

Preliminary Screener's Workshop

Yellowknife, Tree of Peace

November 13, 2019

Introduction:

The Mackenzie Valley Resource Management Act (MVRMA) establishes a process for environmental impact assessment in the Mackenzie Valley. The first step in environmental impact assessment is preliminary screening. Various organizations and agencies are responsible for conducting preliminary screenings under the MVRMA. The purpose of this workshop was to bring together staff from agencies who are responsible for preliminary screening to discuss challenges and share best practices in the practical application of screening.

The workshop was hosted by the Mackenzie Valley Review Board.

Record of meeting:

Attendees:	<u>Land and Water Boards</u>	<u>GNWT ENR</u>
	Angela Plautz (Regional Policy Advisor, MVLWB)	Loretta Ransom (Environment & Climate Change)
	Chris Hotson (Regional Manager, MVLWB)	Alicia McRae (Environmental Coordinator – Inuvik)
	Anneli Jokela (Regional Manager, WLWB)	Kelly Fischer (Environmental Protection)
	Jen Potten (Regulatory Coordinator, MVLWB)	Rafe Smith (Operational Planning Coordinator – Hay River)
	Julian Morse (Regulatory Specialist, MVLWB)	Albert Bourque (Environmental Coordinator – South Slave)
	<u>Environment and Climate Change Canada (ECCC)</u>	Steve Gooderham (Forester – Dehcho)
	Russell Wykes (EA Coordinator)	Laurel McDonald (Wildlife – Sahtu)
	<u>Fisheries and Oceans Canada (DFO)</u>	Patrick Clancy (Environmental Regulatory Analyst)
	Daniel Coombs (Sr. Fisheries Protection Biologist)	Hamsha Pathmanathan (Environmental Assessment Analyst)
	<u>Nunavut Impact Review Board</u>	<u>GNWT Lands</u>
	Jaida Ohokannoak (NIRB Tech Advisor)	Lorraine Seale (Director, Securities and Project Assessment)
	<u>Office of the Regulator of Oil and Gas Operations (OROGO)</u>	Darren Campbell (Project Assessment Analyst)
	Peter Lennie-Misgeld (Energy Policy)	<u>GNWT Justice</u>
	Mike Martin (Senior Tech Advisor)	Rohan Brown (Legal Counsel)
	Pauline DeJong (Executive Director)	<u>GNWT Infrastructure</u>
	<u>Canada Energy Regulator (CER)</u>	Paulina Ross (Environmental Analyst)
Anne-Marie Hesse (Environmental Specialist)	<u>GNWT Industry Tourism and Investment</u>	
Shannon Vollema (Acting Director)		
<u>Mackenzie Valley Review Board</u>		

<p>Brett Wheler (Sr. Policy Advisor) Amanda Annand (EA Officer) Chuck Hubert (Sr. EA Officer) Mark Cliffe-Phillips (Executive Director) Alan Ehrlich (Manager EA) Simon Toogood (EA Officer)</p>	<p>Mike Byrne (Resource Pathfinder) <u>Dillon Consulting (meeting facilitators)</u> Margaret Kralt Dustin Martin</p>
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Opening and Introductions	<p><u><i>Scope and Purpose of Workshop</i></u></p> <ul style="list-style-type: none"> • Previous 2016 workshop focused on the roles and responsibilities of screeners and promoting communication • This 2019 workshop is focused on: <ul style="list-style-type: none"> ○ sharing best practices, challenges, and discussing emerging issues in preliminary screening ○ building on outcomes and action items from 2016 workshop ○ helping to inform the development of updated guidance for preliminary screeners • Emphasis is on fostering communication and supporting each other • Workshop is aimed at screeners specifically, particularly regulatory authorities who receive applications and conduct preliminary screenings • Focus on practical application of screening as opposed to general overview of screening. <p><u><i>Participant Objectives for Workshop</i></u></p> <p>Workshop participants identified several objectives that they were hoping to achieve by participating in the workshop:</p> <ul style="list-style-type: none"> • A greater understanding of the exemption process and how guidelines could provide direction on this • Receiving more information on screening projects where there are no license required • Clarification of the process for screening project changes after an Environmental Assessment • Making the screening process easier to understand for proponents • Developing methods to provide greater screening guidance and support to regional offices (GNWT ENR). • Better understanding of the 10 day pause period and ensuring that all screenings are complete before issuing permits • Ability to make screening forms more user friendly and how to make screening forms scalable for a wide range of projects • More information on how to ask proponents about cumulative effects and climate change • Understanding how much information to request from proponents in screening <p><u><i>Updates from Organizations</i></u></p> <ul style="list-style-type: none"> • Canada Energy Regulator (CER) <ul style="list-style-type: none"> ○ the <i>Canadian Energy Regulator Act</i> replaced the <i>National Energy Board Act</i>. This came into force on August 28, 2019. ○ triggers for preliminary screening under the MVRMA are the same

