wife would say we're doing this too fast [or too slowly] - she would like me to have been home during the past 3 or 4 months, which I haven't been. I think there's a sense of urgency based on what I've heard from almost everybody in this room, and certainly the Minister has laid out that timeline, and I propose to stick with it, if at all possible. I think there's good reason to do it that way. We've seen - and you have seen it more importantly than I have in the last number of years - some issues that have become very involved and have dragged on for lengthy periods of time. I always have the view that once that happens you lose focus on what it was all about to begin with. I don't think we've lost focus on what my role is, and by the end of April or middle of April, I hope we have not lost focus. And that's why there's a sense of urgency at least on my part.

You heard from Ricki what's in the folder before you. As well as the agenda, we've got the 'what we heard' over the last few months and that will be presented by Ricki in a moment – it's divided into 6 themes.

I hope that we don't focus on the words specifically in that document because that's just our best rendition of what we've heard. If there are issues to be taken with it, we've got two days to discuss those and set me straight on what I should have heard, but that's

the document that will give us at least a foundation to work from. We also have in the documents, an inventory of the recommendations that have been made in the past, and one of the comments I'll make later is about that inventory. It provides a lot of the recommendations that have been made to improve the regulatory system and what the status of those recommendations is. There are also series of 10 questions that I used in my own mind when meeting with a variety of you over the last few months. I didn't ask all of those questions to each group, or to each of you individually, because some of them became of little consequence when I met individually. Generally, those were the kinds of issues that were going through my mind as we went through the consultation process.

There is also a document prepared by INAC that I refer to as the 'colouring book' version of how the system works in the north. It is complex, and I'll comment on that later, but I wanted to have something that would give us a clear quick roadmap through the system. And I think that does it, and gives a bit of history as to how it occurred as well.

So, if one is going to try to improve a system, we must start from an example of what the system should look like – what would be the ideal regulatory system. I just want to comment on that – I think that is what I can bring to this table. I can't bring to this table the wealth of knowledge that each of you has of the north, the environment and the history of the north, but I can bring a fair amount of knowledge with respect to how regulatory systems work. So, I'll just give you a notion of what I think a regulatory system would look like if it were a functioning regulatory system.

The first point is that the regulatory system should be ambivalent about whether or not there is resource development. The regulatory system is there to decide whether the development is going to take place responsibly, but it should not be either encouraging or dissuading development. That's up to other people. That's up to our political leaders in the north and those who live in the north to make that decision. I certainly wouldn't assume for one minute that I have any input into whether or not development should occur in the north – that's not my job. But if the decision is made to have development, and we heard in the opening prayer that there's a need for some jobs, if that's the case, then my role is to try to ensure that you have in place a regulatory system that is responsible and orderly and that respects the balance between economic development and societal and environmental concerns. That's my role.

So what does it look like? Well first of all I would suggest that a regulatory body that functions well understands its mandate, and the government understands its mandate, and it operates within that mandate. Roles and responsibilities are extremely important when governments set up agencies, boards and commissions, and both sides should understand what the role is – that's not always clear in any part of this country, having

reviewed agencies, boards and commissions throughout the country in the last year for another project.

Secondly, those roles have to be understood by everybody – the industry, communities, the Aboriginal groups – everybody has to understand what the role of that body is – it's not just good enough for the agency and the government to understand what its role is, the public which is served by the regulatory body must also understand. The regulatory body has to set clear rules of engagement both in the application process and in the operational side of the business once approvals are granted, if they are. Those rules have to be clear, concise, and they have to be enforced. The regulatory bodies have to be assured that if the applications don't measure up to the standards, that they are not acceptable. They have to be assured that once conditions are imposed as a result of the regulatory process within the mandate that body has, that they are enforced. If you don't have that kind of process in place, the regulatory system doesn't make a lot of sense.

Regulatory bodies should be somewhat consistent – you don't have to be 100% consistent because the laws change in this country, our courts change laws every day, so while *stare decisis*, which is the rule of consistency based on precedents, exists in this country - it isn't 100% blanket – there have to be opportunities for change, but by and large there should be some consistency in decision-making.

Some predictability is necessary – if the same set of facts is put before a regulatory body, the same kind of decision will result. An effective regulatory body will make timely decisions, and those are by and large up to the bodies themselves to set in conjunction with their various stakeholders. Regulatory bodies in charge of the process should ensure that there is some performance measure or some timeliness goal that should be met.

And the regulatory body should be accountable. One might ask to whom are you accountable? You're accountable to your role and mandate based on the legislation and through that your structure is accountable to the government that set you up. Every day Ministers of the Crown, provincially and federally, speak on behalf of regulatory bodies. They are not responsible for the decision-making (the regulatory body is), but the government is responsible to ensure that the process has been properly followed. That's the accountability that flows from the regulatory body to the public through the government.

So the question is – does this system work in the NWT, in Nunavut, and in Yukon? I concentrated on the NWT – I did visit Yukon and Nunavut, but did not spend an extensive amount of time there, partly because what I observed over the short time I was there and what I've heard is that the system seems to be working reasonably well.

While there are bugs - there are always bugs in any regulatory system – they can be worked out. So I'm concentrating on the NWT.

Here's what I heard – Aboriginal groups would say (as least from what I heard) that development is fine providing it is responsible development, and there has to be some way of assuring Aboriginal people that this is occurring. I've heard from the Boards that things are reasonably OK, and I met with every board and there are lots of boards in this community. I've heard from governments that there should be some improvements made in some areas, depending on the kind of issue that arises. I've heard from the ENGOs (and I've still waiting for a formal report from them which I hope is coming) that there needs to be that continued measure of protection for the environmental community. I've heard from industry that it's becoming impossible to do business in the NWT – it's too complex, it's too unpredictable, it's inconsistent, there are no timelines, there are no standards, and if you don't have those rules, how does one make a recommendation to make the investment that is required to do business in this part of the world? You'll hear more about that in a minute when Ricki goes through the 'what we heard' document. I'll just say this much – this is the best rendition of what I heard during the last 4 months – it may not be perfectly accurate – there may be word-smithing that should be done during the next day and a half so that we get it right. You'll get another opportunity later as you'll hear. What I'm urging you now is "let's get on with this process" and not spend a lot of time on redoing or re-looking at the specific wording of what we heard.

There are two questions that I think one has to address today. Is the system that we have, the structure, OK? If it's not OK, what kind of structural changes, if any, can be made to it? If it is OK, are there some changes around the edges (small changes relating to capacity issues, appointments, standards, land use plans) that you would recommend? I would



Figure 2. Plenary Discussion

Photo Credit: Gilles Binda, INAC

say this: that when you look at the recommendations that have been made in the past, a

lot of them have been just of that nature – the ones around the edges. Some have been adopted, some haven't. One has to ask the question – why not all of them? What's the delay? Why is there no inertia to get all of those recommendations implemented? Does it take you back to the question of whether there is a structural issue that has to be addressed?

There are a couple of realities that I want to point out. I think we all recognize that the decisions made about resource development in the north need to be made by the people in the north. I don't think there's any question about that in my mind; maybe others have a debate about that. This is evident in the way the land claims were settled, and the fact that there has to be local input for any resource development - I accept that totally. These are the people who will be impacted directly by development, and they should have a major input. My question is – can this continue to operate on a very localized basis? On a region by region basis? Will decision-making of a regulatory nature allow for or enable orderly and responsible development of the resources? I think that's a question I'd like to see you debate. Again, I'm not saying for a moment that local input is not important – it is absolutely important, in fact it is critical to what we're doing.

Another reality is that the federal government is currently involved in regulation in the north in many ways. That isn't going to change completely or dramatically over the short term. But, should that involvement be to the extent that it is today or is there enough maturity in the regulatory bodies that have been developed that the federal government could back off some of its firm regulatory control? I'm interested in your thoughts on that.

The other realities that we know of – there are some land claims that have not been settled yet in this part of the world - those require some deliberate effort over time. Devolution has not firmly taken place in Nunavut and NWT.

I'll close by saying that I think everybody that has come to this session today has the right interests in mind. I think that everybody I've talked to in the north has impressed me with their genuine interest in ensuring that things are done right for the north for generations to come.

The regulatory system that has been structured is in place and is trying to mature. The question is whether or not we need the system to mature more rapidly than would be the case if we let it take its course over the next few years. That's the challenge we have before us for the next couple of days. I think that we have an opportunity. I've heard from almost everybody that there can be changes made, there can be improvements made to the system, either structurally or around the edges. Both the Minister of INAC and the Prime Minister have a great emphasis on the north right now, so let's take the opportunity to give the Minister our insights and to try to make some changes that will

work for everybody. I'd urge you over the next day and a half to work with us to provide your advice as I make some recommendations to the Minister by the middle of April.

Thank you very much.

3.2 Opening Remarks by Workshop Participants

The opening remarks of participants are summarized below.

Willard Hagen

Chair MV LWB

Thank you for the invitation – we are attending on behalf of the MVLWB with great interest and a lot of ideas. The majority of the perceived problems in the regulatory process would be reduced if province-like powers were devolved to the GNWT. There is a disconnect largely as a result of legislation and regulations being lost in translation and implementation due to the distances between the NWT and seats of power (Ottawa). Capacity and funding are huge problems, which were highlighted in 2 reports from the Auditor General. We still haven't gone far enough. Perhaps 75% of the problems could be solved by devolution. The NWT regulatory system is complex – there are at least 17 regulators.

The history of the NWT is complex. Explorers came to find us; the second wave came to save us. Both revolved around the natural wealth of the NWT. The regulators still fill this role – trying to strike a balance between development and protection. I suppose that if enough people cry regulatory wolf, then perhaps there really is a wolf. There are no regulations that can't be improved, but there is one reality – the intent of the Constitution to protect land claim agreements and people's rights over 50% of the Mackenzie Valley. For better or worse, we have arrived here at this workshop. Lines in the sand are clearly defined in the provinces, so I hope that Neil clearly sees the numerous obstacles the NWT regulatory regime faces without devolution powers in the NWT. We believe that Mr. McCrank is here to listen, and we hope that 40+ years of land claim agreements and regulations will be respected. So, hopefully with all of our input and agreement, Neil will put together an honest and hard-hitting 'take no prisoners' report. Mahsi cho.

Gabrielle Mackenzie-Scott

Chair, MVEIRB

We're all key players here, and I'm really thankful for the invitation and also for getting to know Neil a bit. I want to say that I have my vice-chair with me - John Stevenson, and also Vern Christensen, our Executive Director, and John Donihee our legal counsel. The MVEIRB welcomes this initiative – our goal is a system which is predictable, effective and efficient. The workshop also provides us with another opportunity to communicate MVEIRB's issues and concerns and to hear yours. Only by achieving common

understanding can we find a fair solution that includes developers and potentially impacted groups to promote a fair and timely process for all.

The Review Board wants to make the most of this opportunity. Our emphasis is on quality and timely impact assessments. We have worked on timelines and looked at others' best practices. This workshop is an opportunity to improve all our processes. The Review Board has two key recommendations:

- (1) We need to have partners at these meetings – GNWT, land claim organizations and INAC. Without partners, improvement is not possible.
- (2) We need to have the right capacity in place – on boards, in governments and at the community level. Increased funding is required for boards to do their jobs.

Finally, Ms. Mackenzie-Scott mentioned her long family history in the Mackenzie Valley and closed with remarks on working hard on behalf of everyone.

Mahsi cho.

Norman Snowshoe **Gwich'in Tribal Council**

Regulatory processes are the result of the Gwich'in Land Claim and others. Since 1992, the Gwich'in have participated in several reviews of the implementation of the land claims. The five- and ten-year reviews and the AG's report as well as the NWT Environmental Audit – all have recommended capacity improvements in communities. My father, Charlie Snowshoe, tells a story of seeing men doing seismic work on his trap line without any prior notice. Now there's a process to avoid surprises. Now we hear development is too slow and too complex. I guess that means we must be doing something right. Permit applications seem to cause capacity issues for communities and for government. DIAND put together responses to recommendations in the AG's reports and in the Audit. Recommendations:

- (1) We need technical expertise in the communities, funded appropriately. Land Claims implementation is limited by funding and devolution is key to increasing the funding.
- (2) Gwich'in Tribal Council is a big landowner in Yukon but is not included as a Yukon First Nation and consequently loses out on funding. That has to be fixed to enable our effective partnership.
- (3) Legal responsibility and participation in EA in Yukon has to be addressed.

