



## Preliminary Screening Practitioner's Workshop

Hosted by the Mackenzie Valley Environmental Impact Review Board in collaboration with the Land and Water Boards of the Mackenzie Valley  
September 7, 2016 • Yellowknife, NT

# Workshop Report

Report compiled by Christine Wenman, PlanIt North Inc.

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## Executive Summary

Approximately forty participants, from nine organizations / departments with preliminary screening responsibilities, participated in a workshop in September 2016 to share knowledge about the preliminary screening process, discuss challenges associated with the process and identify constructive steps that could be taken to improve, clarify, and standardize preliminary screening processes within and across institutions.

After overview presentations from each organization, participants examined preliminary screening in detail, framing it as a three step process:

- a. application submitted and sent for review;
- b. conducting the preliminary screening; and
- c. the preliminary screening outcome.

In break-out groups and plenary discussions, participants delved into detail about challenges and opportunities related to all aspects of preliminary screenings. Major topics of discussion included:

- a. How to provide effective instructions and support proponents and reviewers in order to obtain the information needed to conduct a rigorous preliminary screening;
- b. How to consider public concern in a preliminary screening;
- c. How to harmonize screening processes and enhance collaboration amongst screeners; and
- d. How best to use the preliminary screening form.

For the most part, discussions and suggestions were focused on initiatives and improvements that could be undertaken within the existing legislative framework. However, it was also noted that Indigenous and Northern Affairs Canada is currently reviewing the *Preliminary Screening Requirement Regulations* and the *Exemption List Regulations* under the *Mackenzie Valley Resource Management Act*. All departments, agencies and boards involved in preliminary screening are encouraged to participate in this review and, where appropriate, to collaborate.

Within the existing legislative framework, participants identified many initiatives that could be pursued and discussed several initiatives that are already underway. These are presented in summary form in the table below and are presented as initiatives that could be undertaken internally by each preliminary screener or collaboratively amongst organizations. In addition, the Review Board and the Land and Water Boards have already taken responsibility for some tasks. (Also see the Next Steps under the Closing section of this report).

LEAD AGENCY	RECOMMENDATIONS FOR ACTIONS THAT CAN BE UNDERTAKEN (WITHIN EXISTING LEGISLATIVE AND REGULATORY FRAMEWORK)
<b>EACH SCREENER</b>	<ul style="list-style-type: none"> <li>▪ Develop or, as applicable, further develop internal guidelines and templates to standardize and clarify preliminary screening processes</li> </ul>
<b>COLLECTIVE</b>	<ul style="list-style-type: none"> <li>▪ Standardize guidelines / definitions / application of the term “manifestly insignificant” as used in subsection 124(2) of the MVRMA (or Act)</li> <li>▪ Share internal guidelines and templates with other organizations</li> <li>▪ All preliminary screeners must notify the Review Board when they are in receipt of an application in order to satisfy the Act</li> <li>▪ Continue to foster and communicate about opportunities for collaboration and engagement</li> </ul>
<b>REVIEW BOARD</b>	<ul style="list-style-type: none"> <li>▪ In developing the on-line registry for screenings:               <ul style="list-style-type: none"> <li>○ communicate clearly about when a screener adopts another screener’s process</li> <li>○ communicate clearly about the preliminary screening outcome</li> </ul> </li> <li>▪ In revising / developing guidelines: clearly recommend that proponents apply to the Land and Water Board first for projects that require applications to multiple screeners</li> <li>▪ Coordinate development of updated screening forms: ensure there is clear written guidance for preliminary screeners; develop forms that are scalable with project scope; add additional guidance to receive information regarding cumulative effects, public concern and socio-economic factors; ensure forms show clear links between potential effects and proposed mitigation</li> </ul>
<b>LAND AND WATER BOARDS</b>	<ul style="list-style-type: none"> <li>▪ Hold additional workshops to further train Board staff for screenings</li> <li>▪ Increase local and regional presence to be able to develop a better understanding of local concerns</li> <li>▪ In the interim of developing new screening forms, encourage (or require) applicants to use the existing forms or at least provide the necessary information in an equivalent format</li> </ul>

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## List of Acronyms

CE	Cumulative Effects
DFO	Department of Fisheries and Oceans
EA	Environmental Assessment
ECCC	Environment and Climate Change Canada
ENR	Environment and Natural Resources
EIA	Environmental Impact Assessment
GLWB	Gwich'in Land and Water Board
GNWT	Government of Northwest Territories
LUP	Land Use Permit
MVEIRB	Mackenzie Valley Environmental Impact Review Board
MVLWB	Mackenzie Valley Land and Water Board
MVRMA	Mackenzie Valley Resource Management Act
NEB	National Energy Board
OROGO	Office of the Regulator of Oil and Gas Operations
PCA	Parks Canada
SLWB	Sahtú Land and Water Board
WLWB	Wek'èezhì Land and Water Board

## Workshop Background

Under the *Mackenzie Valley Resource Management Act* (MVRMA), various organizations/agencies are responsible for conducting preliminary screenings under Part 5, which establishes a process for environmental impact assessment (EIA). The Mackenzie Valley Environmental Impact Review Board (Review Board) is the primary agency responsible for EIA in general in the Mackenzie Valley, and has the authority to produce guidelines for conducting EIA under section 120 of the MVRMA. In collaboration with the Land and Water Boards of the Mackenzie Valley and other screeners, the Review Board hosted a preliminary screening workshop in September, 2016.

The workshop was held to bring together staff from preliminary screening organizations and the Review Board to share best practices and challenges associated with conducting preliminary screenings under the MVRMA.

More specifically, the workshop objectives were to:

- **learn** more about roles and responsibilities related to preliminary screening;
- **identify and discuss** key challenges, successes, and best practices related to preliminary screening;
- **promote** engagement and collaboration amongst screeners and with the Review Board;
- **prioritize** challenges that are most important and/or urgent to address, and **establish** next steps toward developing and implementing such approaches (e.g., through focused “task teams” or individual organizations taking the lead), and;
- **identify** effective communication techniques, internally and externally.

In advance of the workshop, participants had the opportunity to complete a set of survey questions about preliminary screening practices, knowledge, and challenges. The survey results were used to inform the workshop agenda and were presented to participants in advance of the meeting.

## Introductions

Brett Wheler, Senior Environmental Assessment Policy Advisor with the Mackenzie Valley Environmental Impact Review Board (Review Board), and workshop facilitator, introduced himself and reviewed the purpose and objectives of the workshop.

In introducing the topic, Brett acknowledged that many of the workshop participants have dual roles in preliminary screening processes as their respective departments both *conduct* and *review* screenings. This workshop specifically targeted those who conduct screenings. Reviewers may include a much larger group. There are also specific organizations that have referral authorities, which again represent a different audience. The Review Board would also like to engage these audiences in the future. For instance, they hope to make the Mackenzie Valley Resource Management Act (MVRMA) workshop that was held last year an annual event, in some form, and it may be possible to have a one-day workshop on preliminary screening within the broader event. Brett emphasized that although this workshop's agenda is focused on the operational aspect of carrying out preliminary screenings, participants are also welcome to contribute their perspectives as reviewers of preliminary screenings carried out by another institution.

The 40 participants introduced themselves briefly by name, organization and title. A full list of participants is in Appendix 1. The Mackenzie Valley Environmental Impact Review Board (MVEIRB, or the "Review Board"), the Mackenzie Valley Land and Water Board (MVLWB), the National Energy Board (NEB), Government of the Northwest Territories (GNWT) Environment and Natural Resources (ENR), GNWT Lands, Fisheries and Oceans Canada (DFO), Wek'èezhù Land and Water Board (WLWB), Office of the Regulator of Oil and Gas Operations (OROGO), Parks Canada (PCA), and Environment and Climate Change Canada (ECCC) were the organizations or departments represented.

## Overview of Preliminary Screeners in the Mackenzie Valley

Staff representatives of Preliminary Screeners in the Mackenzie Valley presented about their respective organizations. While the presentations are included in appendix 2, the notes presented here emphasize key points that were brought forward in presentations while particular issues explored through question and dialogue are presented in text boxes. Table 1 presents a compiled summary of key points from each organization.

### MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

**Brett Wheler, Senior Environmental Assessment Policy Advisor**

#### Review Board roles in relation to screenings

Preliminary Screenings are defined in Part 5 of the MVRMA. Although the Review Board does not have responsibilities as a Preliminary Screener itself, it is the primary body responsible for the environmental impact assessment process established under Part 5. Part 5 also grants the Review Board authority to establish guidelines respecting the processes established therein, including, therefore preliminary screenings. In addition, the Review Board has the authority to directly refer development proposals to Environmental Assessment.

Part 5 also speaks to the Review Board's role in communication related to preliminary screenings. Screeners must notify the Review Board about applications and screenings, and the Review Board is responsible for maintaining an online public registry that contains all of the notices and screening reports submitted to it. The Review Board is working on fulfilling this role better to ensure that ultimately there is one comprehensive place online where information related to preliminary screenings can be housed.



The Review Board believes that building and sustaining good relationships with all of the preliminary screeners is essential to fulfilling the intent and purpose of the integrated resource

management system contemplated by the land claims and the MVRMA. One of the goals of this workshop is to support those relationships.