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<p>Review of action items</p>	<ul style="list-style-type: none"> ○ the CER regulates off-shore oil and gas development in the Arctic ○ the CER incorporates regulatory functions that were formerly part of the NEB such as transboundary pipelines ○ the CER is also now responsible for regulation of off-shore renewable energy ● GNWT Environment and Natural Resources <ul style="list-style-type: none"> ○ ENR’s responsibility includes administering acts and regulations ○ involved in preliminary screenings for multiple acts relating to GNWT environmental legislation ○ looking to improve screening practices ○ screening is done at regional offices throughout NWT ○ work is ongoing to refine screening process within ENR and update internal guidance documents ● GNWT Lands <ul style="list-style-type: none"> ○ GNWT lead for environmental impact assessment, although GNWT screeners make their own decisions ○ remote possibility Lands may be doing screenings in the future ○ <i>Preliminary screening requirement regulations</i> need to be updated to reflect current legislation and regulations ● Environment and Climate Change Canada <ul style="list-style-type: none"> ○ has mostly an advisory role in preliminary screenings ● Mackenzie Valley & Wek’èezhii Land and Water Boards <ul style="list-style-type: none"> ○ Land and water boards are one of the primary screeners ○ working towards making the application form & info requirements for screening clearer for proponents ○ making screening process easier to understand for proponents is a priority ● Office of the Regulator of Oil and Gas Operations (OROGO) <ul style="list-style-type: none"> ○ work is ongoing to harmonize websites ○ working to make some information more public ○ working on draft guidelines to make material publicly available ● Department of Fisheries and Oceans <ul style="list-style-type: none"> ○ past operational codes of conduct are coming back into force ● Nunavut Impact Review Board <ul style="list-style-type: none"> ○ they do all the screenings and the environmental assessments for Nunavut through the same office ○ will give a presentation on their screening report formats and reasons for decision <p><u><i>Review of Action items</i></u></p> <p>Review Board staff provided an update on the action items from the 2016 Preliminary Screening Practitioner’s Workshop.</p> <ul style="list-style-type: none"> ● Complete update is appended to this document (<i>Status of Action items from 2016 preliminary screening practitioner’s workshop</i>) ● Discussion about Online Review System and using it for screenings by regulators other than the Land and Water Boards – opportunities and challenges

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<p>Preliminary Screening Overview</p>	<p><u><i>Overview of Preliminary Screening</i></u></p> <p>Review Board staff presented an overview of the preliminary screening process to workshop participants (presentation is appended). Highlights from the presentation include:</p> <ul style="list-style-type: none"> • When is a screening is required? • Key principles: <ul style="list-style-type: none"> ○ that environmental impacts of proposed developments are carefully considered ○ that concerns of Indigenous people and the general public are taken into account ○ consideration of the protection of the environment, the social, cultural, and economic well-being of residents and communities and the well-being and way of life of Indigenous peoples • Over 95% of developments only go through preliminary screening. Less than 5% are referred to EA • Most screenings are completed by Land and Water Boards • Screening begins when a developer applies for permits or authorizations • Screening is an initial look at the potential for impacts. It is an early warning system identifying when an environmental assessment is necessary. It is not intended to be an EA • Screening answers the question: “Should the development go to environmental assessment?” • When a regulatory authority receives an application it must notify the Review Board and conduct a screening • When a screening decision is made the outcome is reported to the Review Board (whether it is referred or not) • There are some existing guidelines for screeners and Review Board is working to improve guidelines <p><u><i>Post-Presentation Q & A</i></u></p> <ul style="list-style-type: none"> • Efforts are being made to update screening guidelines and make them more relevant for screeners • A question was asked about whether Review Board provides a response to screening decisions. Review Board currently acknowledges screening decision but is working toward a more formal response to screening decisions and the start of the 10 day pause period
<p>Screening the whole development and whole environment</p>	<p><u><i>Screening the Whole Development and Whole Environment (Presentation appended)</i></u></p> <p>MVRB presented on screening the whole environment and whole development. The key points from the presentation include:</p> <ul style="list-style-type: none"> • There should be a clear distinction between the application for a permit or authorization and screening the entire proposed development which may include components not included in the authorization • Screening the whole development requires screeners to examine the developer’s application for a permit or authorization to determine if it