Gord van Tighem **Mayor of Yellowknife**

I would like to welcome this group to Yellowknife in my capacity as Mayor and then change hats to represent the Association of Municipalities. I recall being in this room several years ago with proponents from Paramount Resources on day 78 of a 42- day review process. Timeliness is still a key issue. Predictability, consistency, and issues heard from the communities are also important. Communities experience changes due to development and expansion – impacts on municipal infrastructure are difficult to

assess, but very important. With the large numbers of boards in the NWT, it would be great if educators could address the skills required to prepare people for board work.

George Barnaby

Sahtu Land and Water Board

I believe that I bring the community perspective to the meeting as there are few community members present. The responsibility for EA rests with the communities on whose land projects may occur. Board members don't have much training, but we are appointed to oversee this responsibility. Capacity and funding are needed to do this job. A lot of money is spent on staff, buildings, etc. which are necessary to our job. However, we are currently doing more than originally agreed under the land claims and should get extra implementation funding. Training is also required – we train a lot of people through the SLWB offices and many of those people leave for jobs in industry and government. Retaining trained staff is an issue for us. We need to have an approved land use plan in place for the Sahtu area. The current system is much better than what we had in the 1970s. It is based on community knowledge and participation. Any changes we consider should not reduce the involvement of local people.

Violet Camsell-Blondin

Wek'èezhìi Land and Water Board (WLWB)

I wish to speak to eight items on behalf of my Board. (1) Funding – the current funding received through claims implementation does not account for the level of activity in the region. (2) Appointments to the Board are slow and the process is unpredictable. It is a challenge to meet regularly to deal with the volume of work, and this delays decision-making. The WLWB has never been at full capacity. (3) Permitting issues – settlement of the Tlicho land claim was supported by industry to enhance predictability. The land claim must be implemented both in deed as well as in spirit. There are constant requests for intervenor funding, but this funding is very limited. (4) Land Use Plans are needed, and this would increase predictability. Industry and regulators need to know where development can and cannot proceed. (5) Guidelines are needed for board decision-making. Boards are taking steps to develop a policy in this regard. (6) Consultation processes – the Boards sometimes get conflicting messages from the federal government. (7) Federal coordination - it would help if different departments would work together to provide consistent statements and recommendations. (8) Any amendments to the MVRMA would require all parties to agree. All parties need to accept co-management. We're here to stay and want to be partners through increased communication and collaboration.

Walter Bayha

Sahtu Renewable Resource Board (SRRB)

The system has changed a lot since the 1970s – mostly through the involvement of local people. The Sahtu Land Claim established the integrated resource management

system. When reviewing permit applications, the SRRB looks for gaps in other decision-making. Land Use Planning is essential. Boards frequently have to make decisions with no information. The appointment process stalls Boards' decision-making and is outside of their control. The system is functional, but needs fine tuning. First we need to get all the pieces of the integrated resource management system working and then look at broader problems and improvements to the regulatory system.

Stephen Ellis

Akaiicho

Mr. McCrank mentioned two types of improvements – tweaking and fundamental change. There is one piece missing and that is – who is responsible for dealing with assertions that Aboriginal rights are being infringed? Issues regarding treaty and Aboriginal rights are falling through the cracks. INAC is downloading responsibilities to the Boards, and it's not in the Boards' mandates as they are not government bodies. Industry and the courts are in the middle. Some agency need to step forward to conduct the consultation process that is required by law to protect Aboriginal rights. Industry is frustrated by the assertions of aboriginal rights to land, so concerns are dumped into the EA process. Land use plans are needed.

Paul Boucher

Akaiicho

Welcome to Akaiicho territory. I am disappointed that no one has acknowledged that we are on Akaiicho land. Akaiicho has not accepted the MVRMA and does not recognize it. In 1992, the Akaiicho were given the right to implement their treaty. In 1973, the Courts recognized that they did not surrender their rights, and we are still in negotiations. A framework was established in 2000 to deal with development and regulatory issues. About 51% of the NWT GDP comes from Akaiicho territory. Regulatory processes and industry have to respect rights. How do we put in mitigative measures important to our people? This is a hot potato that no one wants to deal with. Let's look to solutions, and ensure all voices are heard.

Fred McFarland, Chair

Environmental Impact Screening Committee (for the Inuvialuit Settlement Region)

Thank you for this invitation. I would like to begin by acknowledging the upcoming 25th anniversary of the Inuvialuit Final Agreement (IFA). The EISC stems directly from that the land claim; changes to the EISC mandate have been agreed upon by the signatories (Canada, GNWT and the Inuvialuit). The claim itself ensures that people participate in development within the environmental context. We have many partners at this operational level. Capacity is an issue for us at the screening and review levels and also at the community level. Currently, it is not unusual for the EISC to have 5-6 projects to review in a 30-day period. Capacity is also an issue for the co-management groups that provide valuable advice to the EISC. Basically the regulatory regime has not kept up

with the claims, especially in regards to environmental assessment. Boards and committees make recommendations but have no processes by which to put them into effect, or to track their implementation. So called 'orphan measures' are becoming an increasingly important issue. Finally, there remains an important jurisdictional issue for the ISR over EA responsibility in Yukon. There is also a marine component of the ISR which raises several other issues with respect to regulatory authorities which do not exist under the MVRMA. Furthermore, the discussion of a streamlined or integrated EA/regulatory regime in the NWT seems to ignore the existence of very different claim agreement and regime in the ISR. These are all complex problems that complicate things for developers.

Bob Bailey

Government of the Northwest Territories (GNWT)

Thank you for the opportunity to participate. The GNWT has much interest in regulatory regimes in the NWT. Regulatory control could be added to the existing regime through devolution of control to the Territorial Government. Currently, regulation may not be functioning exactly as intended; cumulative effects are one example. Clearly there are some growing pains, which is not unusual as the system is relatively new. Also, this regulatory system is unique. We have a responsibility to shape its evolution to respond to northern needs. There is considerable room for improvement. I expect to hear northern solutions here over the next 2 days.

Alfonz Nitsiza

Wek'èezhìi Renewable Resource Board (WRRB)

Thank you – I am the interim chair (it seems like forever) of the WRRB. The Board is an institution of public government and must act in the public interest. We make recommendations on proposals for development. The WRRB is focused on proactive management and the co-management of wildlife. There is a shared responsibility for decision-making. WRRB is becoming involved in research, including TK, and has formed partnerships with governments and agencies, based on information sharing and coordination between wildlife management organizations. We expect the Board's focus on co-management to increase.

Phil Jennings

Major Projects Management Office – NRCan

The MPMO was established as a response to issues and opportunities for the regulatory review of major resource projects south of 60. While the approach of the MPMO initiative could have beneficial application in the North, there are unique regulatory challenges and arrangements in the North; how the approach would have value in the North depends in part on the discussion here today. The North has tremendous resource potential, and there are many opportunities related to the responsible development of that potential. Recent growth in major resource projects has stretched departments and

agencies. Funding in recent budgets has recognized the need to maintain strong environmental standards, and capacity from the MPMO initiative is being directed to areas of greatest need across the country. The MPMO is constrained by its mandate to south of 60. The Office does not impact on the existing statutory authorities of regulatory departments and agencies, but assists these parties in increasing the efficiency and effectiveness of the regulatory process through better definition of roles and responsibilities for regulators, stakeholders, departments and project proponents. The Office is also aiming to improve the functioning of the system through performance measurement, accountability and transparency. The MPMO concept is also based on recognition by Ministers that regulatory systems evolve; and the MPMO is a catalyst to ensure that the evolution reflects responsible development.

Ed DeBruyn

DFO

This workshop is a good idea – it puts all of the puzzle pieces into one room. Our mandate today is to show you what our pieces look like. DFO has a broad mandate covering fish, fisheries management, and fish habitat, and the department is a decentralized organization. The *Fisheries Act* says that development in and around fish habitat may need regulatory approval. It is a powerful piece of legislation and is accompanied by well-developed policy tools – for example, the ‘no net loss’ policy. DFO proceeds in a coherent decision-making process. Industrial development and environmental protection go hand in hand, with an emphasis on shared responsibility. We’re all here to roll up our sleeves, to learn from others and to share our experiences.

Glen Bishop

CAPP – ConocoPhillips

Industry carefully crafts its activities around regulatory processes. I bring international experience to the table in my role with CP, and I am certainly struck by my experiences in Canada over the past four years. Regulatory processes are much more complex here in Canada, especially with land claims. Abroad, I might consult a lawyer or a regulatory expert 5 times a year – here it is almost daily. It is rare that projects aren’t elevated to the EA level in the NWT, but this is not the case elsewhere throughout the world. It appears that regulators here need clearer direction from government, allowing more efficient development of resources. Predictability is key. People in the north are in a similar ambition to Norway. Development offers opportunities, but in my experience projects such as the Mackenzie Gas Project, seem to get further away and start dates are put off. This is not solely due to regulatory processes - costs are obviously an issue – but there is clearly room for improvement in processes. CAPP is being proactive in coming up with solutions. There is no intent to short-circuit the process, but industry wants regulation, predictability, and regularity. To be successful, communities must see the success and share in it.

Elizabeth Swanson

Canadian Energy Pipeline Association – TransCanada

From CEPA's perspective, we share the boards' and communities' desire to see the best decisions made, and we share industry's desire to develop. We have a common desire to get to good decisions by making processes more certain. Processes can be complex as long as they are predictable. Timeliness is also important, but not as important as certainty. The issue for industry is not so much that there are 200 steps to climb, but that we understand that there are a certain number of steps; sometimes when we get to the top, there is another stairway that we didn't anticipate.

Bob Reid

APG

The Aboriginal Pipeline Group (APG) is a partner in the MGP, and we are acutely aware of the complex regulatory environment. There is considerable risk to development without initiatives like this one we are involved in today. NEB and CEAA have responsibility for pipelines. Frequently, CEAA is grafted onto NEB review processes and this works smoothly. Recently 'substitution' has been tried on a pipeline project in New Brunswick. This substitute authority approach provides a single window, which is ideal for a linear project like a pipeline. Federal paramountcy or Federal Pre-emption applies when a project crosses a provincial boundary – in the south, provincial legislation does not apply to NEB projects. The North is different – it's like a patchwork quilt with no directed growth. There is a dispersal of federal authority to boards etc. because of the land claims and local factors. As the boards are all federal, the principle of federal pre-emption does not apply. The Joint Review Panel (JRP) for example was created to deal with the issue of amalgamation of boards, but failed. The JRP is over a year behind schedule; it is not accountable to anyone and is losing its sense of purpose. APG looks forward to participating in this workshop to find workable solutions. It is essential that this be done.

Gordon Peeling

Mining Association of Canada

I am encouraged by the number of stakeholders and the breadth of their interests here. Stewardship of the environment and development of resources in a manner sensitive to the needs of communities is a key issue. The time required to go through any regulatory process is also a key issue. We need timelines and the discipline to keep to them. Licence renewals are time-consuming and expensive for developers and boards alike. Clear, transparent standards are required for operators. 'Orphan measures' are a concern, as some areas are not clearly covered by legislation or regulation. Single-project agreements are a reflection of gaps in the system that should be filled. Boards should be properly resourced, and there should be permanent mechanisms to fund the Boards, and to nurture, train and support them.

Melody Nice-Paul

Executive Director, Gwich'in Renewable Resource Board

The GRRB is an institution of public government created by the Gwich'in Land Claim. The GRRB was not part of Mr. McCrank's initial discussions and would like to be included in future consultations. (note that Neil McCrank met with Melody the next day).