### What are screenings

There are clear parallels between clauses in the MVRMA and those within land claim agreements; the MVRMA delivers on land claims. The purpose of the Environmental Impact Assessment process (which includes screening, Environmental Assessments (EA) and Environmental Impact Reviews (EIR)) is laid out in the section 114 of the MVRMA:

- To ensure that the environmental impacts of proposed developments are carefully considered before actions are taken; and
- To ensure concerns of aboriginal people and the general public are taken into account.

Screening, EA, and EIR must consider (s. 115 of MVRMA):

- The protection of the environment from significant adverse impacts;
- The protection of the social, cultural and economic well-being of the Mackenzie Valley residents and communities; and
- The importance of conservation to the well-being and way of life of Aboriginal peoples.

Most developments (95%) go through preliminary screening, whereas only a few will go through environmental assessment. Preliminary Screening begins when a developer applies for authorizations such as land use permits or water licences. It is intended to be a cursory look at the potential for impacts with a focus on identification rather than assessment of impacts.

A Preliminary Screening life-cycle has three distinct steps:

1. Application submission and review (usually involves notification of the public and others)
2. Analyzing the evidence – identification of the potential impacts and mitigations and evaluation of how well they match
3. Outcome – decision making and communication

Ultimately a screening answers the question, should a development go to environmental assessment? To answer this question, screeners apply the MVRMA “might test” to consider the potential for both public concern and significant adverse environmental impacts. For environmental impacts, a preliminary screener evaluates whether: (a) mitigations clearly and confidently address potential impacts, or (b) are there are gaps or unanswered questions that require further investigation? Environmental Assessment is the process for such further investigation. Preliminary screening and the might test are a fundamental part of the integrated resource management system in the Mackenzie Valley.

## Environmental Assessment

In addition to the principles set out in s. 114 and 115 of the MVRMA (and noted above), the Review Board's environmental assessment processes must be timely, fair, evidence-based, and transparent.

One of the reasons to conduct an Environmental Assessment is to anticipate and avoid potential impacts, rather than reacting to impacts and trying to cure them after they occur – we all know that some are impossible to “cure”. Environmental Assessment provides an opportunity to plan ahead and consider changes<sup>1</sup> to project design to better protect the environment and ensure significant adverse impacts are avoided.

Through Environmental Assessment, conflicts can be resolved. A proponent can make commitments that can address impacts or can provide additional clarity on what mitigation is being proposed. Communities have an opportunity for more say. With principles of fairness and timeliness in mind, EAs are conducted to engage the public and have as much opportunity for input as possible.

After completing an Environmental Assessment, if the Review Board determines that significant adverse impacts are likely, the Board is obligated to apply mitigation “measures” to the project, or, if impacts cannot be mitigated, recommend that the development proposal be rejected<sup>2</sup>.

## LAND AND WATER BOARDS

### **Rebecca Chouinard, Executive Director, Mackenzie Valley Land and Water Board**

The presentation described the responsibilities of all of the Land and Water Boards in the Mackenzie Valley. The Gwich'in, Sahtú, and Wek'èezhì Land and Water Boards were created through the establishment of comprehensive land claim agreements. These regional panels regulate the use of land and water and the deposit of waste for activities that fall wholly within these respective management areas. The Mackenzie Valley Land and Water Board (MVLWB) regulates activities that take place wholly outside of the regional management areas, or activities that take place in more than one management region (i.e. transboundary activities). Each Board is made up of a Chair and four Board members, however, all regional panel Board members are also members of the MVLWB. The MVLWB can strike decision-making panels using Board members from any of the regions, and typically do call on regional panel Board members for transboundary determinations.

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<sup>1</sup> If a development proposal is modified after a screening or assessment is completed, it must be screened again.

<sup>2</sup> See s. 128 of the MVRMA for full description.

The Land and Water Boards (LWBs) conduct preliminary screenings. Preliminary screenings need to be based on the broad scope of topics defined in Part 5 of the MVRMA – e.g. the whole environment and all types of impacts on the environment. After completing a screening, the LWBs role is to focus on regulating the use of land and water, and the deposit of waste; the scope is much more specific than during screening.

Generally speaking, once an activity has undergone a preliminary screening, that same activity is exempt from further screening. If the scope of an activity has changed, it might be that only the change needs to go through a new preliminary screening.

The preliminary screening process is intended to be transparent and public participation is facilitated through notifications to the distribution list, and the opportunity to provide comments and recommendations via the online review system. Anyone who wants to be on the distribution list and/or added to the online review system can be. The usual reviewers are on there – other Boards; monitoring agencies; First Nations; and Aboriginal, Territorial, and Federal government agencies. In transboundary situations, stakeholders outside of the Mackenzie Valley may also be included. As applicable, other operators, individuals, and proponents in the area may also be included.

In conducting preliminary screenings, the Boards use the *Mackenzie Valley Environmental Impact Review Board's Environmental Impact Assessment Guidelines* and *Socio-Economic Impact Assessment Guidelines*. In addition, the Board will look to similar projects' preliminary screenings in order to build off good examples.

Draft Land Use Permits are also now circulated to the distribution list for review.

#### ACTIVITIES THAT WERE PREVIOUSLY SCREENED (Exemptions)

There was a discussion about the Board's role in determining whether a development proposal has changed and, therefore, requires a new screening. Specifically, there was a question regarding the Board's practice of inviting reviewers to provide their position on whether or not a project is exempt from screening (versus making this determination on their own).

Making a determination on whether there has been a change to a previously screened undertaking is not always straightforward. Rebecca clarified that the intent is to allow reviewers to provide their recommendations with rationale *if they wish*, and also to try to put the onus on the proponent to clearly demonstrate that the scope of activities has not changed.

Rebecca added that other organizations can take comfort in knowing that the Boards always do a thorough internal review. Also, even submitting a comment to the Board to say that you have *not* reviewed the renewal application to determine if the scope has changed is useful information.

Brett added in closing to the MVLWB's presentation that the Land and Water Boards have a unique role in preliminary screening because they conduct the largest number of screenings and many other regulators adopt the Boards' screenings.

## GNWT – ENVIRONMENT AND NATURAL RESOURCES

### Kate Witherly, Conservation, Assessment and Monitoring Division

ENR actively collaborates to protect, manage and restore ecosystem health, to promote environmental stewardship and to support the wise use of natural resources for the benefit of ecosystems, which include the people of the NWT.

Within the MVRMA, ENR's main roles are as a preliminary screener, regulator, responsible minister, and a referral organization. It is governed by the MVRMA, the *Wildlife Act*, the *Waters Act*, the *Environmental Protection Act* and the *Forest Management Act*. ENR is also considering screenings under the anticipated Air Quality Regulations. Currently, screenings are conducted and permits are issued under the *Forest Management Act*, the *Pesticide Act*, the *Forest Protection Act* and the *Wildlife Act*.

ENR reviews all applications to Land and Water Boards for water licences and “may” use its referral authority. In 2015, ENR only conducted one of its own preliminary screenings, for an authorization under the *Forest Management Act*.

Were ENR to conduct a preliminary screening, it would be done by the relevant department – for example, forestry or wildlife or by the region in which the permit applies. ENR also screens projects proposed in the Inuvialuit Settlement Region, which do not fall under the MVRMA.

In the rare event that ENR does its own screenings, it would inform other ENR Divisions, other GNWT departments, Aboriginal governments and organizations, federal departments, municipal governments and MVEIRB as well as other co-management Boards such as Renewable Resources Boards.

To date, there has been a lack of consistency for how ENR approaches preliminary screenings; the process needs to be standardized. This is the greatest challenge as well as standardizing processes across organizations.

Internally, there is a task force at ENR looking into the internal processes and working to standardize those.



## NATIONAL ENERGY BOARD

**Anne-Marie Hesse, Tech Specialist, Environment**

NEB's mandate includes safety (in navigable waters which is new under the new NEB Act), protection of the environment, which is applicable to every development from a rock collecting permit up to production and producing facilities. NEB is also mandated to conserve resources, which means reducing wastage through limits to flaring and so forth. It is governed by the *Canada Oil and Gas Operations Act* (COGOA) and Regulations, the *Oil and Gas Operations Act* for the onshore ISR, the *Canada Petroleum Resources Act*, which is the rights issuance part of legislation, and the *Canada Labour Code*, where the worker safety piece comes into effect.

The NEB piggy-backs on the great work of the Land and Water Boards. NEB conducts screenings triggered under the *National Energy Board Act*, but the majority of the work is under COGOA. Although it is possible that there would be situations through which an NEB preliminary screening would be triggered alone (without a Land and Water Board preliminary screening) these examples would be rare.

Transparency is a key focus for NEB with new provisions recently enacted within COGOA that provide for document publication. In the past, applications were completely confidential but now pieces related to environment and safety are no longer protected. NEB is asking companies to make whole applications public, however, if they find certain pieces to be commercially sensitive then they can hold that back.

This provision grandfathers items, so Norman Wells is grandfathered in. NEB has asked Imperial Oil to make a few things public going forward but they will not be legally required to do so. For people here, Norman Wells is the main area of jurisdiction and the new transparency provision does not apply.