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<p>Timing of preliminary screenings</p>	<p>includes the full scope of the development – screening may require information beyond what is in an application form</p> <ul style="list-style-type: none"> • Screening the whole environment requires a consideration of all its components including water, fish, wildlife and wildlife habitat, air quality, traditional land use, community wellbeing, and culture, and socio-economic considerations • Screeners are often the regulators, but it is important to distinguish the two roles. This requires: <ul style="list-style-type: none"> ○ considering impacts beyond the specific purpose of the permit or authorization that the application is focused on ○ considering impacts not covered by the authorization being applied for <p><u>Post-Presentation Q & A</u></p> <ul style="list-style-type: none"> • Participants mentioned that they struggle with being required to consider impacts beyond the impacts regulated by the authorization being applied for • Suggestion that there is a need to better connect proponents with guidelines and regulations to eliminate some of the guesswork for proponents • Question about which pieces of a proposal are exempt from screening. Request for further clarification about this • Challenges with screening amendments – how far back do you go on looking at what’s already been assessed • Comment to bring in more local knowledge and cultural practices for technical staff to assist with understanding whole environment • Suggestion that smaller projects shouldn’t be required to go to environmental assessment • Comment that it is the scale and type of issues that are important, regardless of size of the development • Sometimes the jurisdiction for considering cultural and social impacts is not clear. Suggestion that more work on cultural and social impacts needs to be done to assist screeners and proponents <p><u>Timing of Preliminary Screenings (Presentation appended)</u></p> <ul style="list-style-type: none"> • Preliminary screenings are intended to be carried out before a development is acted on • It is important to get projects to the appropriate level of review or to continue with the regulatory process as efficiently as possible • It is important to get the right amount of information from the proponent at the start of the screening process. If a screener determines that more information is needed the screener must consider how much time this may take, whether it will unreasonably extend the screening process, and whether this information is really needed for the preliminary screening decision, the “might test”. • Determining if more information is needed can be difficult for screeners. Screeners may think that additional information may resolve outstanding issues relating the “might test”, but screening is not intended to be a drawn out or intensive process of investigation. <p><u>Post-Presentation Q & A</u></p> <ul style="list-style-type: none"> • Q: How much information is required in a preliminary screening to make a decision?

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<p>Nunavut Impact Review Board Presentation</p>	<ul style="list-style-type: none"> ○ A: Application forms and guidance for proponents could be improved so that necessary information is submitted. • Comment: There is a need for more detailed information up front to help speed up and streamline the screening process. • Comment: Example given of Thaidene Nene National Park. Pre-screening happened after the establishment of the park. An EA was not triggered but there was some discussion about why screening was completed after the decision was made to create the park. <p><u><i>Nunavut Impact Review Board (NIRB) Presentation (Presentation Appended)</i></u></p> <p>A representative from NIRB presented an overview of the screening and EA process that is used in Nunavut. The key points from the presentation are listed below:</p> <ul style="list-style-type: none"> • NIRB screens project proposals to determine whether or not a full review (like EA) is required • One window approach is used in Nunavut so that every project is screened through NIRB • When project is referred from the Nunavut Planning Commission, NIRB complete following steps: <ul style="list-style-type: none"> ○ completeness check ○ information request ○ scoping ○ public comment period (10-21 days): 10-day screening period for minor screening. This is typically done for lower impact projects such as research studies. 21-day screening period for major screening ○ opportunity for proponent to respond to comments (if required) ○ technical impact assessment using scientific knowledge and Traditional Knowledge • NIRB screens projects relating to trails, infrastructure, clean-ups, tourism, research, resource projects etc. Application requires: applicant details, project type, project maps, project activities, community involvement and regional benefits, authorizations required, project details, a non-technical project proposal in English, French, Inuktitut, and local languages (including who, what, why, where, when), material use, water use/water retrieval, waste, impacts identification, impacts table, and additional information/supporting documents • Screening decision (Reasons for Decision) report includes: project referral; project overview and the NIRB assessment process; and Assessment of Project Proposal (specified in Act); views of the board; recommended project specific terms and conditions; monitoring and reporting requirements; other NIRB concerns and recommendations; regulatory requirements; and conclusion/decision • Climate change is beginning to be incorporated into screening processes. (ie. Permafrost degradation) <p><u><i>Post-Presentation Q & A</i></u></p> <ul style="list-style-type: none"> • Q: How is a minor screening category determined? <ul style="list-style-type: none"> ○ A: There are a series of yes/no questions to help the screener determine if it is a minor or regular screen. Lesser the impacts, the more likely it is to be a minor screening (ie. Does it involve a camp?)