Philip Bousquet

Prospectors and Developers Association of Canada

PDAC believes there are several important items to be addressed – define consultation requirements, settle land claims, support boards and develop capacity. Regular dialogue is important, and this workshop is important as a part of that process. It is critical that boards be aware of companies' good practices. Dialogue can contribute to setting clear thresholds, expectations and timelines. PDAC has made a written submission to Mr. McCrank which includes recommendations – it is available on the PDAC website.

Jennifer Morin

Canadian Parks and Wilderness Society – NWT Chapter

CPAWS-NWT has worked with NWT communities, territorial and federal government, other conservation organisations, and industry to identify and protect important cultural and ecologically significant areas. Our Chapter was formed in Yellowknife by volunteers over a decade ago. Since that time, we have primarily worked with the Dehcho and Sahtu communities. Conflict has occurred between development and protection interests. The MVRMA has a feedback loop (auditing process), and it is important. There are many good recommendations in the NWT Environmental Audit. Some recommendations have been implemented since the report was released in December 2005, but all in all the process is not very far along, and that is an issue. The Boards need more capacity. Land claims are not fully settled and this has created conflict. Even in the Sahtu region where there is a settled claim, prospecting permits have been issued against the wishes of the Sahtu people – land use plans would help resolve these conflicts. Appointments to the Sahtu Land Use Planning Board have been delayed and currently the Board does not have quorum so progress can not be made. Land Use Plans should be approved in advance of major projects. We also need a larger strategy to act to fill these gaps in the regulatory system. Participant funding is also an important issue for CPAWS and other ENGOs, but also for communities.

James Caesar

Vice Chair, Sahtu Secretariat Inc (SSI).


The improvements we're working on are important to the regulatory system. The Sahtu Land Use Plan is in its second draft, and it deals with areas that are up for development. This working document is being quoted and honoured and should become a formal part of the regulatory process. Capacity is an issue – we need people who are going to be

able to do the work that's required. We have to be cognizant of the Constitution – if we're not recognized, we have to raise our voices. The co-management boards need adequate funding and resources to deal with the provisions stated in the comprehensive land claims. Overall, if this meeting recommends changes, we'll need funding and technical resources to deal with them.

4.0 What Has Neil McCrank Heard to Date?

4.1 Presentation by Ricki Hurst

**What was heard...
a sampling**



December 2007 to March 2008


Presentation to Workshop: Neil McCrank
Regulatory Improvement Initiative March 18, 2008

1

This presentation is not a formal report on the meetings held by Mr. McCrank, nor does it presume to reflect the entire content of the meetings.

The purpose is to provide a quick overview of the range of comments and opinions expressed on some key issues - with the hope that this workshop will provide further insight.

2



FACE TO FACE MEETINGS (Dec -Mar)
About 100 meetings + Written Advice

- INAC, EC, DFO, CEAA, NRCan, PC, NGPS+
- YTG, NG, GNWT (Premiers + staff), City
- MVEIRB, MVLWB, IJS, GLWB + (Dec -Mar)
- Akaitcho, GTC, Sahtu, DFN, IRC, Métis, Tlicho +
- NWB, NPC, NIRB, YESAB, CYFN +
- EMAB, CPAWS, DU, Boreal +
- APG, CEPA, CAPP, MGP, MAC, PDAC, Chambers +

3

Questions asked by Mr. McCrank

- Is the current regulatory regime working well enough to allow for responsible resource development? Does it require restructuring?
- If the system does not require restructuring, what changes would allow for accountability, predictable and timely decisions?
- Is there a need for more coordination amongst government departments: whether territorial or federal?

4

- Are there major or minor policy gaps that need to be filled?
- Are specific changes in legislation or regulation needed?
- Are there specific issues that need to be addressed, including implementation issues?
- Have the mandates, roles and responsibilities of Boards been properly defined?
- Should INAC be involved in parts of the regulatory decision making process? How?

5



What Was Heard: by theme

- Jurisdictions and Mandates
- Economic Development
- Timelines/Accountability
- Consultation
- Capacity and Resources
- Coordination Mechanisms

6



Jurisdictions & Mandates

Participants said...

- We need more positive coordination and communication, amongst boards, and with and amongst federal departments, at all stages of project development.
- Federal departments are often inconsistent in their approach (e.g. to the Joint Review Panel) - there is no consistent federal message.
- There is a need to resolve the overlapping jurisdiction for the North Slope between Yukon (YESAA) and the Inuvialuit.
- Devolution (and the potential for imminent devolution) adds another layer of complexity to the system.

8

Participants said...

- Full implementation of the MVRMA and a 5-year review of MVRMA would address many issues.
- A surface rights tribunal with adjudication powers would clarify land access and help with certainty.
- There is a need to fill gaps in the regulatory framework- e.g. barge-mounted fuel storage is unregulated in the Mackenzie Delta.

9

- It is unclear to whom the Boards really answer.
- Boards include conditions in authorizations that are beyond the scope of their mandate, and can not be enforced by INAC inspectors (orphan measures).
- There is no system to monitor the implementation or effectiveness of conditions.
- There is a general and functional disconnect between regulators and INAC inspectors.
- We need standards for the NWT, such as air quality and water quality guidelines, that can be applied consistently by the Boards and other regulators

10

The Auditor General wrote in 2005

A (second) shortcoming in the regulatory regimes of the NWT is the absence of clear regulatory tools to assess and mitigate social, economic and cultural impacts from development. Although a variety of non-regulatory approaches are being used, we heard from many interested parties that such impacts are not being addressed to the same extent as biophysical impacts.

11

- The information base for biophysical impacts is greater than that for cultural or economic impacts.
- There is an urgent need to complete land use plans to guide proponents, boards and regulators.
- There will be less surprise or opposition to development when there is confidence that:
 - Critical cultural and ecological areas are protected
 - An impartial third party is monitoring impacts
 - A robust and proactive plan is implemented to prevent wide spread impacts of cumulative effects.

12



Economic Development

Participants said...

- the northern regulatory regime, because of the way it evolved, is just too complex.
- Some NWT residents feel there is too much development, and too fast, whereas others want more.
- Government and residents sometimes feel differently about development; government generally wants to speed it up, but many residents have concerns.
- Too many projects (it seems like virtually ALL projects) go to environmental assessment.

14

- The regime created under the MVRMA was a new paradigm in resource development - in the NWT, the right to develop or explore doesn't automatically exist, but needs to be earned - the 'free entry system' is an 18th century concept which doesn't necessarily work in the 21st century.

15

The Auditor General wrote in 2005:

The investment climate for non-renewable resource development (in the NWT) is uncertain, in part because the Department...INAC... has not adequately managed its role in the process that considers development projects.

16



Timelines / Accountability

Participants said...

- Permitting of a major development proposal should take months, not years.
- There are too many permits required for small projects.
- Boards should focus on the big projects or those with potentially important impacts.
- To be truly competitive, timelines need to be "nailed down." This would help regulators work quickly and with accountability.

18

Participants Said...

- The JRP reports to no one and has no timelines.
- There are some timelines in the regulatory system, but they are often ignored, and there are none for consultation.
- Permitting is dependent on completion of access agreements – but there are no guidelines or direction; each is unique.
- It takes too long to get Ministerial approvals after all the work has been done

19

- Where land claims have been settled, there are some timelines for permitting. But for the full environmental impact review, that's where the process slows down - sometimes for other agenda - firm timelines should be attached to such processes.
- Because the Yukon is in a post-devolution context, they do not suffer from split authorities and can troubleshoot, which makes a significant difference (as compared to the NWT). The fact that industry knows who is really responsible provides an additional layer of accountability.

20

The Auditor General in 2005, wrote

- Good reporting begins with a clear understanding of the accountability relationship.
- Before the boards can develop appropriate accountability reports, there is a need for clear direction from the government on the roles and responsibilities of the boards.

21



Consultation

Participants said...

- Over 9000 permits will be required for the Mackenzie Gas Project and at each one, someone could state that they had not been adequately consulted.
- The Government is unwilling to say what is adequate consultation, and so people do not know how far to go. Boards need measures to deal with potential infringements of Aboriginal rights.
- There is consultation overload.

23

It was also said that...

- With consultation comes accommodation and the Boards cannot address accommodation.
- The role of Boards in consultation is a significant issue as INAC believes they are agents of the Crown whereas Boards do not necessarily agree; legal opinions also differ.
- There is a need for consultation guidelines.

24

NWT Environmental Audit noted in 2005...

(...) Despite improvements in community involvement and consultation, room for improvement remains. Challenges include: differing expectations for public consultation; effective communication; and management of the consultation process within communities themselves.

25

The NWT Environmental Audit recommended in 2005...

INAC should review the November 2004* Supreme Court ruling and assess whether there are any implications to the consultation process under the MVRMA for areas with unsettled land claims. The findings of this review should be shared with other participants in the NWT's environmental management regime.

26



Capacity and Resources

Capacity and boards...

- There are too many levels of regulators, and too many boards for such a small population.
- Board Appointment process is slow and unpredictable.
- There are at least two Board funding issues – how and how much Boards are funded.
- Funding alone will not resolve NWT capacity issues.
- Boards and Board staff need training programs.
- A centralized technical group could provide scientific and administrative support to a number of boards.

28

Capacity and Communities...

- The EA process depends heavily on communities, some of which are very small and without capacity.
- Intervenor funding for EA is needed.
- Community Groups (e.g. HTC's) have valuable advice but need technical support to frame advice to EA process.
- Communities are being "pulled inside out". They do not have enough people or funding to respond.
- There has to be a better way.

29

... there was a disconnect between the theory behind the Mackenzie Valley Resource Management Act and what is actually happening on the ground.

30

- MVRMA calls for recognition of traditional knowledge.
- This information should be collected and assessed by Aboriginal organizations, which requires :
 - baseline information
 - organizational capacity
 - institutional resources.
- This is a capacity issue for Aboriginal organizations.

31

The NWT Environmental Audit (2005)

- Meaningful community participation is a foundation of the MVRMA, but continues to be a challenge
- INAC should fund an independent evaluation of the capacity of Aboriginal communities to participate in environmental and resource management processes. The findings and recommendations...should be acted on.

32



Coordination Mechanisms: (Northern Major Project Management Office)

Some participants said...

- The existing Board Forum is useful to coordinate board efforts, training, etc.
- Some type of major projects office could be useful, if it helped coordinate government approaches.
- Any entity that would help make project reviews consistent up and down the valley would be beneficial and could increase confidence.

34

Other participants...

- Would like to see if and how it works in the south, before such a concept is implemented in the North, given that there are already so many existing groups and processes.
- Were cautious about such a concept (MPMO). They noted that anytime entities such as these are set up they add another hoop to jump through, more expense and can be "very difficult to kill".

35

Questions?



36

5.0 Taking a Chance on the Future

On the afternoon of March 18th, participants were assigned to four break-out groups and asked to consider specific aspects of the Northern regulatory process and mechanisms for its improvement. One break-out group (Red Group) was tasked with discussing the future of the regulatory system and the pros and cons of making fundamental changes to it. The remaining three groups were asked to consider the nature of an ideal regulatory system for the Northwest Territories and then focus upon a topic area related to it. These included coordination (including discussion of the possibility of a northern Major Projects Management Office – Blue Group), consultation (Green Group), and timelines (Yellow Group). The results of the workshops were reported back to the plenary session on the morning of March 19.

All break-out groups shared the same ground rules. The organizers of the workshop sought the groups' best advice through soliciting a range of opinions; achieving consensus was not the objective of the workshop. Any participant was free to indicate that they held a minority view on any question, and that view was recorded and noted during the report to plenary.

The following are the results of the reports of the breakout groups made to Mr. McCrank and the rest of the workshop participants. The results themselves are reproduced in slides which were shown to the plenary session, and comments and questions from the attendees are listed below following each presentation.