Parts of a Development Plan can be proprietary because a company does studies that they don't want other people seeing. This is still considered to be commercial information and may be kept confidential.

NEB requested legal changes related to transparency; the changes were not hoisted upon them. This is partly because of working with northern boards and the standard of transparency created by those boards. The changes have been a culmination of approximately 5 years of discussions and request for changes to COGOA.

COGOA transparency requirement changes are only related to areas regulated under COGOA, which are in shore. Everything else is run under OGOA, which is mirror legislation devolved in the same way it was on April 1 2014 so NEB is looking at workarounds that allow for greater transparency in the interim of changes to that legislation as well.

NEB has done minimal screening in the past couple of years and piggy backing on the Land and Water Boards to adopt their screenings has worked well, as has the information sharing within

this process. The NEB has MOUs in place with the MVLWB, MVEIRB and OROGO. NEB also has a letter template used to communicate to the Preliminary Screeners (the Land and Water Boards) the scope that the NEB requires.

NEB's greatest challenge is with respect to scope – ensuring that the scope of the screening matches the scope of NEB authorizations so that the screening is readily adoptable.

## OFFICE OF THE REGULATOR OF OIL AND GAS OPERATIONS

**Jamie Fulford, Executive Director**

There will be similarities in this presentation and NEB's presentation because OROGO works with mirrored legislation, except for a few tweaks on the transparency side.

OROGO's mandate is to regulate oil and gas works and activities in order to promote safety, protection of the environment, and conservation of oil and gas resources (onshore NWT outside of ISR and federal areas). Our main responsibilities are to: issue operations and authorizations and well approvals; conduct inspections, investigations and other compliance-related activities; and issue significant discovery and commercial discovery declarations. OROGO is governed by the *Oil and Gas Operations Act*, the *Petroleum Resources Act* and the MVRMA.

OROGO's preliminary screening experience to date is limited – they have not done their own screenings. Similar to NEB, they have adopted the Land and Water Board screenings. They have conceived of instances where OROGO could have a trigger when the Land and Water Board doesn't, so they will need to be able to address that if and when it happens. For example, in an OA for seismic that has ATVs going out, this doesn't create a trigger for a land use permit or a water licence.

In terms of tools and resources, OROGO relies on the relationship with the Land and Water Board and adopts whatever screening that they have done, after examining the scope to make sure it covers off everything required by the OROGO authorizations.

A challenge is being transparent while still respecting confidential information. It is important for screening purposes to know what is going on down hole, however section 91 of the *Petroleum Resources Act* specifies that all information provided to the Regulator is privileged. OROGO is reviewing implications of this provision for application within the MVRMA, however, as OROGO typically works with devolved (and mirrored legislation), their interpretation so far has been that if NEB or OROGO gets a package of information, it is all privileged as default with certain exceptions.

Confidentiality requirements are challenging because the privilege is antiquated. It is overly broad compared to other jurisdictions and there is an evident appetite from companies to waive that in order to build public confidence.

### CLARITY OF ROLES

There was a discussion following Jamie's presentation about a perceived lack of clarity in the system as it currently operates. Although many regulators are operating as though the Land and Water Boards (LWBs) are the main preliminary screeners, it may not be clear when other regulators are adopting LWB screenings.

Lorraine Seale added that the MVRMA was specifically amended (ss 124(4)) so that regulators don't have to formally adopt a LWB screening. There is revised text that specifically explains that regulators do not have to do a preliminary screening if the LWBs have done one.

One clarifying approach could be to add direction in the guidelines specifying that a proponent doing oil and gas activities should apply to the LWBs first. This typically happens, but isn't explicitly in the guideline.

### PARKS CANADA

**Jacque Bastick, Environmental Assessment Specialist, Natural Resource Conservation Branch**

Parks Canada's organizational mandate is to, on behalf of the people of Canada, protect and present nationally significant examples of Canada's natural and cultural heritage and foster public understanding, appreciation and enjoyment in ways that ensure their ecological and commemorative integrity for present and future generations.

Parks Canada's primary responsibilities pertain to select locations within the Mackenzie Valley with respect to National Parks and National Historic Sites – Tuktut Nogait National Park, Saoyú-æhdacho National Historic Site of Canada, Nahanni and Nááts'ihch'oh national park reserves, proposed Thaidene Nëné National Park Reserve.

Parks Canada does conduct some, though few, preliminary screenings. The majority are for commercial guiding activities such as outfitters, air activities within parks, or minor construction/maintenance of park infrastructure. Parks Canada NWT offices had no new applications last year, although some were renewed. Examples from previous years include a strategic EA for a management plan, and an archaeology permit, which were minor preliminary screenings.

Parks Canada works with a large stakeholder group because all NWT national parks are managed cooperatively with indigenous partners. Staff would therefore communicate preliminary screenings to appropriate organizations within communities affiliated with a park, as well as outfitters and other government departments or Boards.

PCA has their own procedures for preliminary screening, which staff is finalizing now as a step-by-step procedure to standardize processes internally. They use a basic impact analysis template to incorporate all of their legislated and mandated requirements. They also have best management practices, which they attach as terms and conditions to their permits.

Their challenges are to maintain consistency with other preliminary screeners, respect and communicate timelines and ensure staff is trained so that they can be consistent in the preliminary screening process.

PCA has put a lot of effort into developing the templates and has committed to sharing them with the Review Board and others.

Another challenge is how to deal with the preliminary screening for developments that have not been modified and have been previously screened (e.g.; business licence applications for river outfitters), as the legislation does not provide for exempting these developments from preliminary screening within national parks and historic sites.

## DEPARTMENT OF FISHERIES AND OCEANS

### **Sophie Barrett, Fisheries Protection Program**

DFO's mandate is to maintain the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Its main responsibilities are to ensure that the works, undertakings and activities are conducted in such a way that the proponents are in compliance with the applicable provisions of the *Fisheries Act*. DFO's responsibilities include the management and protection of fish, marine animals and their habitat. The Act now specifies commercial recreational and aboriginal fisheries, which was a change in the last revision of the Act. DFO is also governed by the *Species at Risk Act* (sections 32, 33, or 58).

DFO typically conducts screenings for proposed developments in an around fisheries waters including water crossings, water taking, infilling and dredging.

All preliminary screenings sent to DFO are reviewed initially by the Triage Unit and DFO only comments on ones related to the mandate, approximately 100 per year.

Participants in DFO preliminary screenings include federal, territorial, Aboriginal and community governments or organizations. Specific departments within DFO include the Triage Unit, Regulatory Review Units, Species at Risk, Fisheries Management and Coast Guard.

The Triage Unit acts as a one-window to conduct initial review. If a project is deemed to fall under DFO's mandate, it will be reviewed using guidelines to determine if site-specific review or comment is required. DFO also has internal toolkits and guidelines for screening projects and has specific toolkits and guidelines for northern processes.

Challenges: This is a different process to the usual one-window design used in the Fisheries Protection Program. It is different from the Request for Review Form. It is a challenge to determine whether a project falls within DFO's mandate. It is also challenging to ensure that

reports have sufficient detailed information about fish and fish habitat as well as the summary of works to conduct DFO's review in a timely manner.

## ENVIRONMENT AND CLIMATE CHANGE CANADA - CANADIAN WILDLIFE SERVICE

### Marie Fast, Habitat Biologist

ECCC's mandate is to preserve and enhance the quality of the natural environment. ECCC manages, administers or shares responsibility for a couple of dozen acts over a variety of topics. CWS mostly looks after migratory birds and their habitat, and species at risk and includes those species that fall under *SARA*, and the *Migratory Birds Act*. They also work with CEPA and provisions of the *Fisheries Act*.

Staff has limited experience with coordinating their own preliminary screenings. There are authorizations that ECCC/CWS issues that could trigger a preliminary screening - for example, authorizations related to scientific research, airport management of migratory birds, protected areas or species at risk. ECCC's has not conducted a preliminary screening in the last few years but staff is involved in commenting on preliminary screenings. As a rough estimate, a quarter of ECCC's workload is spent providing comments on preliminary screenings led by others.

ECCC has some standard requirements in place, for instance requiring a current Wildlife Research Permit and, as applicable, animal care approval. If an application is for an activity in a protected area, ECCC would have a co-management committee review it. Staff uses various internal and public permitting polices and applies standard terms and conditions.

For challenges, ECCC can improve their understanding of their "role" as a preliminary screener by developing a standard process. Another challenge is that some ECCC permits are issued by southern offices so any standard process would have to include these authorizations. Improvements or a wish list would include a CWS permitting process map in the Mackenzie Valley, a public registry for keeping a public record, and templates for notifications and decisions.

## GNWT – LANDS

### Lorraine Seale, Director, Securities and Project Assessment

Many of Lands' authorities are under legislation (the MVRMA) that the

### MANIFESTLY INSIGNIFICANT

Section 124(2) of the MVRMA states that: "If government is carrying out a project that does not require an authorization, it must do a preliminary screening unless:

- the activity is manifestly insignificant;
- the activity is exempted under the regulations." (emphasis added)

There was discussion among participants about how the term "manifestly insignificant" is defined and applied in practice. Soon after the MVRMA came into force, DOT developed a list of activities it considered to be manifestly insignificant and provided this list to the Land and Water Boards and the Review Board. MACA and ENR also developed such lists. Parks Canada has developed a matrix to evaluate "manifestly insignificant". These lists do not apply to activities that require regulatory authorizations (see s. 124(1) of the MVRMA). Participants agreed that this is something that should be looked at in more detail.

department does not control, which is a fairly unusual position for a government department. Lands is the GNWT lead on the MVRMA and also administers territorial land-related legislation.