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	<p>Does it involve transportation of materials? etc.). Minor is mostly for things that don't require a land use permit.</p> <ul style="list-style-type: none"> • Q: How are impact tables designed and how does a proponent work through the impact table? <ul style="list-style-type: none"> ○ A: The proponent can put an 'x' in a series of boxes that relate to different impacts. • Q: How are cumulative effects determined? <ul style="list-style-type: none"> ○ A: NIRB keeps map of project history to track cumulative effects of projects. NIRB seeks public feedback to help determine cumulative effects. • Q: How is geographic area determined for cumulative impacts? <ul style="list-style-type: none"> ○ A: Area is determined by the type of activity in area. For example geographic range of using a helicopter is different than area for drilling or using a snowmobile. Communities provide a lot of feedback on impacts on local uses and this assists in determining geographic area for cumulative impacts.
<p>Mighty “Might Test” Presentation</p>	<p><u><i>The Mighty “Might Test” Presentation (Presentation Appended)</i></u></p> <p>The Manager of Environmental Impact Assessment at the Review Board gave a presentation on the “Might Test”. The key points include:</p> <ul style="list-style-type: none"> • Screening using the “Might Test” was compared to triage in the medical field. Screening is an initial look for potential impacts to decide what, if any, more investigation is needed before the project can proceed. • Screening must be done correctly or else the EIA process will not work properly • The Review Board does not conduct screenings, but it has an oversight function and provides guidance (under s.120 MVRMA) and support • “Impact on environment” is broadly defined and may include impacts that are not within the technical expertise of the screener. This is why the screening process seeks input from a wide range of parties who may have the required expertise. • Sometimes screeners are regulators and it is important that screeners take off their regulatory “hat” when screening projects. Screeners must consider broad range of impacts like socio-economic impacts, cultural impacts, wildlife, and cumulative impacts • To conduct a screening, screeners must get and share comments, identify potential impacts, consider adequacy of mitigations, and conduct the “might test” • Considerations for the “Might Test”: <ul style="list-style-type: none"> ○ “Might” does not equal “likely” ○ if a project “Might” cause significant adverse impact on environment or public concern, then it is referred for EA ○ “Might” test does not apply within municipal boundaries ○ “Might” is a sensitive trigger ○ screeners should consider referring to EA if there are relevant unanswered questions about project effects ○ screeners must balance how much time may be required to answer questions and the overall screening time. if resolutions to questions are not available, or are taking a long time, this may be a reason to refer to EA