5.1 Red Breakout Group – Taking a Chance

Members: Bob Bailey, Glen Bishop, Patrick Borbey, Violet Camsell-Blondin, Larry Carpenter, Lou Covello, Willard Hagen, Paul Jennings, Gabrielle Mackenzie-Scott, Fred McFarland, Gordon Peeling, Bob Reid, and Elizabeth Swanson with Jim Micak and Dave Finch of Terriplan.

This group addressed two questions: (1) With respect to the northern EA and regulatory assessment system, should there be any fundamental changes made? (2) Barring major changes, what improvements could be made to improve efficiency & effectiveness? Willard Hagen reported the following results from the breakout group discussion to the plenary.

**Northern Regulatory Initiative
Workshop**

March 18th-19th, 2008 Yellowknife, NT

**Breakout Groups
Report to Plenary Session**

CHANGING FUTURE

WORKING GROUP

Breakout Group Ground Rules

We are seeking this groups best advice

- We are not seeking consensus
- Any participant can indicate that they have a minority view on any question
- That view will be recorded and noted during the report to plenary

Two questions were addressed:

1. With respect to the northern EA and regulatory assessment system, should there be any fundamental changes made?
2. Barring major changes, what improvements could be made to improve efficiency & effectiveness?

Should there be any fundamental changes made?

- The group came to a general agreement that fundamental change might be desirable, but would be difficult to achieve.
- This is due in part to nature of land claim agreements.

- If possible, this change could include a fully-integrated (single) EA, regulatory, & resource management system.
- The group felt that over time the benefits of a fully-integrated single system would be realized as a result of:
 - devolution to GNWT & IPGs;
 - redefined INAC role;
 - settlement of all claims;
 - transboundary coordination; and
 - harmonization across jurisdictions
- "Give the existing system a chance to grow & succeed."

- An alternate (minority) proposal was a comprehensive overhaul & redesign of the northern EA & regulatory system in consultation with the signatories to all land claims.
- Rationale: Improvements to the existing system have already been identified with little tangible progress.

What improvements could be made to improve efficiency & effectiveness?

1. Consider establishing a northern Major Projects Management Office
 - Repository for technical information
 - Pooling resources to support all Boards
 - Consolidate non-MVRMA regulators ("clearing house")
 - Support coordination of government involved
 - Identify creative solutions (e.g. Substitute Authority)

Caution:

- **Must not be too big or too powerful**
- **Carefully assess organizational model (centralized, localized, network, or partnership)**

2. Timeline accountability by all parties.

- e.g. EA ---- 6 months maximum

3. Rationalize decision-making

- As decisions are made, do not revisit them; focus on what remains to be decided
- Establish Land Use Plans to better inform industry of community preferences
 - LUPs make the process "almost too easy"
- Establish (and share) baseline information

4. Clarity & Certainty

- Streamline EA's to reflect complexity, size, & significance of projects
- Government must provide definitions & clarity on consultations
- Government must provide definitions of terms in legislation
- Clear definitions of roles & responsibilities of all participants in the process

5. Board Appointments

- Appointments must be made in a timely manner.
- Options for improving or maintaining capacity of the boards...
 - Joint nominations
 - Establishing a pool of candidates
 - Longer terms for board members
 - Appointing alternate members

6. Responsive funding to meet EA & regulatory needs

- Implementation funding is inflexible
- Sliding scale needed that reflects workload

7. Legislative Reviews

- Conduct review & evaluation of MVRMA
 - with industry, government, Boards.
- Review *NWT Waters Act*
- Address EA duplications between Yukon & ISR

In light of the discussion of fundamental changes to the regulatory and assessment system, one member of the audience reminded the attendees that the Inuvialuit Settlement Region (ISR) is significantly different from the Mackenzie Valley. For example, discussion of harmonization in the ISR has included the Canadian Environmental Assessment Act (CEAA), whereas CEAA does not apply in the Mackenzie Valley. As regards suggestions that approved land use plans should be

more widespread, one member of the working group commented that approved LUPs make the regulatory process “almost too easy.” Another commented that land use plans are frequently created in isolation and questioned the degree to which other groups are consulted in their drafting. Finally, discussing the topic of whether or not a northern MPMO would be necessary, one board member suggested that the Northern Gas Project Secretariat (NGPS) has been a positive and productive model, and could fulfill in part the role of an ‘information repository’ suggested for such a body.

5.2 Blue Breakout Group – Coordination

Members: Wanda Anderson, George Barnaby, Allan Burnside, Chuck Brumwell, Vern Christensen, Stephen Ellis, Robert Esser, Tania Gordanier, Larry Hutchinson, Robert Johnstone, Sandy Lapointe, Rick Meyers, Jennifer Morin, Alfonz Nitsiza, Randy Ottenbreit, John Smith, Kevin Smith, Bob Turner, and Mike Vaydik with Bonnie Gray Wallace and Shena Shaw of Terriplan.

This group addressed two questions posed to it by facilitators: (1) What would an ideal regulatory system for the Northwest Territories look like? (2) Would a northern MPMO help in coordinating or managing this ideal system? Chuck Brumwell (EC) reported the following results of the breakout group discussion to the plenary.



What would the ideal regulatory system look like?

- **Simplicity**
 - One project – one assessment – one approval
- **Clear mandates, responsibilities and accountabilities**
 - Understandable and inclusive
- **Supporting 'toolbox'**
 - Regulations
 - Land use plans - "I think the best way to characterize how peoples rights are laid out on the ground are land use plans."
 - Cumulative effects management framework
 - Information sharing

What would the ideal regulatory system look like?

- **A system that evolves by learning**
 - Audits, scheduled reviews, continuous improvements, best practices
- **Encourage voluntary initiatives to resolve issues outside the regulatory process**
- **Trust**

Would a Northern "MPMO" be helpful?

- **Needs to:**
 - Provide clear leadership or ownership of the process
 - Have authority to resolve disputes or broker solutions
 - Integrate processes that are interdependent
 - Provide a path through a convoluted system
 - Enhance the use of scarce resources
 - Extend beyond the federal government
- **A good start on "project management" initiatives**
 - some successes (e.g. MGP coordination activities; regulatory process mapping, harmonization of terms and conditions etc.)

Additional thoughts on a Northern "MPMO"

- **Continue to work on our current initiatives**
- **Don't rush ahead**
 - monitor the success of the MPMO in the coming years.
- **Whatever the recommendations are that come out of this exercise, they need an implementing body to make a difference.**

One member of the *Coordination* break out group noted that there was general agreement regarding the need for some entity to take responsibility for the regulatory process. Another observed that it would be difficult to have accountability in the absence of a focal point or one single responsible authority. One member suggested that the parties to the claims should be the managers of the system and should formalize this role by meeting regularly to address issues as they arise – small issues left unaddressed lead to huge issues that are harder to resolve. In regards to the utility of a northern MPMO, a question was raised as to what constitutes a 'major' project. One member of this group noted that the extant southern MPMO only coordinates federal departments and stated that within the group there was a feeling that for any northern equivalent, coordination would have to involve more than just federal departments. This same individual added that the ideal is to conduct only one assessment per project (noting that within the MVRMA it is possible to have more than one EA on the same component of a project) and highlighted the need for more cooperation.

One member commented to Mr. McCrank that the regulatory system as it exists is a co-management system, cautioning him to consider carefully before recommending the

establishment of a northern MPMO. The member emphasised that for a northern office to truly work, it would have to consider and represent all the partners, not just federal departments. Another member of the group stated that the design of the southern MPMO seemed intended to coordinate federal and provincial involvement in large projects. He added, "This northern context seems so small to layer on this kind of management." Another member of this group commented that a single-window regulatory model might be unwieldy and better coordinating the existing regulatory system might be more feasible.

5.3 Green Breakout Group – Consultation

Members: Robert Alexie, Jann Atkinson, Collin Bayha, Walter Bayha, Lynn Bernard, Rosy Bjornson, Paul Boucher, James Caesar, Jason Charlwood, Ed DeBruyn, Doug Doan, Edward Drybones, Paulo Flieg, Mike Hardin, Helga Harlander, Tim Heron, Marc Lange, Melody Nice-Paul, Annette Nita, John Stevenson, Freda Taniton, Norm Snowshoe, and Ron Wallace with Constance Ramaciere and Ameer Pond of Terriplan.

This group also addressed two questions: (1) What would an ideal regulatory system for the Northwest Territories look like? As a second question the green group was asked (2) Can the Northern Regulatory Improvement Initiative address some of the concerns around the consultation process? Mike Hardin (PDAC) reported the following results of the breakout group discussion back to the plenary.



Question No. 1

What Would the Ideal NWT Regulatory System Be?

What would the ideal regulatory system look like?

- A single system that protects the environment and includes social, economic, cultural factors
- Respect for Aboriginal and Treaty rights

What would the ideal regulatory system look like?

- Building relationships between communities and industry
- Building collective trust and capacity
 - building capacity within all constituencies

What would the ideal regulatory system look like?

- Complete implementation of the *Mackenzie Valley Resource Management Act* (land use plans)
- Develop a common vision and common goals for all regulatory boards and agencies

What would the ideal regulatory system look like?

- Regulatory reform and settlement of land claims must proceed concurrently
- Mechanisms needed for projects that cross jurisdictional boundaries (decision matrix)
 - integrate conflict prevention

Question No. 2

Can the NRII Address Some of the Concerns Around the Consultation Process?

Consultation

- Crown should develop written consultation protocols with First Nations
- Protocols should have a duration of three to five years in order to respond to changes in the law

Consultation

- The *Mackenzie Valley Resource Management* designed to protect the environment; not intended to satisfy the Crown's duty to consult and to accommodate
- Establish a coordinated ("one window") approach to consultation for federal departments and agencies

Consultation

- Any requirement for consultation must be addressed at the beginning of the process
- The Crown can satisfy its duty to consult in a number of different ways: *Taku Tlingit* and *Paramount Resources*

Consultation

- The MVRMA Boards need to develop their own protocols for the consultation that they must conduct
- The Crown cannot delegate its constitutional duty to consult to the MVRMA Boards: government departments and agencies must fulfill this obligation themselves.

Consultation

- In determining when and how deeply to consult, the Crown should err on the side of caution (*honour of the Crown*).
- Education is essential to equip First Nations to fully protect their Treaty rights and interests.

One participant noted that a number of provincial governments had produced written guides on how to engage in adequate consultation. His personal experience was that there is a need for clarity on the duty of the government to engage in consultation and the terms of that duty. He suggested drafting a document that was legally correct and

had a plain-language summary, which would be followed up by an educational process involving governments and First Nations organizations.

Another participant also commented that there should be greater education regarding the regulatory process, noting that under the current system there are no formal requirements for assessing cultural and social impacts. These are instead left to the communities, and without a specific mechanism to address them it was felt that matters were pushed to the EA process. Another participant emphasized the matter of dispute prevention, stating that if potential problems were anticipated and dealt with, then they would not have to be mediated and settled at the end. Referring to this as 'punting away' problems, he compared the process to playing football with seventeen players.

One participant pointed to provisions in the Gwich'in land claim agreement that could be used as a starting point to expand or clarify the consultation protocol. Another offered the Akaitcho interim measures agreement, putting it forward as a model for consultation. Another participant stated that the EA process was one of the few opportunities for elders and land users to be heard regarding treaty rights and that the EA process is often seen as a demonstration of how the process is really working. One participant's expressed hope that any recommendations to come out of this process would be respected and implemented. Another participant stated that communities should have the final say for determining if they have been consulted, and added that "everyone agrees with consultation but it should be step-by-step and more clear."

5.4 Yellow Breakout Group – Timelines

Members: Philip Bousquet, James Boraski, Carl Chala, Gordon Erlandson, John Donihee, Ginny Flood, James Fulford, Tim Goos, George Govier, Susan Mackenzie, John Masterson, John McCullum, Bill Megill, Zabey Nevitt and Zoe Ramer with Ricki Hurst and Nathan Towsley of Terriplan.

This two questions addressed by this group were: (1) What would an ideal regulatory system for the Northwest Territories look like? And (2) What are the key issues and potential solutions around timelines, including predictability and accountability? Tim Goos (EC) reported the following results of the breakout group discussion to the plenary.