With respect to preliminary screening, before devolution, MACA occasionally did preliminary screening of activities on Commissioner’s Land. As part of devolution, responsibility for the *Commissioner’s Land Act* (CLA) transferred from MACA to Lands. Since devolution, Lands has not conducted any preliminary screenings under the CLA.

As Lands hasn’t yet completed any preliminary screenings, the stakeholders section has not yet been relevant and so has been removed from the presentation.

Lands provides input to and monitors all Land and Water Board preliminary screenings. Inspectors recommend land use permit terms and conditions and comment on draft permits. Lands Administration and ITI’s Mining Recorder’s Office provide information on the proponent’s eligibility to apply for a land use permit and on any third party interests near the proposed activity. If applicable, Lands will provide input on questions about whether an application is exempt from preliminary screening (for example, previously screened or MVRMA s 157.1 applies). Lands also provides other input as required – the Project Assessment Branch coordinates GNWT input on some applications. Since Lands was established on April 1, 2014, it has provided input to one non-LWB preliminary screening, which was led by ENR Forestry in 2015.

Challenges and wish list:

- How are people managing all roles in short time frame available for screenings?
- It is really hard to find information about when other organizations are doing screening so the Review Board’s registry will be really helpful for that.
- Lands wants to make sure new, post-devolution authorities are properly captured in the regulations. Lands is GNWT’s single window to INAC for potential amendments to the *Preliminary Screening Requirement Regulations* and *Exemption List Regulations* (both under MVRMA). ENR and other GNWT departments are contributing to GNWT’s input.

**TABLE 1: OVERVIEW OF REGULATORS WITHIN PRELIMINARY SCREENINGS**

<b>Land and Water Boards</b>	
<b>Regulate the use of land and water and the deposit of waste; Issue and administer Land Use Permits and Water Licences; Conduct Preliminary Screenings</b>	
<b>GOVERNING LEGISLATION</b>	<ul style="list-style-type: none"> <li>▪ MVRMA and Mackenzie Valley Land Use Regulations</li> <li>▪ Waters Act &amp; Regulations (outside federal areas)</li> <li>▪ Mackenzie Valley Federal Areas Waters Regulations</li> </ul>
<b>TYPICALLY SCREENS</b>	<ul style="list-style-type: none"> <li>▪ Industrial undertakings</li> <li>▪ Mining and milling undertakings</li> <li>▪ Municipal undertakings</li> <li>▪ Power undertakings</li> <li>▪ Agriculture, conservation, recreational and miscellaneous undertakings</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Land use applications</li> </ul>
<b>PS WORKLOAD</b>	<ul style="list-style-type: none"> <li>▪ Past year: 15 PS decisions; 7 exemption confirmations (January – August, 2016)</li> </ul>
<b>PS RESOURCES</b>	<ul style="list-style-type: none"> <li>▪ Guide to the Land Use Permitting Process and Guide to Completing a Water Licence Application</li> <li>▪ MVLWB Regulatory Manual for Land Use Permits</li> <li>▪ Standard Land Use Permit Conditions</li> <li>▪ Engagement and Consultation Policy, Engagement Guidelines, Water and Effluent Quality Management Policy, Waste Management Plan Guidelines, Spill Contingency Planning Guidelines, Closure and Reclamation Guidelines (for mineral exploration and mining)</li> </ul>
<b>PS CHALLENGES &amp; WISHLIST</b>	<ul style="list-style-type: none"> <li>▪ Challenge: To obtain sufficient information about impacts, cumulative effects, and mitigation measures during the application process</li> <li>▪ Wish: To improve the PS Form and to ensure future changes are made in a systematic way</li> <li>▪ To think of more ways to get the information that is required for the PS process (eg, change application forms, more guidance, public workshops)</li> <li>▪ To clarify how to best capture change to a PS when a project changes after an EA (during the licensing phase, changes in management plans, etc.)</li> </ul>

## MVEIRB

**Conducts environmental assessments and environmental impact reviews in the Mackenzie Valley**

<b>GOVERNING LEGISLATION</b>	<ul style="list-style-type: none"> <li>▪ MVRMA, especially Part 5, which describes the Environmental Impact Assessment process, including preliminary screening.</li> </ul>
<b>TYPICALLY SCREENS</b>	<ul style="list-style-type: none"> <li>▪ Not a preliminary screener.</li> </ul>
<b>PS WORKLOAD</b>	<ul style="list-style-type: none"> <li>▪ Responsibilities for environmental impact assessment guidelines and preliminary screening registry, as well as EA referral authority independent of preliminary screenings</li> </ul>
<b>PS RESOURCES</b>	<ul style="list-style-type: none"> <li>▪ EIA Guidelines, Socio-economic Impact Assessment Guidelines, and Traditional Knowledge Guidelines</li> </ul>
<b>PS CHALLENGES &amp; WISHLIST</b>	<ul style="list-style-type: none"> <li>▪ Comprehensive online registry of preliminary screening documents</li> <li>▪ Fostering relationships with preliminary screeners</li> </ul>

## GNWT ENR

**Preliminary screener; Referral organization; Regulator; Responsible minister**

<b>GOVERNING LEGISLATION</b>	<ul style="list-style-type: none"> <li>▪ MVRMA</li> <li>▪ Wildlife Act</li> <li>▪ Waters Act</li> <li>▪ Environmental Protection Act</li> <li>▪ Forest Management Act</li> </ul>
<b>TYPICALLY SCREENS</b>	<ul style="list-style-type: none"> <li>▪ permits issued under the Forest Management Act, Forest Protection Act, Pesticide Act, Wildlife Act</li> <li>▪ Screenings for Air Permits under the new Air Quality Regulations</li> <li>▪ Review of applications to LWBs for water licences and land use permits under the MVRMA</li> </ul>
<b>PS WORKLOAD</b>	<ul style="list-style-type: none"> <li>▪ nearly 100% participation in the PSs conducted by LWBs</li> <li>▪ Minimal preliminary screenings conducted by ENR (1 in 2015)</li> </ul>
<b>PS RESOURCES</b>	<ul style="list-style-type: none"> <li>▪ standard internal processes for participating in preliminary screenings conducted by the Boards</li> <li>▪ process documents and flow charts for preliminary screenings conducted by ENR, but updating is required</li> </ul>

- PS CHALLENGES & WISHLIST**
- development of consistent practices, tracking and understanding across ENR
  - standard processes / guidelines that can be shared

## GNWT Lands

**Preliminary screener; Referral organization; Land manager and inspector; Responsible minister; Delegated authority for EA decisions regarding developments on non-federal lands; GNWT lead for MVRMA legislative and regulatory changes**

- GOVERNING LEGISLATION**
- MVRMA
  - NWT Lands Act
  - Commissioner’s Land Act
  - Area Development Act
  - Surface Rights Board Act

- TYPICALLY SCREENS**
- Certain activities on Commissioner’s Land (rare)

- PS WORKLOAD**
- 100% participation in the PSs conducted by LWBs
  - Lands has not conducted any preliminary screenings since devolution (April 1, 2014)
  - Participated in 1 non-LWB screening since April 1, 2014. (ENR Forestry was the lead.)

- PS RESOURCES**
- standard internal processes for participating in preliminary screenings conducted by the Boards and other bodies
  - GNWT legislation, policies, strategies, and other materials
  - MVEIRB and MVLWB guidelines, reference bulletins , and other materials

- PS CHALLENGES & WISHLIST**
- greater understanding of how reviewers manage their application review (small hat) and preliminary screening (big hat) responsibilities in the limited review time usually available
  - more information on non-LWB preliminary screenings
  - understand what information preliminary screeners want Lands to provide
  - INAC needs to ensure that the MVRMA regulations (PSRR and ELR) are current with respect to GNWT and federal authorities

## DFO

**Ensure that works, undertakings and activities are conducted in such a way that the proponents are in compliance with the applicable provisions of the Fisheries Act; management and protection of fish, marine animals and their habitat**

- GOVERNING LEGISLATION**
- Fisheries Act; Section 35, 20,21
  - Species at Risk Act; Sections 32,33 or 58

- TYPICALLY SCREENS**
- Proposed developments in and around fisheries waters(e.g. water crossings, water taking, infilling, dredging)

- PS WORKLOAD**
- all preliminary screenings sent to DFO are reviewed initially by the Triage Unit
  - Only comment on ones related to mandate; estimate 100/year

- PS RESOURCES**
- all initial screenings, request for review forms are sent into the Fisheries Protection Program ‘one-window design’ for Triage Unit to conduct initial review
  - project that falls under mandate will be reviewed using guidelines to determine if site specific review / comment is required.
  - we have internal toolkits and guidelines for screening projects
  - internally having working toolkits and guidelines for northern processes