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<p>Canada Energy Regulator Presentation</p>	<ul style="list-style-type: none"> ○ consider development scale, development location, and nature of activity ○ things like magnitude, spatial extent, duration, and likelihood are criteria to consider ○ screening is not a popularity contest. Whether something is popular or not should not be considered ○ screeners must ask: Has the developer proven, to the screener’s satisfaction, that there is no reasonable possibility of significant adverse impacts or public concern from the proposed development? If not, refer development to environmental assessment. <ul style="list-style-type: none"> ● In summary, screen the whole development, put on screener’s hat, screening is not an EA. <p><u>Post-Presentation Q & A</u></p> <ul style="list-style-type: none"> ● Q: How do screeners balance getting the right amount of information without doing EA type work? <ul style="list-style-type: none"> ○ A: Screeners often consider the size of a development as part of criteria for referral. However, smaller projects can be referred for a variety of reasons. It’s important to have local information and get appropriate information without going beyond the mandate of screening. ● Comment: There is a difficult balance between getting enough information to do a proper screening and keeping screening “preliminary”. There is a need for more guidance in this area. ● Comment: In general it is difficult to prove when there will be an impact and when there won’t be an impact. Desire to have better understanding of “reasonable possibility” of significant impact. ● Comment: There is a desire for more practical guidance on day to day operations for screeners. ● Q: How much information is enough information for a proper screening? <ul style="list-style-type: none"> ○ A: Every project is different and the amount of information needed for proper screening will vary. It is context specific and it is not an exact science. Not every screening decision will be the same and that’s ok. It is informed by the lens being used by the screener and by professional judgement. <p><u>Canada Energy Regulator – Line 21 Presentation (Presentation Appended)</u></p> <p>A representative from the Canada Energy Regulator presented a case study on a pipeline segment (Line 21) replacement and how CER collaborated with the MVLWB. The key points from the presentation are listed below:</p> <ul style="list-style-type: none"> ● Canada Energy Regulator (CER) is a Designated Regulatory Agency under the MVRMA ● The Line 21 project is regulated by MVLWB and Canada Energy Regulator ● Line 21 is an Enbridge pipeline running from Norman Wells, NWT to Zama, AB ● The project is a pipeline replacement project across the Mackenzie River ● Authorizations the project required: <ul style="list-style-type: none"> ○ Horizontal Directional Drill <i>National Energy Board Act s. 58</i> ○ Decommissioning <i>National Energy Board Act s. 45.1</i> ○ Type B Water Licence <i>Mackenzie Valley Resource Management Act</i>

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<p>Special topics and break-out groups</p>	<ul style="list-style-type: none"> ○ Type A Land Use Permit <i>Mackenzie Valley Resource Management Act</i> ● There was a parallel but separate process with CER and MVLWB ● Challenges: <ul style="list-style-type: none"> ○ participant funding for hearing ○ sequential processes may have resulted in fatigue on community members participating in both processes ○ perception of duplication/overlapping of hearing processes ○ confusion between the two parallel but separate processes ● Highlights included: <ul style="list-style-type: none"> ○ building relationships with community members ○ communication between CER and MVLWB ○ public notices were translated into local languages ○ the Panel’s decision to design a hearing process with an oral portion was made in light of the project location and potential community interest. This is unusual for the CER. <p><u>Post-Presentation Q & A</u></p> <ul style="list-style-type: none"> ● Q: Was information kept private? <ul style="list-style-type: none"> ○ A: It was a completely public process. <p><u>Break-out Sessions</u></p> <p>Workshop participants broke into four separate break-out groups for more in-depth discussion on four topics: 1) Coordination of preliminary screenings; 2) Preliminary screening in different regions of NWT; 3) Screening project changes; and 4) The “Might” test. Below are some key points discussed in each of the break-out groups:</p> <p><u>Coordination of Screenings</u></p> <ul style="list-style-type: none"> ● Project may require multiple authorizations which each trigger a screening. The intent is that each project is screened once. However, there may be a considerable amount of time between the proponent applying for each permit and triggering the associated screening. This may lead to issues with completing the screening and allowing authorizations to be issued. In these instances it is important to coordinate screenings. To accomplish this the screener who receives the first application for an authorization must know what other authorizations are also required. ● Better coordination can help flag authorizations that could be an issue ● Uncertainty on which agency is responsible for coordinating screening. (Noted that Land and Water Board typically lead coordinated screenings) ● It would be useful to have some guidelines or industry best practices for screeners on screenings with multiple authorizations from different agencies <p><u>ENR Regions</u></p> <ul style="list-style-type: none"> ● There aren’t very many projects being screened – mostly forestry and wildlife-related. ● Discussed example of a project within municipal boundaries, a small part of project requiring authorization, phased project with a series of authorizations ● Some projects are less linear, they are multi-faceted and multi-phased. Discussion of how these projects are screened using regulations that are more suitable for simple projects