**Northern Regulatory Initiative
Workshop**

March 18th-19th, 2008 Yellowknife, NT

**Breakout Groups
Report to Plenary Session**

TIMELINES

WORKING GROUP

Breakout Group Ground Rules

We are seeking this groups best advice

- We are not seeking consensus
- Any participant can indicate that they have a minority view on any question
- That view will be recorded and noted during the report to plenary

What would the ideal regulatory system look like?

- **Having all the Pieces in Place**
 - All Land Claims would be settled.
 - Boards would be established with a full slate of appointees.
 - Proponents, Boards and the Public would understand the system and know who to talk to.
 - There would be a clear understanding of Roles and Responsibilities.
 - There would be Clear Accountability.
- **Defining the Hard Limits**
 - land claims are enshrined in the Constitution and we cannot change the regulatory system without respecting this.
 - The spirit and intent of Land Claims is to have Regional bodies; and they are probably here to stay.

What would the ideal regulatory system look like?

- **Having the means of 'closure' for certainty**
[mechanisms to complete each stage of regulatory process]
 - Establish Surface Rights Board with adjudication powers/
 - One project – One EA [fewer 'on ramps' to EA].
 - Establish Process for finalizing land access agreements.
- **Consultation**
 - The extent of consultation would be scaled depending on the type of activity and potential impact.
 - Consultation analysis is going on simultaneously with review of permit proposal (in ideal regulatory system, consultation would have: guidelines, process, protocol).

How can we get there?

- **First, make what you have work well**
 - Some of the MVRMA has not been implemented.
 - Sort out implementation issues [and prioritize them].
 - Clearly define 'public concern' under the MVRMA [as well as other definitions].
- **Create a Risk-Management System**
 - there may be creative ways of doing this...
- **Boards could function better** with an adequate budget and increased capacity.
- **Finalize and Approve Land Use Plans**
- **Existing timelines would be respected**
[e.g. 42 day limit on Land Use permits].

Timelines: our group discussed

What are the key issues and potential solutions around timelines; including predictability and accountability?

Key issues and Solutions around TIMELINES [e.g. predictability & accountability]

- **Explore timelines**

- a comprehensive review of existing processes and their timelines.

- **Licensing Issues**

- Deal with licensing in a fashion that works to satisfy the needs of the Boards, the community, and the proponents.
- Tailor timelines to users needs (e.g. sensitive to seasonality issues such as need for ice roads, and proponent business schedule).
- Timelines are very difficult to predict when several regulatory processes follow one another.

- **Proactive management of future EA timelines**

- Provide stable funding for and use CIMP to improve baseline info.
- Implement recommendations of NWT Environmental Audit.

Key issues and Solutions around TIMELINES [e.g. predictability and accountability]

- **There are Intrinsic linkages between Landuse Permits and Water Licenses**

- Can each be tied onto the same timeline?
- Can we align permitting timeframes.

- **Anticipate infrastructure and expertise support**

- use outside technical expertise to inform reviews (e.g. water license) in order to move it along faster.
- use expertise from Federal government or provisions from Feds. [INAC] to contract outside technical experts.
- establish 'independent' fund to contract experts [maintain a stable of experts].
- Sponsor technical workshops on relevant themes.

Issues without solutions:

- **No time limits exist on Environmental Assessments.**

There is not necessarily one project – one ea.

Aboriginal Groups and communities can order an EA, even after a proponent has been granted a land use permit, and project work has begun.

Relatively few comments were made as regards this report. A member of the group noted that the report to the plenary was quite comprehensive and clarified that not all points raised were consensus, the matter of tailoring timelines to specific proponent and seasonal needs being an example.

6.0 One Recommendation to Mr. McCranks

Mr. Neil McCranks took the microphone and encouraged attendants to make one recommendation directly to him. He suggested that there was no need to repeat earlier advice, but also stated that if there was something that anyone wished to repeat for emphasis or clarity they should feel free to do so.

Robert Esser (NTI) suggested that we should give the boards the tools to do their job by, for example, implementing the legislation and providing adequate funding. When asked by Mr. McCranks if he was including in his suggestion a definition of their respective roles and responsibilities, Mr. Esser agreed that this would go a long way

towards clarifying ambiguities. **Mr. McCrank** referenced his recent work with the Board Governance Task Force in Alberta and said that the Government of Alberta didn't even know how many boards there were (their estimate was 100 fewer than actually existed as determined by Mr. McCrank).

Chuck Brumwell (Environment Canada) emphasized the importance of implementing the recommendations from this work. "You have been given the assignment and you will have to light the fire to actually make it happen." **Mr. McCrank** agreed that a very important part of his report will be to recommend an implementation plan for his recommendations.

Vern Christensen (MVEIRB) expressed his hope that Mr. McCrank would consider carefully the length of the EA process, and how only a portion of that time is under the control of the Review Board. He expressed more concern about the 'back end' of the process; i.e. post-MVEIRB recommendation. Mr. Christensen expressed his feeling that there must be a big capacity problem within INAC given the problems with timely appointments, Section 35 consultation, and the apparent departmental inability to address social-cultural concerns. **Mr. McCrank** assured Mr. Christensen that he sees this as a continuum of events, wherein everyone shares the blame.

Norm Snowshoe (Gwich'in Tribal Council) noted that the 2003 OAG report on the Gwich'in Land Claim Agreement Implementation highlighted capacity issues. The 2005 NWT Environmental Audit also noted a gap in capacity for implementation. He expressed hope that the McCrank report will recommend capacity development especially in communities, and that the current implementation funding is not a solution to capacity. **Mr. McCrank** agreed that there are capacity issues on all fronts, but he also stated his belief that the capacity issue won't be solved in the present way – i.e. by involving everybody in all steps of the process. He stated that one of his conclusions is that we simply can't have all parties become experts in all areas, and that the capacity issue may be more than simply adding funding or bodies. Mr. McCrank then quoted Willard Hagen that, 'we have to be bold and take no prisoners.' Mr. Snowshoe offered that there may be a way of identifying one person from each community or one from each region to help with the regulatory process.

Tim Goos (Environment Canada) referred back to the comment of Paul Boucher suggesting conflict avoidance rather than conflict resolution. He also noted Willard Hagen's comment that with an approved Land Use Plan for the Gwich'in region, the regulatory process is almost too easy. He supported the approach 'to do it right once' either through a land use plan or a regional environmental assessment.

Willard Hagen (Chair MVLWB and Gwich'in LWB) made a point from the Mackenzie Valley Land and Water Board perspective that we haven't been sitting back and waiting for a report to come out showing us our strengths or our weaknesses. We've initiated, in partnership a few months ago with all the regional boards, an initiative to develop consistent policies, procedures and practices on how we do our business through the whole Mackenzie Valley. That is still ongoing. All of our staff and Executive Directors are involved, and we're focusing on six areas: application review processes, terms and conditions, planned guidelines, data management, water quality guidelines, and public engagement. It's been ongoing for a couple of months, and we hope to produce products that will be made available to a larger group to review and comment on in the next six months, at the very outside, a year. The goal is to provide certainty again for all our clients - industry, First Nations, communities, and all stakeholders and participants - involved in our processes. We have been working on this, and we'll continue to work on it to improve what is happening in the Valley. A lot of times also - and I don't carry the banner for INAC because they can do that well for themselves - not enough credit is given to INAC. We work very hard and very well with INAC, and we really rely on their decades of experience in the North and in particular in the regulatory field. The boards today are where we are largely because of the mentoring from INAC and their people. Some of our hardest working board members and directors are long-term northerners who have retired from a 20-30 year career with INAC. We again rely on their expertise for decisions, the kind of tough decisions that they've made a career of. I just think there's not enough accolades been given to INAC in the North. Thank you. **Neil McCrank** supported this, suggesting that the north is lucky to have such committed civil servants in INAC doing a very tough job.

James Boraski (MVLWB) noted that there has been a lot of very good dialogue at this workshop and that he would like to encourage Mr. McCrank to accentuate the positive. Like any change, this can and should be viewed in a positive light. He suggested framing change in a way such that it doesn't suggest the present process, or the people implementing that process, are wrong. Mr. Boraski suggested that we exhibit the courage required to take small steps, incremental and together make some distance...start short term and lead to long term change. Regulatory change is hard work – but the fact that it is time consuming and difficult does not mean that it is the wrong thing to do. **Neil McCrank** agreed and said that, 'if you want a regulatory system to work as well as it can, it has to come out of this group, these people here in the room today.' He suggested that if we want a regulatory system that is balanced, efficient and allows development to occur, then we need to figure out how to get from A to Z. Mr. McCrank cautioned attendants that they should not expect anything new or particularly creative in his report to the Minister, because you in this room are the brain trust for the NWT.'

Paul Boucher (Akaitcho First Nation) emphasized to Mr. McCrank that the Akaitcho are not in an unsettled area; rather 'we have a treaty that's been in existence since 1900'. He noted outstanding treaty issues like resources and lands. For us to move forward, we need to recognize the treaty relationship of the Crown and build upon it, not tear it down. Mr. Boucher said, 'we want to benefit from resources extracted from our territory; we don't want things like the MVRMA imposed.' We need to respect the principles of the laws of the Dene and work in parallel with those. He challenged any use of the word integrated, stating that one can not integrate differing values. 'We have to walk together, not one behind the other. We have to walk together but also respect the Dene law.' He concluded by saying, 'we don't want to fall under other people's laws. We are a government and we have a treaty that has to be respected.' **Mr. McCrank** confirmed that he has the message of respect and trust for one another clearly in his head.

Gabrielle Mackenzie-Scott (Chair, MVEIRB) expressed some disappointment that there were not a whole lot of aboriginal people here, especially from the communities. She asked, 'where are the parents that agreed to have kids like us, kids of the land claims?' Ms. Mackenzie-Scott told Mr. McCrank that she doesn't want EA to be the scapegoat in this report. She said she was heartened by Rosie's words earlier (that community people who have a say at MVEIRB hearings are beginning to say that it is finally working. She asked Mr. McCrank to 'let us have time to grow and leave the Act alone.' **Neil McCrank** agreed that he too is disappointed with the few Aboriginal people here today, but that we did try hard but weren't successful in connecting with them. He noted again his belief that the regulatory issue is actually a continuum of issues, and that no one part of the system should become the scapegoat.

Vern Christensen (MVEIRB) suggested, 'a management approach which engenders trust and cooperation among all of the partners to the MVRMA.' He expressed his wish that Mr. McCrank recommend some formalized management structure to alleviate trust issues as to who makes recommendations for change (again, a conflict prevention mechanism). He stated his belief that a different approach is needed; that annually the boards meet with partners to the MVRMA to discuss how things are working; that this must be transparent and not the current political system. **Mr. McCrank** thanked Mr. Christensen for his suggestion particularly as we have them all in one room today.

Fred McFarland (Chair, EISC) asked Mr. McCrank 'not to forget the ISR'. He noted that there are some similar issues between the ISR and the valley, such as the compelling need for information to permit timely decisions. He noted, for example, the failure of government to keep up the momentum in the 1980s and 1990s when the oil and gas industry left the Beaufort Region. In



Figure 3. Katimavik Room

Photo Credit: Gilles Binda, INAC

terms of differences, he noted the marine component in the ISR where issues differ from other areas of the NWT. Mr. McFarland cautioned Mr. McCrank to remember that this is a co-management regime; unique, protected; and created from the bottom up. He listed some other things to remember: that part of the difficulty with capacity is in the pace of development. Neil McCrank responded that he will address the issue of capacity due to increased development.

Patrick Borbey (ADM, INAC) acknowledged INAC's share of problems and solutions. He agreed that, 'we have a complex business to run, and I can stand to learn from others.' He stated that, 'I am very much aware that the role of INAC has to change;' that it has to change through devolution, and that it has to change through empowering local people. He noted that this, as well as the strong attention on Canada's north, reflects the sentiment in the Northern Strategy and that being expressed by the Prime Minister. He noted that the present system reflects more than land claim agreements, but also a long history including redressing mistakes of the past such as Giant Mine and other abandoned sites. He said that he would support the previous comment that there are some gaps in the northern regulatory system, specifically in the NWT that need addressing (e.g. surface rights board, MVRMA amendments). Neil McCrank thanked Mr. Borbey for his comments and also for the excellent support he had received from INAC staff, including Steve Traynor, Alison Lobsinger and others.