- PS CHALLENGES & WISHLIST**
- challenge: different process to usual one-window design in FPP
    - different from the Request for Review Form
    - Determining whether project falls within mandate
  - With other organizations, ensuring reports have sufficient detailed information about fish and fish habitat as well as the summary of works to conduct our review in a timely manner

## OROGO

**Issue operations authorizations and well approvals; Conduct inspections, investigations and other compliance-related activities; Issue Significant Discovery and Commercial Discovery declarations**

<b>GOVERNING LEGISLATION</b>	<ul style="list-style-type: none"> <li>Oil and Gas Operations Act</li> <li>Petroleum Resources Act</li> <li>MVRMA</li> </ul>
<b>TYPICALLY SCREENS</b>	<ul style="list-style-type: none"> <li>Applications for Operations Authorizations (OAs) trigger PS</li> <li>OAs are required for all oil and gas works and activities e.g. an exploratory drilling program or establishing a production facility</li> </ul>
<b>PS WORKLOAD</b>	<ul style="list-style-type: none"> <li>to date, OROGO has accepted the PS conducted by the land and water board, consistent with NEB’s past practice.</li> <li><i>In 2015-16, there were no applications for new OAs, therefore no preliminary screenings were required</i></li> <li><i>OROGO has not conducted a preliminary screening to date</i></li> </ul>
<b>PS RESOURCES</b>	<ul style="list-style-type: none"> <li><i>OROGO MOU with the MVLWB</i></li> </ul>
<b>PS CHALLENGES &amp; WISHLIST</b>	<ul style="list-style-type: none"> <li>Developing a public acing process that respects the confidentiality requirements of the Petroleum Resources Act</li> <li>Agreeing on requirements for the content and timing of applications such that OROGO can continue to accept the PSs conducted by the land and water boards, confident that the full scope of the project has been screened.</li> </ul>

## Parks Canada

**Administer national parks, historic sites. In the Mackenzie Valley: Tukut Nogait National Park, Saoyú- ʔehdacho National Historic Site of Canada, Nahanni and Nááts'ihch'oh national park reserves, proposed Thaidene Néné National Park Reserve)**

<b>GOVERNING LEGISLATION</b>	<ul style="list-style-type: none"> <li>Canada National Parks Act</li> <li>MVRMA</li> <li>SARA, Migratory Birds Convention Act, Fisheries Act</li> </ul>
<b>TYPICALLY SCREENS</b>	<ul style="list-style-type: none"> <li>business licences (commercially guided activities, air access)</li> <li>construction (cabin shelter, trail work, radio repeater installation backcountry privy installation replacement of ferry at Rabbitkettle Lake)</li> </ul>
<b>PS WORKLOAD</b>	<ul style="list-style-type: none"> <li>Nahanni and Nááts'ihch'oh NPRS: minimal – no new projects this year, a few were renewed</li> <li>SENHS: archaeological survey (2010) and an SEA for the site management plan (2015)</li> <li>TNNP: park expansion (2015)</li> </ul>
<b>PS RESOURCES</b>	<ul style="list-style-type: none"> <li>Parks Canada Procedures for Impact Assessment under the MVRMA</li> <li>Basic Impact Analysis Template</li> <li>Best Management Practices for Aircraft Landings and for Commercially Guided Eco-tourism Activities</li> <li>- We also commonly use the MVEIRB EIA Guidelines</li> </ul>
<b>PS CHALLENGES &amp; WISHLIST</b>	<ul style="list-style-type: none"> <li>Challenge: clarity around timelines, access to training on the PS process, how to deal with the renewal of authorizations</li> <li>Wishlist: consistency is application of the PS process (with other organizations)</li> </ul>

## NEB

**Issuing exploration and production permits; Ensuring worker safety on NEB regulated facilities; Ensuring conservation of resources (no wastages)**

<b>GOVERNING</b>	<ul style="list-style-type: none"> <li>Canada Oil and Gas Operations Act and Regulations</li> </ul>
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<b>LEGISLATION</b>	<ul style="list-style-type: none"> <li>▪ Oil and Gas Operations Act – onshore ISR</li> <li>▪ Canada Petroleum Resources Act</li> <li>▪ Canada Labour Code</li> </ul>
<b>TYPICALLY SCREENS</b>	<ul style="list-style-type: none"> <li>▪ Operation Authorizations (production &amp; development plans)</li> <li>▪ Geophysical programs (exploration)</li> </ul>
<b>PS WORKLOAD</b>	<ul style="list-style-type: none"> <li>▪ Minimal</li> </ul>
<b>PS RESOURCES</b>	<ul style="list-style-type: none"> <li>▪ various MOUs in place:                             <ul style="list-style-type: none"> <li>▪ NEB- MVLWB MOU (2013)</li> <li>▪ NEB – MVEIRB MOU (2005)</li> <li>▪ NEB – OROGO MOU (2015)</li> </ul> </li> <li>▪ process and a letter template used to communicate to the preliminary screeners (the LWBs) the scope that the NEB requires</li> <li>▪ We also commonly use the MVEIRB EIA Guidelines</li> </ul>
<b>PS CHALLENGES &amp; WISHLIST</b>	<ul style="list-style-type: none"> <li>▪ Challenge: ensuring that the scope of the screening matches the scope of our authorizations so it is readily adoptable</li> <li>▪ Wish: continuing positive working relationships with other organizations to facilitate communication and information sharing</li> </ul>

## ECCC / CWS

**assess, monitor and protect the environment; and provide weather and meteorological information to keep Canadians informed and safe**

<b>GOVERNING LEGISLATION</b>	<ul style="list-style-type: none"> <li>▪ CEPA, 1999; provisions of the Fisheries Act</li> <li>▪ Migratory Bird Convention Act, 1994; SARA, 2002</li> </ul>
<b>TYPICALLY SCREENS</b>	<ul style="list-style-type: none"> <li>▪ Scientific research (capture) damage and danger (non-emergency), airport</li> <li>▪ Protected Areas</li> <li>▪ Species at Risk on federal lands</li> </ul>
<b>PS WORKLOAD</b>	<ul style="list-style-type: none"> <li>▪ ECCC conducted no PSs in the last few years</li> <li>▪ ECCC actively participates in most screening processes led by other organizations</li> <li>▪ ECCC participation in other screening processes represents ~ 25% of workload.</li> </ul>
<b>PS RESOURCES</b>	<ul style="list-style-type: none"> <li>▪ We have / will have in place:                             <ul style="list-style-type: none"> <li>▪ scientific permits:                                     <ul style="list-style-type: none"> <li>▪ require a NWT Wildlife Research Permit</li> <li>▪ Animal Care Committee review</li> <li>▪ Co-Management Committee review for activities in protected areas.</li> </ul> </li> <li>▪ Also use various internal and public permitting policies; standard terms and conditions</li> </ul> </li> </ul>
<b>PS CHALLENGES &amp; WISHLIST</b>	<ul style="list-style-type: none"> <li>▪ understanding our “role” as preliminary screener</li> <li>▪ some permits are issued by southern offices (e.g. banding, SARA)</li> <li>▪ Notify and seek input on applications (i.e. registry)</li> <li>▪ Also hope to make progress with other orgs on:                             <ul style="list-style-type: none"> <li>▪ CWS permitting process map in the Mackenzie Valley</li> <li>▪ No public registry method of keeping a public record</li> <li>▪ Templates for notifications and decisions</li> </ul> </li> </ul>

## Life Cycle of a Screening

## PART 1: APPLICATION SUBMITTED AND SENT FOR REVIEW (INFORMATION REQUIREMENTS, APPLICATION COMPLETENESS, DISTRIBUTION FOR REVIEW)

### Land and Water Board Process

Angela Plautz (MVLWB) briefly explained the LWBs' process for this part of the preliminary screening cycle.

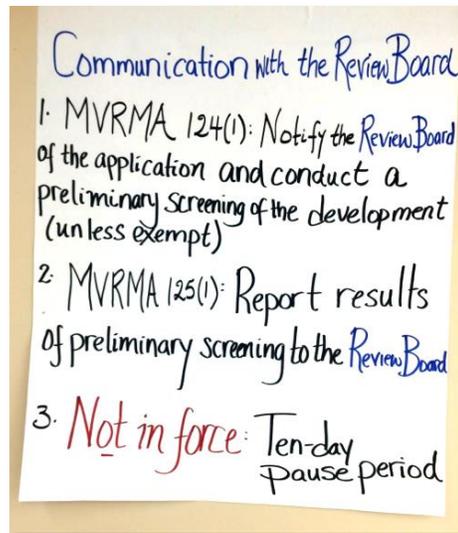
1. An application is submitted by a proponent.
2. The Land and Water Board reviews the application for completeness – most people are familiar with our application process and the information that is required. We will send a letter to the proponent if information is incomplete.
3. Application review – The Board uses a “wide net” for the distribution list.

For the application review step, the Boards include everybody on their distribution list. If any member of the public or community wants to be on the list, Board staff will add them. The Board also uses the online review system (ORS), advertises water licence applications in the newspaper (which is legislated), and has a newspaper ad about our websites and items for review, which is important because individuals such as lease holders could otherwise be missed.