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	<ul style="list-style-type: none"> • Explanation of Review Board role in screenings (not a screener, can refer projects directly to EA even if screening doesn't refer to EA, provides guidance about screening and EA under section 12 MVRMA). Review Board has different role than MVLWB – MVLWB issues permits and licences and conducts screenings. Other screeners can adopt or coordinate their screenings with the MVLWB • Some fundamental communication tools need to be implemented better – within ENR, within GNWT, and with land and water boards, Review Board, and other co-management partners. <p><i>Screening Project Changes</i></p> <ul style="list-style-type: none"> • Discussed exemptions, modifications, extensions • There needs to be some clarification on what constitutes a minor amendment vs. a significant amendment • Discussed screenings that have little or no public comment. Screenings with little or no public comment doesn't necessarily mean that the public is supportive. Local context needs to be considered. • Discussed project changes that could have an impact on EA measures • Discussed how projects can change and how these changes influence the impacts • Many minor project changes over time can significantly change a project when all changes are taken into account. This is something that screeners should be aware of <p><i>"Might" Test</i></p> <ul style="list-style-type: none"> • Talked primarily about public concern and how it is considered in the "Might" test
Group Discussion	<p><u><i>Result of breakout sessions</i></u></p> <ul style="list-style-type: none"> • Concern mentioned about scope creep (little changes to projects over time). This should be looked at through the lens of cumulative impacts. • Project evolution with little exemptions over time that may seem minor but as a whole could have a significant impact. • Some concern that small proponents can find it difficult to provide information about cumulative impacts. How is this done in other jurisdictions like Nunavut? Could this be applied in Mackenzie Valley to make it easier for proponents to assess cumulative impacts? How much burden should be placed on proponents, some information might be better collected by government or regulators. • Discussion around thresholds for cumulative impacts on wildlife such as the Bathurst Caribou. • Suggestion to create a couple of smaller working groups to begin work on specific topics that could feed into updated guidance for screeners.
Workshop outcomes Topics for a Guidance	<p><u><i>Topics to include in an updated guidance document to assist screeners</i></u></p> <p>One of the primary goals of the Preliminary Screening Workshop was to identify areas where preliminary screeners felt that they needed more guidance and to use this information to develop a preliminary screening guidance document. Based on the</p>

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document for Screeners	<p>discussion and feedback in the workshop, the following topics will be considered for inclusion in a future preliminary screening guidance document:</p> <ul style="list-style-type: none"> • There is a need and desire for more guidance for preliminary screenings • More details on the exemption process and how exemptions should be screened • The 10 day pause period • Screenings for smaller vs larger projects (Nunavut example of minor and major screenings) • Working with proponents <ul style="list-style-type: none"> ○ making the screening process easier to understand for proponents ○ getting more detailed information from proponents at the start of screening to complete the screening process more efficiently ○ balancing the need of getting more information from proponents without extending beyond the scope of the preliminary screening process • Cumulative impacts and climate change at screening level <ul style="list-style-type: none"> ○ determining geographic scope for cumulative impacts ○ considering climate change • How to address project changes after original screening and after Environmental Assessments <ul style="list-style-type: none"> ○ understanding a minor amendment versus a major amendment ○ understanding how several minor changes over time can significantly change an overall project ○ changes in projects relating to intensity, location, duration, technology, and activity • Understanding how to use traditional knowledge, local knowledge, and cultural practices with respect to screening <ul style="list-style-type: none"> ○ How to determine cultural and social impacts ○ Screening projects with little or no public comment • The “Might” test <ul style="list-style-type: none"> ○ Understanding of “reasonable possibility” of significant impact ○ How to address relevant unanswered questions • Coordination between screeners and coordination of screenings • Screening projects that are multi-faceted and multi-phased • Determining the difference between a minor amendment and a significant amendment for a project can be challenging for screeners • Timing of Screenings • Screening forms/analysis and Reasons for decisions
Next Steps	<p><u><i>Next Steps</i></u></p> <ul style="list-style-type: none"> • Over the next few months the Review Board will review workshop outcomes and incorporate this into providing support and guidance for screeners. • The Review Board may invite screeners to be part of topic-specific working groups to inform development of updated guidance for screeners. • A future workshop will be considered to focus more on specific issues for screeners as well as a workshop or venue for anyone who participates in screenings (a broader audience).