George Barnaby (Sahtu LWB) noted that the process in place now is based on community control, and we should always keep that as the main thing. All of the Boards work for their region, and Boards reflect local knowledge. Mr. Barnaby argued against centralization saying, 'there is nothing but trouble there.' He suggested that Boards get together and look at issues outside the implementation of their own claim. **Mr. McCrank** thanked Mr. Barnaby, acknowledging his suggestion for inter-board dialogue.

Bob Bailey (Deputy Minister of ENR-GNWT) who was retiring the next day, after a 34-year career with government in the NWT) started by noting that, 'the system is there and it is working'. We need to look to the future. He acknowledged the earlier GNWT commitment to provide Neil McCrank with written comments and noted that they will follow soon. He echoed the comments of Patrick Borbey with respect to the importance of partnerships, including those between INAC and GNWT and with the City Council. He noted the recent alliance between the City and GNWT to request that the Giant Mine remediation go to the EA process. Mr. Bailey concluded by saying that there are always ways to worked together. **Mr. McCrank** thanked Mr. Bailey and congratulated him on his long and illustrious career and his imminent retirement.

7.0 Closing Remarks

Ricki Hurst made some closing remarks on administrative matters, informing participants that Terriplan will send out copies of the five presentations used at this workshop including 'What Mr. McCrank Heard' as presented by Ricki, and the four Breakout Group presentations reported in the morning plenary session. He also reinforced the commitment that Terriplan would send a copy of a draft Workshop Summary Report to all participants on March 31; that attendants would be asked for any review comments by April 4, and that Terriplan would finalize the report by April 7, 2008.

Neil McCrank gave kudos to the Terriplan team, including the facilitators and recorders, and for all of the work undertaken in preparation for the workshop. Following his recounting of an old family story, Mr. McCrank pursued the metaphor by describing his role from here on as, 'to take this, on your behalf, through all of the bottles...to avoid any potential conflict that may occur on the way to get from here to where you have to go.' Mr. McCrank closed the workshop by reminding attendants that, 'I am not just the Minister's representative, but I am also your representative to the Minister.'

Appendix A - Workshop Agenda

NORTHERN REGULATORY IMPROVEMENT INITIATIVE

WORKSHOP AGENDA

18-19 March 2008

Explorer Hotel, Yellowknife

Day 1 – March 18th

8.30 Registration and coffee

9:00 OPENING REMARKS - Neil McCrank

Session 1: Building a common understanding

Opening statement – “Sharing Insights on the Regulatory Process”

One person from each organization that wishes to speak has 2-3 minutes to make an opening statement.

Break

Open Plenary Discussion

What can you add to increase our knowledge and understanding of the challenges?

12.00 Lunch – provided

14:00 **Session 2: Taking a chance on changing the future – the role of the regulatory process in responsible resource development**

4 break-out discussion groups

16:00 Reconvene in plenary for brief wrap up.

End of day 1

17:30- 19:00 Evening reception (also Explorer Hotel)

NORTHERN REGULATORY IMPROVEMENT INITIATIVE

WORKSHOP AGENDA

18-19 March 2008

Explorer Hotel, Yellowknife

Day 2 – March 19th

9.00 OPENING REMARKS - Neil McCrank

Session 3: Our Best Advice

Plenary

Break-out groups report back and summarize results.

Facilitated discussion on the report back results.

Break – a light brunch will be provided mid-morning

Open discussion

What's the regulatory future of the NWT?

Can we implement regulatory change?

What's the one recommendation you want to make to Neil McCrank?

CLOSING REMARKS - Neil McCrank

12.30 End of day 2

Appendix B - Participants List

Northern Regulatory Initiative Workshop

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Appendix C - Regulating Resources in North

REGULATING NATURAL RESOURCES IN THE NORTH

Introduction

Canada's North, the Yukon, NWT and Nunavut Territories, make up approx. 40% of the country's land mass, almost 2.6 million square km. The population however is only a hundred thousand, about 0.3% of the country. Sparsely settled, remotely located, little developed and subject to a harsh climate, the Territories largely depend on the development of mineral and petroleum resources and annual federal transfer payments for the regional economies.

Background

The current regulatory practices in the Canadian North evolved with the country throughout the last century. International interest and competition spurred the creation of the Yukon Territory in response to the Klondike Gold Rush. The quit claim by Norway to islands in the Sverdrup Basin enhanced Canada's claim to the eastern arctic archipelago. The echo of long-standing boundary disputes with the USA and Denmark endure today in the Beaufort Sea adjacent Alaska and in the Kennedy Channel adjacent Greenland. Canada's assertion of jurisdiction in and sovereignty over the frontier territories began in 1870 but can be seen presently with the exercise of various offshore and onshore regulatory powers, exploration (North American ocean ridge hydrographic mapping) and dominion (military security patrols).

Domestically, the twentieth century has also seen steady change in the place of the North in the Canadian mosaic. Never promoted as an attraction for homesteading or a route for a national railroad, the territories were not candidates for provincehood and are not found in the constitution of Canada. Creatures of federal legislation, less than a province, the territories have steadfastly strived for more autonomy and local control. Federal policy directions for the North were largely benign and passive throughout the 1940's and 50's and were driven for the most part by an interest in developing oil and mineral resources (gold, silver, lead, zinc).

Petroleum exploration gained momentum throughout the 1960's and took on a spirited pace after the Prudhoe Bay discoveries and the first OPEC oil crisis. Exploration boomed in the Mackenzie Delta, the high arctic islands and in the Beaufort Sea. The Berger Inquiry, while responding to the challenging Mackenzie Valley pipeline proposal, also dwelled at length on socio-economic and environmental issues, elevated the debate on the aboriginal condition and vaulted the North onto the national scene. The discovery and production of diamonds has enhanced the economies of the NWT, Nunavut and Canada.

Environmental Protection

Northern regulations take many forms and involve many players. Renewable and non-renewable resources have been regulated by either the federal or territorial governments to protect, manage and conserve water quality, varieties of terrain, bird, fish and mammal species, forests and archeological sites. Human behaviour has been regulated to manage public health and to encourage safe practices in the operation of mines, transportation and oil exploration and production.

Until the last decade, Indian and Northern Affairs Canada (INAC) was the most visible regulator, acting in the lands, forestry, water, mining and oil and gas sectors. Annex 1 illustrates the INAC role. Annex 2 briefly describes other federal regulators.

Changes to the regulatory regime have come from many directions. The *Territorial Land Use Regulations* were promulgated in 1970 in direct response to damaging uncontrolled summer petroleum exploration conducted in the Mackenzie Delta and along the western arctic coast. Research programs were also initiated into the effects and mitigation of such activities as seismic operations, well drilling, use of explosives and discharge to sumps. The application of the Regulations (i.e. land use permits) eventually spread over the following decade to Yukon and other districts of the NWT. Together with water authorizations and water licences issued under the *Northern Inland Waters Act*, land use permitting was administered by INAC as one of the most visible tools of environmental protection.

In the offshore, the unescorted voyage of the supertanker *Manhattan* through the Northwest Passage provoked a sovereignty response from Canada and the swift passage of the *Arctic Waters Pollution Prevention Act*. The sinking of the tanker *Torrey Canyon*, the loss of the drill rig *Ocean Ranger* and the grounding of the bulk carrier *Exxon Valdez*, created widespread demand for the improvement and regulation of rig safety, blowout prevention and relief, spill prevention and emergency response.

The Territorial, Federal and Supreme Courts have created case law affecting the regulation of northern natural resources. The *Hamlet of Baker Lake*, *Rafferty/Alameda*, *Oldman River*, *Sparrow*, *Delgamuukw* and *Haida Nation* decisions, for example, have borne directly on traditional hunting rights, caribou protection, federal super-added duties, the protection of aboriginal rights and honour of the Crown. Each has had a direct bearing on the extent, process or technique of regulation.

The Berger Inquiry, the Mackenzie Valley Pipeline Commission, raised the profile of aboriginal concerns and assertions. Land Claims were subsequently filed in Yukon and the NWT and accepted for negotiation. The first large settlement was the Western Arctic (Inuvialuit) Final Agreement in 1984 covering lands in the western NWT and the north slope of Yukon.

The (federal) Comprehensive Land Claims Policy was adopted in 1986 and it encouraged the final agreements with the Gwich'in, the Council for Yukon First Nations, the Sahtu Dene and Métis and the Inuit of Nunavut. The (federal) Policy Guide on Aboriginal Self-Government was adopted in 1995 and reflected most recently, in 2005 in the NWT, with the ratification of the Tlicho Land Claims and Self-Government Agreement. The Nunavut Territory was established in 1999.

The northern claim settlement areas exceed the size of Europe. The lands negotiated by the various aboriginal beneficiaries exceed the size of France. Land claims are not concluded in all the regions of Yukon and the NWT and additional claims have been made in all three Territories from groups in British Columbia, Alberta, Saskatchewan, Manitoba and northern Quebec. Self-government negotiations are progressing with the Inuvialuit and Gwich'in.

Co-Management

Among the many notable features of the land claim settlements are the various treatments given to aspects of managing natural resources. Most of the final agreements deal in some form with the protection of heritage resources, the management of hunting/harvesting, land use planning, environmental assessment and land and water management. The approach negotiated has been one of co-management, that is, the sharing of environmental protection responsibilities through the establishment and empowerment, often by statute, of new advisory and regulatory bodies. (See Annex 3 for an overview).

Environmental assessment and impact review is now under the jurisdiction of the (i) Yukon Environmental and Socio-economic Assessment Board, (ii) (western arctic) Environmental Impact Screening Committee and (iii) Environmental Impact Review Board, (iv) Mackenzie Valley Environmental Impact Review Board, (v) Nunavut Impact Review Board and (vi) Nunavik Marine Region Impact Review Board. In some cases similar responsibilities fall to the Canadian Environmental Assessment Agency.

Disputes between land owners and surface rights/access holders (i.e. explorers) currently fall under the jurisdiction of the (i) Yukon Surface Rights Board, (ii) yet-to-be-created NWT Surface Rights Board and (iii) Nunavut Surface Rights Tribunal.

Managing northern waters fall to the (i) Yukon Water Board, (ii) NWT Water Board and (iii) Nunavut Water Board. In the Mackenzie Valley, water and land management responsibilities are shared amongst the (iv) Gwich'in Land and Water Board, (v) Sahtu Land and Water Board, (vi) Wek'èezhìi Land and Water Board and (vii) Mackenzie Valley Land and Water Board. Land Use Planning is carried out by Boards in the (i) Gwich'in and (ii) Sahtu regions, and by the Planning Commissions in (iii) Nunavut and (iv) Nunavik Marine Region.

Challenges

The northern regulatory landscape is now more complex. More regulatory powers are now exercised by more bodies in more areas than ever previously. See Annex 4. Previous jurisdictions of INAC and the two Water Boards have been replaced and supplemented by 20+ co-management bodies, each with their own membership, staff and advisers. The largest number of new Boards is found in the NWT.

Appendix D - Guidance Questions

Northern Regulatory Improvement Initiative

Context: The following questions were developed by Neil McCrank to guide his discussions with the various groups and individuals with whom he has met over the past couple of months. These specific questions will not necessarily form part of the Workshop scheduled for March 18-19 in Yellowknife, but should provide some helpful background for participants.