### Communication with Review Board

Following Angela's presentation, Brett led a discussion about communication between screeners and the Review Board. The MVRMA has a notwithstanding clause that the Review Board can refer something to EA on its own. The MVRMA also has specific provisions about the Review Board's role in communications regarding preliminary screening. As soon as an application that requires a preliminary screening has been received, the MVRMA requires the screener to **notify the Review Board**. At that time, there may not be an indication of whether the development is exempt from screening.

MVRMA 125.1 requires screeners to **report the results** of their preliminary screening to the Review Board and this is partly because it relates to the Review Board's referral authority, which is “notwithstanding” the preliminary screening outcome or status, and needs to appear on the Review Board's



### REFERRAL PAUSE PERIOD

Participants sought additional clarity about the implications of the ten-day pause period (not yet in force). For example, it was pointed out that a land use permit has to be issued within 42 days. Participants acknowledged that the ten-day pause period would allow the Land and Water Boards to issue a permit/licence, but the permit/licence will only come into force 10 days after the Review Board receives the screening report (and if no referral to EA is made).

preliminary screening registry. Typically, the Land and Water Boards (LWBs) have informed the Review Board about what staff's recommendation to the LWB is going to be, including the full staff report and Review Comment Table.

## Challenge and Opportunity Discussions

In preparation for breakout group discussions, Brett reviewed some of the key challenges that had been raised in the pre-workshop survey. For instance, while screeners are receiving much of the information that they need, gaps frequently occur (for example, related to cumulative effects and socio-economic effects). Some of the opportunities for improvement that were noted in the survey included: communicating better about information that is needed; coming up with standard language to tell reviewers what areas the screener is looking for input on; casting a wide

### COMMUNICATIONS TO REVIEW BOARD

An OROGO staff representative commented that OROGO is in the habit of communicating the "result" to MVEIRB but not the application. OROGO may not be able to send the Review Board all of the information because of confidentiality requirements. Would it be sufficient to send a note (rather than the application itself) that they are in receipt of an application and will advise when the screening is completed? Brett Wheler noted that this would satisfy the MVRMA requirement to notify the Review Board.

net when soliciting comments from reviewers; and developing consistent approaches within and between departments and organizations to help screeners and participants.

Participants then formed break-out groups to discuss key challenges, existing best practice to share, and new ideas for improvement. The key outcomes from each group are compiled and summarized below.

After the groups had reported back, Brett reminded participants that the Online Review System in use by the LWBs and Review Board was an idea that emerged from a 2009 workshop. So, collectively participants can

celebrate the implementation of that idea. Although we do feel at times that we repeatedly talk about the same things, there are good examples of progress and improvement.

## Challenges, Best Practices and Opportunities

### (group discussion summary)

#### Challenges

- Screeners reviewing information outside of their regulatory expertise.
- Capacity of reviewers
- Getting sufficient information from the proponents to inform the preliminary screening.
- Lack of information especially related to: Socio-economic topics, cumulative effects, consultation and engagement
- Questionnaire/screening form itself as a challenge.
- Different approaches amongst screeners.
- Not all authorizations currently listed as requiring screening should necessarily be screened.

- Defining and assessing public concern. This information is not specifically sought through the existing process.
- Who to engage in terms of other screeners.
- Community capacity.
- No real guidelines for participants or reviewers to participate in the process.
- Current guidelines for what is needed for a preliminary screening might not align right now with the regulations.
- Lack of clarity about exemptions for emergencies or things that are “manifestly insignificant”.
- Lack of experience within organizations that don't do preliminary screenings frequently.
- Lack of process (infrastructure) for activities that don't trigger land use permits or water licences.

### **Best Practices**

- When screening outside of regulatory expertise, use others to share knowledge.
- Regulatory process mapping, understanding roles of organizations, who the experts are within each organization.
- Board guide to EA - there is an appendix and Board encourages people to fill it out.
- Pre-application community engagement.
- Blank screening form provided as appendix.
- Working towards improving the guidelines specific to preliminary screening including consideration of the scale of a project and key triggers.
- LWB guidelines.
- Waste management planning (best practice guidance).
- Newspaper ads to reach stakeholders such as leaseholders.
- Pre-engagement meetings.
- On-line review system.

### **New Ideas for Initiatives & Improvements**

- The NWT Board Forum is discussing an interactive regulatory navigation tool, which will be based on up-to-date process mapping. Screeners could build on this work to include lists of expertise and expected responsibilities associated with preliminary screening.
- Could be more firm and prescriptive in getting information from applicants. Questionnaire needs to be updated to receive the detail that is needed.
- Preliminary screening form itself needs to be scalable so that information requests are appropriate to the scale of the proposed project.
- CIMP has approached the Boards to ask our perspective on priorities so this is a good start. However, it would be good to have a central body that has that information and can be standardized in terms of giving information about CE.
- Updating guidelines, simplifying guidelines. Standardize common requirements.
- Helping proponents by informally providing examples with caveat that the board can make a different decision.

- Helping the proponent to understand engagement. A lot of applications are deemed incomplete because of lack of information about consultation and engagement. More encouragement / support in pre-application community engagement.
- Whose responsibility is it to assess a small contribution to a regional effect? Regional studies are new in the MVRMA amendments and might be a tool to assess cumulative effects.
- Blank screening form can be provided during pre-engagement activities also.
- Shared public registry will help with consistency, coordination and public perception of that. The existing ORS is a good example.
- Formalizing a requirement to go to the LWBs first as the Preliminary Screener.
- Amendment to regulations to simplify process for non-triggering activities and reconsider exemption list. (Parks and ECCC should participate in this process).
- Blank screening form could be provided to reviewers as well – if these topics are in your jurisdiction please provide us with some information to help us with the screening.
- More work to give guidance about information needs for preliminary screening (as opposed to information needs for regulatory applications).
- LWB guidelines and waste management (examples of best practice) but more work can be done to scale those as well as more work to implement them.
- Common tools to define an “emergency” or “manifestly insignificant”.
- More training for staff who don't do frequent preliminary screenings.
- Community workshops
- Provide blank preliminary screening form to applicant and reviewers; provide information for discussion; similar to the security estimates
- One window to contact at GNWT / feds / communities in the case of an external screening (non LUP, WL trigger).

## PART 2: CONDUCTING THE PRELIMINARY SCREENING - COLLECTING AND ANALYZING EVIDENCE

### Scoping, the Might Test, and Public Concern

Brett Wheler, MVEIRB

Brett presented an overview of preliminary screening focusing on the importance of the “might test”.

#### Scope

The scope of a screening is typically not the same as the scope of a permit. Screeners must consider the development as a whole, not just regulatory aspects. There might be specific regulatory aspects that trigger a preliminary screening requirement, but those may not represent the development as a whole. Preliminary screening is one of the things that links the regulatory system under the MVRMA to various regulations that wouldn't fall directly within the MVRMA (and therefore links together the entire regulatory system). The Preliminary Screening triggers can be seen as a fish hook – the specific triggers are the hook gets the whole development into the environmental review process.

Once the preliminary screening begins we are looking at the whole development and the whole environment (as defined within the MVRMA). Importantly, that includes the human and biophysical environment, which is broader than the jurisdiction of any one regulator. This is where we imagine the giant sombrero, a very big hat that reflects the broad definition of the environment. It isn't just a bigger hat; it is actually a different hat all together. Within the definition of environment, there are socio-economic impacts, cumulative impacts and cultural impacts that need to be considered and these are examples that might not be within the jurisdiction of the regulator conducting the screening or specifically considered within the initial trigger.

#### The Might Test

The MVRMA requires screeners to determine whether a development proposal “might” have a significant adverse impact on the environment or “might” be a cause of public concern.

- If yes, review board does EA.
- If no, permits can be issued.

#### Factors that could affect the might test

- Development location.
- Characteristics – scale, degree of disturbance, hazardous chemicals or effluents, changes to access, infrastructure needs, new technology or setting, severity of worst-case scenarios.
- Two qualifiers – might and significant – probability and significance.

In discussion, participants further clarified that the might test is **NOT** the likely test. An environmental assessment will evaluate and determine whether significant impacts are *likely* and require mitigation measures in order for the development proposal to proceed.

- Factors that affect the significance of impacts from a project are described in the review board guidelines (and there may be a few others that aren't set out in the guidelines), including: magnitude, spatial extent, duration, nature of the impact, likelihood, and reversibility.
- In EA, there is a chance to investigate and characterize impact predictions thoroughly, whereas screening is a more cursory examination of impacts and mitigations.
- Popular vote is NOT the test.
- Public concern – some general factors that can be used to characterize this:
  - Diversity, extent, and frequency of concern.
  - Evidence of adverse impacts on environment (that form the basis of public concern) Example: public concern AND evidence to back it up is stronger for the Board to use in decision-making rather than public concern that may not be substantiated. More work at characterizing the public concern would be needed if it is not clearly linked to a specific impact on the environment.
- More guidance on public concern and how to characterize it may be needed:
  - How public concern may be characterized.
  - How to investigate the factors contributing to public concern.
  - Determining whether specific public concerns are within the scope of an individual screening or EA process.
  - Consideration of tools that may be applied to address public concern and/or factors contributing to public concern.

## Challenge and Opportunity Discussions

Participants divided into three groups, based on topics that they identified as being important for more discussions. In preparation for discussions, Brett reviewed feedback received from survey responses relevant to the preliminary screening forms.