Questions

1. Is the current regulatory scheme working well enough to enable responsible resource development, or do we need a fundamental re-ordering of the scheme?
2. If there is no need for fundamental change, what changes would provide for greater accountability and predictable and timely decision-making by all agencies involved with northern regulatory approvals?
3. Is there a need for more coordination within and between federal and territorial government departments? Would a 'major projects management office' or some similar type of agency help?
4. Are there major or minor policy gaps that should or must be addressed by government (e.g., water quality standards, air quality standards)?
5. Are there specific changes in regulations or legislation that need to be made - for example, to eliminate qualified language, define terms such as significant adverse effects, and provide more clarity for regulators and proponents?
6. Are there specific policy issues that need to be addressed (e.g., defining adequate s 35 Consultation)?
7. Would a regional environmental assessment approach be more effective or appropriate than the current project-by-project approach? For example, are there tools available to reduce the need to repeat the same comprehensive EA approach for each project - such as regional databases or "strategic assessments"?
8. Are there implementation issues arising from Land Claim Settlements that need to be addressed? (e.g. capacity, funding, and appointments of Board members). Can some of these be addressed now, rather than waiting for devolution or for all land claims to be settled?
9. Question to the northern Boards – Have your mandates, roles and responsibilities been properly defined for you by the Minister? Do you have the necessary tools (e.g. mandate document, orientation package, and training)?
10. Should INAC be involved in parts of the regulatory decision-making process (outside of its own mandated areas) and if so, how should it be involved?

Appendix E - Workshop Visuals

Managing Natural Resources in the North since 1984

(After comprehensive land claim settlements and self-government agreements, various transfer agreements with the NWT and general devolution to Yukon)

<i>Yukon Waters Act</i>	<i>NWT Waters Act</i>	<i>Nunavut Waters and Surface Rights Tribunal Act</i>
<i>Yukon Surface Rights Board Act</i>	<i>[proposed NWT Surface Rights Act]</i>	
<i>Territorial Lands Act</i>		
<i>Yukon Environmental and Socio-economic Assessment Act</i>	<i>Mackenzie Valley Resource Management Act</i>	<i>[proposed Nunavut Land Use Planning and Impact Assessment Act]</i>
<i>Yukon Act</i>	<i>NWT Act</i>	<i>Nunavut Act</i>
<i>Yukon First Nations Land Claims Settlement Act, Yukon First Nations Self-Government Act</i>	<i>Western Arctic (Inuvialuit) Land Claims Settlement Act, Gwich'in Land Claim Settlement Act, Sahtu Dene & Métis Land Claim Settlement Act, Tlicho Land Claims & Self-Government Act</i>	<i>Nunavut Land Claims Agreement Act</i> <i>(possible Nunavik Claim Settlement Act)</i>
<i>Department of Indian Affairs and Northern Development Act</i>		<i>Constitution Act (1982)</i>

Other Federal Mandates

Canadian Environmental Assessment Agency

The Agency administers the Canadian Environmental Assessment Act to produce comprehensive environmental assessments that support informed decision making. The Agency provides Guidelines respecting assessments by a Review Panel, public participation and certain procedures (e.g. the project registry, participant funding, climate change considerations, cumulative effects, biodiversity). The Agency provides the secretariat function to Review Panels.

Environment Canada

Under the Department of Environment Act, the department is charged to preserve and enhance the quality of the natural environment, conserve migratory birds and water resources and conduct meteorology. The department coordinates environmental policies and programs for the federal government.

Fisheries and Oceans Canada

DFO is charged with the management of Canada's inland and oceanic fisheries, habitat and aquaculture. In addition the dept. is responsible for shipping, navigation and aspects of marine safety. Notable legislation includes the Fisheries Act, the Oceans Act, the Navigable Waters Protection Act, the Canada Shipping Act and the Coastal Fisheries Protection Act.

National Energy Board

The NEB is responsible for the regulation of the construction and operation of inter-provincial and international pipelines and designated power lines, the export and import of natural gas, the export of oil and electricity and for the regulation of Frontier oil and gas activities. In the case of a determination respecting a pipeline proposal, the Board reviews economic, financial and technical feasibility and the environmental and socio-economic impacts of the project.

Transport Canada

As one element of its broader overall national transportation mandate (air, road, rail), MOT oversees the safety, security and marine infrastructure for the operation of passenger and cargo vessels. Related responsibilities include navigation safety and communications, port operations, ship inspection, transportation security and the transportation of dangerous goods (including bulk liquids and gases).

Land and Water Management / Environmental Protection Northern Boards

ADVISORY	REGULATORY	DISPUTE RESOLUTION
Yukon Environmental & Socio-economic Assessment	Yukon Water Board	Yukon Surface Rights Board
[Inuvialuit] Environmental Screening Committee, Review Board	NWT Water Board	[Inuvialuit, Gwich'in, Sahtu] Arbitration Boards²
Mackenzie Valley Environmental Impact Review Board	Mackenzie Valley Land & Water Board	
Gwich'in, Sahtu Land Use Planning Boards¹	Gwich'in, Sahtu, Wek'èezhìi Land & Water Boards	
Nunavut Planning Commission	Nunavut Water Board	Nunavut Surface Rights Tribunal
Nunavut Impact Review Board		

1 Planning Commission and Boards make binding decisions respecting the “determination of conformity” for approved land use plans.

2 Arbitration Boards deal with access disputes in the absence of an NWT or Mackenzie Valley Surface Rights Board.

Provided by: Indian and Northern Affairs Canada

Environmental Screening Agencies

(in most cases activities need to undergo environmental screening BEFORE proceeding to Land Tenure or Regulatory issuance)

Land Tenure Issuing Agencies

(these are needed BEFORE “activity based” regulatory authorisations)

Regulatory Issuing Agencies

(these are needed BEFORE development activities can take place)

INUVIALUIT SETTLEMENT REGION (additional Advisory agencies/references are HTC's and Community Conservation Plans).

Inuvialuit Land Claim Agencies (ISR)

- EISC
- EIRB

Public Boards

- NWT Water Board

Canada

- INAC & other Fed Depts (under CEAA)

GNWT departments

Inuvialuit land claim Agencies

- ILA (surface leases, quarries)

Canada

- INAC (surface leases, quarry permits, easements, licences of occupation)

GNWT

- MACA (commissioners lands)

Inuvialuit Land Claim Agencies

- ILA (Land use permits)

Public Boards

- NWT Water Board (water licences)

Canada

- INAC (land use permits + inspects/enforces) also DFO, CWS, EC, TC, Parks, and NEB (project dependent)

GNWT

- ENR (timber)
- MACA (commissioners land use permits)
- PWHC & ARI (archaeology and science research)

MACKENZIE VALLEY REGION (additional Advisory groups are RenResource Board and councils, Land Use Planning Boards Gwichin / Sahtu/ Dehcho (committee)

Land Claim based Public Boards (MVRMA)

- MVEIRB (assmt and reviews)
- Land & Water Boards (preliminary screening)

Canada & GNWT (MVRMA)

- depts with expertise or regulatory responsibilities (Preliminary screenings)

Land Claim Organisations

- Gwichin Land Administration
- Sahtu District Corps
- Tli Cho governing bodies

Canada

- INAC (surface leases, quarry permits, easements, licences of occupation)

GNWT

- MACA (Commissioners land)

Land Claim based Public Boards (under MVRMA)

- MVLWB (Valley wide)
- GLWB (Gwichin)
- SLWB (Sahtu)
- WLWB (Tlicho region)

Canada

- DFO, NRCan, TC, EC, Parks and NEB (project dependent)
- (INAC is not a regulatory issuer but inspects/enforces Board-issued permits and water licences)

GNWT

- ENR (timber)
- PWHC & ARI (archaeology and science research)

Managing Natural Resources in the North into the early 1980s

(before Land Claim Settlements and before Devolution)

<i>Territorial Lands Act (& Regulations)</i> <i>Respect to:</i> <ul style="list-style-type: none">– Sales– Leasing– Coal– Mining– Forestry– Land use– Dredging– Quarrying	<i>Northern Inland Waters Act</i>	<i>Canada Petroleum Resources Act, Oil & Gas Production & Conservation Act</i>	<i>Yukon Placer Mining Act, Yukon Quartz Mining Act</i>	<i>EARP Guideline s Order</i>
Northwest Territories Act			Yukon Act	
Department of Indian Affairs and Northern Development Act				
British North America Act – Constitution Act				

Appendix F - Summary of OAG Report

Title of Report	Scope/Objectives	Key Findings	Recommendations and Government Response	
October 2007 OAG Report – Chapter 3 – Inuvialuit Final Agreement	Objectives: -to determine whether or not Indian and Northern Affairs Canada (INAC) has adopted appropriate management systems and procedures to successfully implement federal obligations within the <i>Inuvialuit Final Agreement</i> (the Agreement); -to determine whether INAC has monitored its implementation of these obligations; -to determine whether or not federal organizations have met specific obligations under the Agreement; -to determine whether or not INAC has identified performance indicators; and -to determine whether INAC has monitored and reported progress towards achieving the Agreement's principles.	Summary of observations and recommendations: Meeting Federal Obligations: -obligations have been met for capital transfers, park creation, and land transfers -No process has been established for exchanging land -Federal organizations did not respect Agreement contracting obligations -Economic Measures Review has not been acted upon -Federal organizations implement environment and wildlife obligations Federal Implementation of the Agreement -lack of a strategic approach to implementing federal obligations -no monitoring of achievement of the stated goals Other Relevant Observations: Board member appointments INAC, DFO, and Environment Canada are responsible for recommending appointments of 12 of the members and chairs to the five co-management committees, councils, and board created by the Agreement. Members are appointed for three-year terms. We	Recommendation	Response
			Meeting Federal Obligations 3.30 Indian and Northern Affairs Canada should develop and implement clear processes for -ensuring the timely exchange of lands under the <i>Inuvialuit Final Agreement</i> , and -cleaning up and returning control of parcels of land identified in Annex R that are no longer required by the federal government. (3.15–3.29) 3.45 Indian and Northern Affairs Canada should clearly communicate to federal organizations the Government of Canada's contracting obligations in relation to the <i>Inuvialuit Final Agreement</i> . In addition, INAC should define the Agreement's term "reasonable share." It should also provide guidance to federal organizations as to how to fulfill their contract obligations to award to the Inuvialuit a reasonable share of non-competitively tendered contracts that are related to the Region. (3.31–3.44) 3.46 In consultation with the Treasury Board Secretariat, Indian and Northern Affairs Canada, Public Works and Government Services Canada, the Parks Canada Agency, Fisheries and Oceans Canada, and Environment Canada should develop and/or enhance systems and procedures to enable them to monitor their compliance with the <i>Inuvialuit Final Agreement's</i> contracting provisions. To ensure compliance, these systems and procedures should monitor each federal organization's	INAC accepts this recommendation. -With respect to land exchanges, INAC will document the processes outlined in the <i>Inuvialuit Final Agreement</i> for use in future land exchanges; guidelines will be recommended for each step in the process to ensure timeliness by April 1, 2009. -With respect to Annex R lands, INAC will review the process for cleaning up and returning control of parcels of land identified in Annex R and will make changes to improve its efficacy by April 1, 2008, drawing on the results of the removal of the encumbrance against title on Kittigazuit Bay, already under way. INAC accepts this recommendation. The Department will complete its work with Public Works, Treasury Board Secretariat, and the Canada School of Public Service on the development of a Comprehensive Land Claim Agreement training module for all federal procurement officers by March 2008. INAC will also take a leadership role in working with signatories and the Department of Justice to define "reasonable share" by December 2007, and will share this definition with federal organizations in order that they may be guided in their fulfillment of obligations relating to federal procurement. Agreed. Indian and Northern Affairs Canada, in consultation with Treasury Board Secretariat and Public Works and Government Services Canada, will provide guidance to departments on the appropriate level of monitoring required to ensure compliance with this Agreement's and similar agreements' contracting provisions, as reflected in Treasury Board policy requirements. It is important to note that an interdepartmental working group has been established by Treasury Board Secretariat