Some survey responses were:

- Provide direction on how to address cumulative effects, public concern and what level of detail.
- A general point that more discussion is needed about how we use forms and what they are for.
- Add socio-economic components and link them (on the form).
- Include definitions for check box categories.
- Some recent iterations of form have included text from land use permit conditions, which may help link potential impacts to the conditions intended to mitigate them.

- Species at Risk – how to include in preliminary screenings.

Survey participants also shared ideas for other tools – report of EA, MVEIRB guidelines, regular staff meetings and sharing events.

Three break-out groups were organized so that participants could focus in more detail about key themes that have emerged, both through the survey and through the morning of the workshop.

1. **Preliminary screening form** – deconstructing and building on some of the survey responses that talked about relevance and purpose of form and is there room to better integrate information on form with assessment guidance.
2. **Reviewers: soliciting and giving feedback** – what information is really needed from the by the land and water boards from the reviewers? How can contributions be most useful? Conversely, how can screeners better communicate to reviewers what they need?
3. **Public concern**

## Preliminary Screening Form

### (GROUP DISCUSSION SUMMARY)

#### Opportunities for improvement

- Parks Canada tends to be off on our own a little bit because we primarily do screening for developments within our park/site boundaries. Screening Forms circulated by the Land and Water Boards do not work well for Parks Canada's needs. There will likely still be a role for organizations to have their own tools.
- A lot of preliminary screening tends to focus on land and water board whereas there are other screeners who want to contribute to evaluation of CE and overall assessment. So a form that really communicates that would help.
- Add a cover page on the form to identify triggers (small but informative piece) that brings people to screening. For example, we have business permits but that isn't really a screening trigger for anyone else. So considering other people's roles to make it a more comprehensive form. The overall framing of it the form can be improved such that the content is more applicable to all groups (not just land and water boards).
- Many oil and gas specific components and principle activities are currently missing and should be added. The nuts and bolts of the form should be applicable to everyone.
- There could be a contextual introduction and then broad bullets that people check off.
- The form will need to be scalable. A project like a business licence or gravel pit is not going to be the same as a larger project, but you do want to assess cumulative effects and socio-economic perspectives. Perhaps for a smaller project a 2-3 page form is more appropriate as opposed to the scale of a larger project with a form to match
- Principles might be defined differently by different people so the form should try to provide definitions or commonalities for terms that might be vague.

- The form should address the scope and areas requiring consideration of ecosystem scale of project and looking at cumulative effects.
- There are two tests that underlie the preliminary screening, the first related to significant adverse impact on the environment and the second, public concern. Public concern is tagged on in the screening form but there is a lot of angst and questions that a project can get referred just for public concern. So, in reasons for decision, on the form it should be broken out more the thought process that the reviewer (and screener) went through regarding public concern.



#### **Path forward: How do we start to edit this form?**

1. Gather information from different forms from various preliminary screeners (and different legislation – example NUPPAA – NIRB just came out with a new form).
2. Compile into a form that has a core that will work for everyone plus additional forms that can be added on to fit roles of specific screeners.
3. Need for consistency – not supposed to be doing it just within our own authorities and proponents should be able to expect a consistent application of the Board so the form can become a tool towards that consistency.
4. Modify how the form is being presented and used. Right now the form appears as an appendix to the Review Board's EIA Guidelines and also in the MVLWB's Guide to the Land Use Permitting Process. There is no legal requirement to use it and a number of screenings have elected to not use that form. Once modified, the form could be brought more formally into the process.

#### Reviewers: Soliciting and Giving Feedback

##### **(GROUP DISCUSSION SUMMARY)**

#### **Tips for Reviewers**

- Reviewers are not expected to speak about everything – focus on your area of expertise
- Clarify your area of jurisdiction and therefore which parts you are looking at in detail. OROGO example - if Land and Water Board has received an application related to oil and gas, chances are we have or will have received it. OROGO is providing information specifically related to their authorizations, reaffirming yes we are interested, we issue permits related to x, y. Therefore, each department identifies where their authority lies or if there is an exemption under our legislation.
- Identify if there is information or level of detail that is missing, within your jurisdiction. For example, OROGO would want to ensure that the scope is the same with respect to a Board application and what OROGO has or would receive because if OROGO is adopting a Board screening then they are saying we are looking at this within our jurisdiction and yes, scope of project is the same.
- At least attempt to make a comment on whether scope of what has been submitted is acceptable (within your area of jurisdiction).
- Are the proposed mitigations proposed acceptable and effective? Refer to your own best practices and guidelines if relevant. Identify if there is any possibility that they are going to contravene legislation.
- Would any of the standard terms and conditions that the LWB already has apply?
- A reviewer could suggest a particular condition as opposed to a standard one.
- If you don't have a concern but have reviewed the application, let the LWB know as this is also valuable information.
- Another piece of valid information can be to say "we don't have the capacity to review this document at this time." If you haven't reviewed it, this is also valid and useful information (as well as saying it has been reviewed and no comments).
- It is also useful to specify that there isn't anything of relevance to mandate / expertise within the given application.
- Emphasize mitigations – if there is a mitigation that makes you come to the conclusion that a possible effect is not a concern, identify which proposed mitigation is making you say that there is not a concern. Without that validation and emphasis there could be a gap if that particular condition doesn't end up in a licence even if it has initially been proposed by the proponent.
- The overall guideline for reviewers is to bring evidence forward to back-up any opinion that is offered. It is important to remember that this is a quasi-judicial process so it is all about getting evidence documented. Has the Board given reasons for every decision they've made? As a reviewer, you are helping to give the board evidence so their decision is bullet proof if questioned later.

- Reviewers need to remember that the coordinating body is casting a wide net and is not an expert on your specific jurisdiction.
- If additional specific information is required, the Board may issue an information request but typically initially the net is cast quite wide to invite broad input.
- Operational statements are useful – there were some standard ones for ice roads, culverts from DFO that were really useful helpful for the LWBs. Operational statements are still valid for the content that they have but they are not supposed to be given out. They were repackaged. Info that was in operational statements fall under the self-assessment tool. So if someone is looking for information on blasting for example, the information is there but not as neatly packaged as best management practices for a specific project type. A referral agency referencing those best practices is great (and/or attaching them).

#### **What the Land and Water Board can do to support / direct reviewers**

- Create guidelines for reviewers.
- Hold workshops for reviewers.
- Within the form that the proponent completes, adjacent to impacts and mitigation, leave space for reviewer comments. This would make it much clearer to the LWB what areas fall in the reviewer's jurisdiction from the reviewer's perspective.
- Provide instructions for on-line review system. Give clear directions for reviewers about how to make their comments effective. Rebecca added that the Land and Water Boards are working on standardizing the ORS language. The Board has templates for letters we send out the door so we can parse out the steps that screening will entail and ensure it is clear in letters related to preliminary screening. This sort of documentation helps with turn-over / training as new people come in and sometimes basic information and knowledge transfer doesn't occur as it should. There was additional discussion among participants that the language used will again have to consider scale of projects.

#### **Temporal challenges:**

- If a development is exempt or something is added on then the level of detail that is desired for the whole project now may be quite different than what was from the past. However, if an element is added, we will screen only that piece. A key question is the longevity of screening - how do we make the best screening that will endure 10 years from now?
- A related challenge is a development may have been more stand-alone 10 years ago but now cumulative effects may have changed substantially. Not only does the project change but the world around it changes too.
- Looking ahead to development certificates, there is an expiry on those (although this relates to EA, not preliminary screening) but a development in the future may lose some

of its relevance so that is paired with the requirement for the review board to consider past developments.

- This is a legal question – how long is the preliminary screening good for? A development that is initially proposed may be proposed within a certain timeframe so is it possible that just extending that timeframe changes the development.

#### **Public concern challenges:**

- An individual raising a concern may not have the capacity of consultants and studies on hand to bring evidence forward but the concern is there nonetheless.
- It is also difficult to know how to weigh opinions. What should be done with letters? Form letters?

#### Public Concern

##### (GROUP DISCUSSION SUMMARY)

#### **Challenges regarding public concern**

- Public concern might be muted by perceived benefits that might not come to fruition, something to keep in mind
- Timeline – how do you reconcile getting a comprehensive public input on a screening followed by a comprehensive public input on an EA within legislated timelines and ensuring that proponent concerns are considered?
- Poorly executed projects – there are examples where a project does not have significant public concern and does not get referred to EA. The ideal scenario that is presented on paper may not be executed that way such that the public concern arises later – this erodes public trust.
- Respecting timelines that might exist within other agreements such as IMAs and logistical considerations of getting things to the board. There is therefore not a lot of wiggle room when you start teasing out the timelines available.

#### **Opportunities regarding public concern**

- More local and regional workshops to discuss and better gauge and characterize public concern.
- If there is a water licence associated with a land use permit, the Boards will address it concurrently but it should be resisted to force the water licence at same time of land use permit. If more time is required there is an ability to have more time to consider land and water together (because the land and water board doesn't separate them). There is less of a timeline for water licences but still the sooner we make the screening decision the better so we can focus the time on the licensing. –There are only nine months available for licensing. Scope changes too so you get down to more specifics in water regulation versus the scope of preliminary screening.

## Collecting Evidence – recommendations for the registry

In plenary, participants further discussed the role that the on-line registry will play in collecting, communicating, sharing and documenting evidence.

1. There is a dedicated space on the Review Board site for preliminary screening – if you look there today it is incomplete and out of date. However, with the amendments to the MVRMA and now explicit requirement to host and to include communications about preliminary screening, internally there is motivation and appetite to get that registry working. We are still working on the mechanics of it and how this would integrate with Land and Water Board platforms, but this work is now underway.
2. Screeners to provide information to the review board. In terms of coordination with other screeners, further discussions can help to flesh this out. Is there a specific timing or type of communication that would help to facilitate that or will the on-line registry within the review board site suffice for the outcome desired?

Participants discussed that having this information centralized and hosted on MVEIRB registry will be great. Participants look there for preliminary screening examples that have been done, and examples of screenings that were done well.

A collective next step is to identify simple procedures between screeners and review board to formalize how and when that communication happens. Forms would support this. Non-LWB screenings are harder to get information about so this is why this will be very important.

Administrative suggestion - review board has to post everything they get with respect to preliminary screening. Sometimes screenings don't get finished as they are either referred to EA or are withdrawn so there should be an administrative convention to "close" it somehow and detail what happened.

The registry could also formalize the "piggy-backing idea" so it is clear if an authority is relying on the LWB screening.

The registry will also help with cumulative effects assessments in a project area – can see what else is going on in a given window under one window.

The registry should build in automatic notification system similar to ORS.

In a case of amendment or renewal in which former documentation would likely be in paper form, it was discussed that the initiative would likely focus on new applications but there would be space for a specific effort to digitize information once an active project comes up for renewal.

There was a discussion about whether the registry could be map based. Spatial query is built in on back end but works well for point disturbances, rather than linear ones. Each EA has a centre point or main location and the Review Board is revamping their website right now so that hopefully the advanced search function will have that ability to key in on a particular region.

The Board also hopes to link the registry to key documents in the NWT CIMP Discovery Portal – which would help to link to information needed for cumulative effects assessment.

CEAA and NIRB (Nunavut) can be used as website examples.

The site will need clear directions of who to communicate with because the host of the registry will not be the coordinating screener. MVEIRB might be inadvertently inundated with people who don't know where they should be going. The site has to clearly direct a reviewer to the screener. Similarly, all of the pertinent information might not be on the website but a link will lead to, for example, the MVLWB website or to another screener's information.

### **PART 3: THE PRELIMINARY SCREENING OUTCOME (DECISION-MAKING AND COMMUNICATION)**

#### **Issuing Reasons for Decision**

One of the suggestions emerging from the survey was an idea for linking reasons for decision for a permit to the reasons for decision for a screening. Such an approach would acknowledge that there is more information contributing to a "might" test than the one paragraph on the back of a screening form. So the reasons for decision would comprise of both the report and the completed screening form.

Some participants pointed out that the reasons for decisions for exemptions issued by the land and water board are great examples as they are very clear (specifically with reference to the Norman Wells water licence application). These are stand-alone documents that confirmed board determination of why certain exemptions were made. Rebecca clarified the land and water boards are reviewing their whole exemptions reasons for decision. These are sometimes straightforward but if they are unusual then we would elaborate more. She added that if there is something particular that you do or don't like now is a good time to let us know because these approaches are being reviewed now.

MVLWB has done 25 preliminary screenings already this year. So if there is not much to say it might be overload to go into great detail but in certain cases it might be good to have some more information.

Resources available and training are issues that require more follow-up.

There was a suggestion that the registry or something adjacent to it might be a good place for resource materials such as guidelines or links to other examples – a place to have an exchange among screeners. Mark added that the Review Board is updating their database to Sharepoint, which will make a platform like that a lot easier.

## Closing

### REVIEW OF NEXT STEPS

1. Share internal screening tools (e.g. templates, guidance documents, best practices) with other organizations / departments. MVEIRB has offered to facilitate document exchange.
2. Support the regulatory process mapping initiative being undertaken by Board Forum – to create an interactive regulatory navigation tool based on up-to-date process maps.
3. Be involved in INAC's review of the Preliminary Screening Requirement Regulations and Exemption List Regulations. (GNWT is interested in sharing information and views with other organizations. Lorraine Seale is the GNWT contact.)
4. Collaborate to update the standard preliminary screening form. While the screening form is being revised, applicants should be encouraged to fill out the existing form, to help ensure adequate information is provided to the screener.
5. Clearly communicate the guidance for developers to apply to the LWB (as the "lead screener) first if multiple authorizations are required (e.g. from LWB and OROGO).
6. Explore opportunities for non-LWB screeners to use the ORS for their own screenings. There needs to be more work done to take advantage of existing tools (e.g. ORS) while being clear about who is leading each screening process (e.g. ORS is MVEIRB/LWB tool, but other organizations may be able use it for their own screenings).
7. Discuss interpretations of "manifestly insignificant" under subsection 124(2)(a) of the MVRMA and how they differ from developments for which "impacts on the environment [are] declared to be insignificant by regulations" under subsection 124(1)(a)". Share lists of activities that different organizations consider to have "insignificant" impacts.
8. Discuss strategy for providing instructions to reviewers for renewal applications which are likely to be exempt from preliminary screening.

## CLOSING COMMENTS

Brett expressed thanks to everyone who participated. Although environmental assessment gets a lot of attention in our regulatory system, preliminary screening deals with 95% of projects and creates fundamental linkages between regulatory triggers (both inside and outside of the MVRMA) and the principles of environmental impact assessment enshrined in the MVRMA. This effort to work on collaboration, communication, and coordination is needed and is encouraging.

Review Board staff are open and interested in meeting with anyone one-on-one as well to keep this conversation going or further build on specific actions identified.

A draft version of the report will be circulated towards the end of October. Participants will have an opportunity to review the draft report over the course of a couple of weeks before it is finalized.

Participants thanked Brett for facilitating.

Meeting concluded.

## Appendix 1

### LIST OF PARTICIPANTS

**Julian Morse**  
Regulatory Officer, MVLWB

**Heather Scott**  
Technical Advisor, MVLWB

**Patrick Clancy**  
Environmental Regulatory  
Analyst, ENR

**Georgina Williston**  
Head Environmental  
Protection Officer, ECCC

**Marie Fast**  
Habitat Specialist, Canadian  
Wildlife Service, ECCC

**JF (Jean Francois) Dufour**  
Environmental Assessment  
Officer, Canadian Wildlife  
Service, ECCC

**Jamie Fulford**  
Executive Director, OROGO

**Pauline de Jong**  
Senior Advisor Legislation &  
Policy, OROGO

**Sarah Elsasser**  
Regulatory Manager, WLWB

**Shannon Allerston**  
Regulatory Officer, MVLWB

**Tyree Mullaney**  
Regulatory Officer, MVLWB

**Tom Bradbury**  
Regulatory Specialist,  
WLWB

**Jessica Pacunayen**  
Regulatory Specialist IT,  
WLWB

**Janice Ziemann**  
Compliance Forester,  
Forestry Management, ENR

**Albert Bourque**  
Regional Environmental  
Coordinator, South Slave  
Region, ENR

**Jacquie Bastick**  
Environmental Assessment  
Specialist, Parks Canada

**Rebecca Chouinard**  
Executive Director, MVLWB

**Erica Janes**  
Regulatory Officer, MVLWB

**Angela Plautz**  
Regulatory Policy Advisor,  
MVLWB

**Lorraine Seale**  
Director, Securities and  
Project Assessment, GNWT  
Lands

**Marcy MacDougall**  
IRMA Program Coordinator,  
ENR

**Kate Witherly**  
Manager Environmental  
Assessment, ENR

**Monica Wendt**  
Environmental Assessment  
Analyst, ENR

**Aileen Stevens**  
Air Quality Program  
Coordinator, ENR

**Melissa Pink**

Manager Project Assessment,  
Lands

**Andrew Matthews**  
Senior Legislative Advisor,  
Lands

**Sophie Barrett**  
DFO

**Angie McLellan**  
DFO

**Anne-Marie Hess**  
Tech Specialist,  
Environment, NEB

**Christy Wickenheiser**  
Environmental Specialist,  
NEB

**Brian Chambers**  
Chairman, Executive Office,  
Regulatory Group, NEB

**Jen Potten**  
Regulatory Coordinator,  
MVLWB

**Mark Cliff Phillips**  
Executive Director, MVEIRB

**Stacey Menzies**  
Policy and Planning Officer,  
MVEIRB

**Chris Rose**  
Environmental Assessment  
Policy Advisor, MVEIRB

**Catherine McManus**  
Administrative Assistant,  
MVEIRB

**Robyn Paddison**  
Environmental Assessment  
Officer, MVEIRB

**Chuck Hubert**

Acting Manager,  
Environmental Assessment  
Officer , MVEIRB

**Paul Mercredi**

Project Assessment Analyst,  
Lands

## Appendix 2

### WORKSHOP AGENDA

## Appendix 3

### PRELIMINARY SCREENERS' PRESENTATIONS

## Appendix 4

### SURVEY RESPONSES