<p>October 2007 OAG Report – Chapter 3</p> <p>– Inuvialuit Final Agreement (continued)</p>		<p>examined whether departments recommended these appointments in a timely manner, to ensure that federal positions would not remain vacant.</p> <p>We found that the federal government has been responsible for more than 60 appointments or reappointments to these boards since they were established. Twelve of these were delayed, seven of them in the last three years. Looking at all boards and positions, there were vacant positions for a total of more than 130 months, over the past 20 years. We found, however, that these delays often occurred due to the necessity of waiting for ministerial or Governor in Council appointments, rather than due to recommendations from department officials. These delays have at times prevented the Board from reaching quorum at meetings. Board members have voiced concerns that these delays compromise their ability to reach timely and appropriate decisions about proposed developments.</p>	<p>activities for</p> <p>-notifying the Inuvialuit of contracts related to activities within the Region;</p> <p>-awarding the Inuvialuit all contracts that are subject to public tender and related to activities within the Region, when the Inuvialuit submit the best bid;</p> <p>-awarding the Inuvialuit a reasonable share of contracts that are not subject to public tender, that are related to activities within the Region, and for which the Inuvialuit are capable of supplying the required goods and services on a reasonable basis; and</p> <p>-providing the Inuvialuit with contracts that relate to activities within the Region's national parks and landmark, on a preferred basis. (3.31–3.44)</p> <p>3.53 Indian and Northern Affairs Canada should meet its responsibilities related to the economic review by</p> <p>-assessing reasons for lack of progress identified in the first review;</p>	<p>for the development of an amendment to the Treasury Board Contracting Policy, which will update the process for government procurement in the context of comprehensive land claims agreements. The amendment will clarify departmental responsibilities for monitoring and reporting requirements of Crown procurements undertaken in regions covered by comprehensive land claims agreements, including the <i>Inuvialuit Final Agreement</i>.</p> <p>It should be noted that departments do have systems to monitor compliance with the specific provisions of their contracts and that they recognize the need to monitor contract obligations relating to the agreements. To this end, Indian and Northern Affairs Canada, Public Works and Government Services Canada, the Parks Canada Agency, Fisheries and Oceans Canada, and Environment Canada will take measures to develop or strengthen, where necessary, systems and procedures to meet any new monitoring and reporting requirements that may be established by the Treasury Board within a year of their introduction.</p> <p>In addition, the five audited departments will give full consideration to this recommendation as they review and, where necessary, enhance current systems and procedures to monitor the awarding of contracts to the Inuvialuit that are not subject to public tender, when they are capable of supplying the goods and services on a reasonable basis. Work on processes governing federal procurement to include provisions for contracting in national parks is already under way, and will be developed to capture the same information for other comprehensive land claims agreements.</p> <p>This recommendation will be acted on by March 2009.</p> <p>INAC accepts this recommendation. An economic measures working group was established in February 2007. INAC will, through this working group, conduct assessments of community capacity and economic opportunities and assess reasons for the lack of progress by March 2009. Current plans call for the completion of the second five-year economic measures review in 2010.</p>
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<p>October 2007 OAG Report – Chapter 3</p> <p>– Inuvialuit Final Agreement (continued)</p>			<p>-taking actions to respond to the first review; and</p> <p>-leading the completion of a joint economic measures review every five years until such time as the economic objectives have been met, as required in the <i>Inuvialuit Final Agreement</i>. (3.47–3.52)</p> <p>Federal Implementation of the Agreement</p> <p>3.76 Indian and Northern Affairs Canada should develop a strategic approach towards implementing Canada's obligations under the <i>Inuvialuit Final Agreement</i>. Such an approach should, at a minimum</p> <p>-identify each of Canada's obligations and the appropriate federal organizations to address them, and should clearly communicate their obligations to these federal organizations;</p> <p>-develop a plan to implement federal obligations; and</p> <p>-regularly monitor and report to other signatories Canada's fulfillment of its obligations. (3.65–3.75)</p> <p>3.85 In cooperation with the Inuvialuit, and with the Yukon and Northwest Territories governments, Indian and Northern Affairs Canada should develop performance indicators to measure progress towards meeting the principles of the <i>Inuvialuit Final Agreement</i>, and should publicly monitor and report progress to other signatories.(3.77–3.84)</p>	<p>INAC accepts this recommendation. INAC will develop a strategy to effectively communicate federal obligations to federal organizations, by March 2008. INAC will develop a results-based management framework for the implementation of federal obligations in cooperation with relevant federal institutions, by fall 2008. INAC will also monitor and report on Canada's progress towards the fulfillment of its obligations to other signatories at Inuvialuit Final Agreement Implementation Coordinating Committee meetings.</p> <p>INAC accepts this recommendation. INAC will propose performance indicators to all signatories at a future Implementation Committee meeting, with a view to monitoring and reporting on progress, beginning in spring 2008.</p>
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<p>April 2005 OAG Report – Chapter 6</p> <p>Indian And northern Affairs Canada</p> <p>Development of non-renewable resources in the Northwest Territories</p>	<p>Focus of the audit</p>	<p>Observations and Recommendations</p>		
	<p>6.34 Our audit examined how well Indian and Northern Affairs Canada is managing its responsibilities for the process set out in the <i>Mackenzie Valley Resource Management Act</i> for the development of non-renewable resources in the Northwest Territories (apart from the Inuvialuit Settlement Region). We looked at the process from the point at which one of the regulatory and environmental assessment boards receives an application for a permit and/or licence until a decision by one of those boards is made.</p> <p>6.35 We did not audit any of the boards' responsibilities for their practices, procedures, or internal administration; nor did we examine the roles that other federal departments and agencies play in the process. However, we did interview officials from the boards to understand how the Department is managing its responsibilities.</p>	<p>Governance of resource development</p>	<p>6.47 Recommendation. Indian and Northern Affairs Canada, in consultation with the boards under the <i>Mackenzie Valley Resource Management Act</i>, should develop guidelines for clarifying key terms in the legislation.</p>	<p>Department's response. The Department, with the boards throughout the Northwest Territories (NWT), has developed a process known as the NWT Board Forum. Through this forum, the Department will work with the boards to develop guidelines to clarify key terms of the legislation. These will be based on the precedent work already completed through the <i>Canadian Environmental Assessment Act</i>. A working draft for external consultation will be completed by 1 April 2006.</p>
	<p>Objectives</p>	<p>-A reduced operational role for the Department in regulating development</p> <p>-The Department needs to take a more active role to fulfill its responsibilities</p> <p>-Guidance on key terms in the legislation needs to be provided</p> <p>-Regulations for water should be established</p> <p>-The Department needs to establish an effective process to ensure that the boards have the appropriate resources</p>	<p>6.52 Recommendation. Indian and Northern Affairs Canada, in consultation with the boards under the <i>Mackenzie Valley Resource Management Act</i>, should develop standards for water and the Minister should direct the boards to use the standards.</p>	<p>Department's response. In consultation with the boards and water users, the Department will ascertain the information needs (with respect to water standards used by the boards to set licence terms and conditions) of water users and the best form to provide proponents with certainty. A report on information needs will be completed by the end of 2006.</p> <p>In consultation with the boards, the Department will develop water standards and set them out in codes, guidelines, policy, or regulations, as best fits the need. A completion date will be determined as part of the consultation.</p> <p>The Department will improve the system for notification to the boards of various standards. This will be an ongoing process.</p>
	<p>The objective of the audit was to determine how well the federal government is managing its responsibilities associated with the process for the development of non-renewable resources in the Northwest Territories, other than the Inuvialuit Settlement Region.</p>	<p>Renewing the Department's role</p> <p>-The Department needs to hold the boards accountable for managing the process</p> <p>-Good reporting begins with a clear understanding of the accountability relationship</p> <p>-The Department needs to establish an effective working relationship with the boards</p>	<p>6.59 Recommendation. Indian and Northern Affairs Canada should work with the boards under the <i>Mackenzie Valley Resource Management Act</i> to identify best practices and to assess training needs and provide for them, where appropriate.</p> <p>6.60 Recommendation. Indian and Northern Affairs Canada should work with the boards under the <i>Mackenzie Valley Resource Management Act</i> and other boards in the Northwest Territories to develop a permanent process for sharing best practices and</p>	<p>Department's response. The Department has already met with some boards to discuss outstanding issues (for example, best practices, training needs, etc.) and has developed a process, which includes the NWT Board Forum, for ongoing dialogue to resolve those issues. This will become an ongoing agenda item at the next NWT Board Forum, scheduled for fall 2005.</p> <p>The Department will research and compile, as a starting point, best practices of other institutions of public government or expert organizations. The Department will prepare a preliminary report by fall</p>

April 2005 OAG Report – Chapter 6 Indian And northern Affairs Canada Development of non-renewable resources in the Northwest Territories			solutions to the challenges they face.	2005. The boards and government will utilize the NWT Board Forum as a key vehicle for discussing best practices and to assess training needs. The Board Forum meets regularly during each year. The Department expects that changes to the boards' operations resulting from these discussions will start to be reflected in 2006–07 strategic, business, and expenditure plans of the boards.
			6.68 Recommendation. Indian and Northern Affairs Canada should require that boards include in their annual reports to the Minister information not only on the board's financial performance but also on the way they manage their responsibilities for the process.	Department's response. All boards currently report on their financial performance annually. The Department will continue discussions with the boards to implement changes to their reporting requirements to reflect not only their financial performance but also on the way in which they manage responsibilities for the process. Changes to the boards' reporting documentation will be evident by the 2005–06 reports. This initiative will be linked to the development or improvement of strategic plans.
			6.69 Recommendation. Indian and Northern Affairs Canada should require that reporting on financial and non-financial performance begin with the annual reports for 2005–06 and the Minister should make the reports public.	Department's response. Discussions regarding changes to the reporting requirements are already underway. The Department will work with the boards to expand and strengthen the content of the annual reports. Initial changes will be evident in time to be reflected in the 2005–06 annual reports.
			6.76 Recommendation. Indian and Northern Affairs Canada, in consultation with the boards under the <i>Mackenzie Valley Resource Management Act</i> , the Aboriginal communities in the Northwest Territories, and other stakeholders, should clarify the roles and responsibilities of the boards.	Department's response. Bilateral discussions on roles and responsibilities with some of the boards are already underway and replies to our invitation from the others are pending. In addition, this will become an agenda item for the NWT Board Forum. The Department will also initiate discussions with the representatives of groups with settled claims to ensure that roles and responsibilities reflect the claims agreements and legislation. This is an ongoing process of updating, renewal, and evolution. First

April 2005 OAG Report – Chapter 6 Indian And northern Affairs Canada Development of non-renewable resources in the Northwest Territories				results will be evident by April 2006.
			6.77 Recommendation. Indian and Northern Affairs Canada should work with each board under the <i>Mackenzie Valley Resource Management Act</i> to develop a strategic plan that includes a statement about the board's mandate, vision, and mission; strategies for achieving them; and measures to demonstrate performance.	Department's response. Discussions with some boards on the development of, or strengthening existing, strategic plans is already under way and will continue. Other boards will be contacted for bilateral discussions. In addition, this will become an ongoing agenda item for the NWT Board Forum. All the boards will be requested to develop a strategic plan by April 2006. The Department recognizes that strategic plans and performance measurements are not static and improvements will be ongoing.
			6.78 Recommendation. Indian and Northern Affairs Canada should include in its <i>Report on Plans and Priorities</i> for 2005–06 a section that indicates how it plans to address the recommendations in this chapter. In subsequent performance reports, it should demonstrate its performance against these plans.	Department's response. The Department will include in its Report on Plans and Priorities (RPP) an action/work plan that indicates how it plans to address the recommendations in this chapter and report on progress. The action/work plan will be completed by April 2006. Future RPPs will report progress and achievements.
			6.83 Recommendation. Indian and Northern Affairs Canada should establish an ongoing process of consultation between the heads of the boards under the <i>Mackenzie Valley Resource Management Act</i> and the senior officials of the Department.	Department's response. The Department has requested that the boards increase and regularize their consultation with the government on key issues and will undertake bilateral meetings as required. In addition, the NWT Board Forum will be utilized as a key vehicle for ongoing consultation with the heads of the boards and senior departmental officials.