



Environmental
Assessment Office

What We Heard

Summary of the EAO's Direct Engagements on EA Revitalization

May 2018



EXECUTIVE SUMMARY

This report identifies the overarching themes heard from each of the four groups of external environmental assessment (EA) participants that the EAO engaged directly¹, followed by a high-level overview of some key topics that were frequently raised during engagement with participants in that group. The topics have been organized below under each of the three objectives of revitalization. The overarching themes from each of the EA participant groups are included under the relevant revitalization objective.

EA Revitalization Objective: Enhance public confidence, transparency and meaningful participation.

Topics: Early engagement; public confidence and engagement; process certainty and additional guidance; role of EAO, proponents and technical experts; compliance and enforcement, permitting process and certificate amendments

Overarching themes:

EA Participant Group	Overarching Theme
Industry and Business Associations	<ul style="list-style-type: none"> Many aspects of the current EA process already successfully and effectively support public confidence and participation
EA practitioners or consultants	<ul style="list-style-type: none"> It is important to have a predictable EA process with clear expectations regarding EA methods and engagement activities The EAO could improve EA practice and quality by providing additional clarity and guidance on new and evolving priority areas for assessment (e.g. social impacts)
Non-Governmental Organizations	<ul style="list-style-type: none"> There is a lack of public confidence in the EA process and resulting decisions The purpose of EA should be specified in legislation, and include sustainability and public interest

EA Revitalization Objective: Advance reconciliation with Indigenous groups

Topics: Capacity funding; government to government agreements; strength of claims assessments; impact assessment process; information requirements; decision making; implementation of the United Nations Declarations of the Rights of Indigenous Peoples and reconciliation

¹ Indigenous groups, industry and business associations, EA practitioners or consultants, and non-governmental organizations

Overarching themes:

EA Participant Group	Overarching Theme
Indigenous groups	<ul style="list-style-type: none"> • Indigenous governments need to be formally recognized as decision makers in the EA process, and provided predictable and sufficient capacity funding to fully participate • Early engagement can improve the efficiency and effectiveness of the EA process by enabling the development of positive relationships between proponents and Indigenous groups, and ensuring Indigenous information requirements inform the design and development of projects • Assessment plans should be collaboratively developed with Indigenous groups, and include the options of collaborative EAs and Indigenous-led assessments

EA Revitalization Objective: Protect the environment while offering clear pathways to sustainable project approvals

Topics: One project, one assessment; process flexibility and timelines; environmental assessment scope and methods; data, cumulative effects, strategic, and regional assessments

Overarching themes:

EA Participant Group	Overarching Theme
Industry and Business Associations	<ul style="list-style-type: none"> • Investor confidence should be a key consideration in EA revitalization, and this is supported through an EA process that provides certainty and predictability • An effective EA process should maintain sufficient flexibility for individual proponents to employ new or innovative approaches for the planning and development of their projects, including the ways in which proponents build and advance relationships with Indigenous groups and stakeholders
EA practitioners or consultants	<ul style="list-style-type: none"> • New EA legislation needs to balance clarity with the flexibility needed to stand the test of time and to address project-specific and regional variation
Non-Governmental Organizations	<ul style="list-style-type: none"> • There is a need to address broader public concerns through regional planning and cumulative impact assessments

INTRODUCTION

The Premier has mandated the Minister of Environment and Climate Change Strategy (Minister) to revitalize the environmental assessment (EA) process “to ensure the legal rights of First Nations are respected, and the public's expectation of a strong, transparent process is met”.

The EA revitalization process will result in changes to legislation that:

- Enhance public confidence, transparency and meaningful participation;
- Advance reconciliation with Indigenous groups; and
- Protect the environment while supporting sustainable economic development.

On March 7, 2018 the Minister [announced](#) an approach for the revitalization of EA in British Columbia (BC). The revitalization process included an engagement phase from February to the end of April 2018 to inform the development of a discussion paper to be released for public comment in June. There were three initial streams: EA Advisory Committee; First Nations engagement; and direct engagement.

The EA Advisory Committee is an independent forum, established by the Minister to review and make recommendations on BC's current EA process. The committee met multiple times through March and April 2018 and produced a report with recommendations, available at www.eao.gov.bc.ca/revitalization.

The First Nations Energy and Mining Council, with involvement from the EAO, led a stream called First Nations Engagement, which consisted of four regional group workshops for Indigenous nations held between February 23 and March 7, 2018. A province-wide workshop will be held on May 29 and 30, 2018 to gather Indigenous nations' input on EA revitalization. A summary of the regional workshops can be accessed online (www.eao.gov.bc.ca/revitalization) and a summary of the May workshop will also be made available.

The direct engagement stream consisted of meetings between the Environmental Assessment Office (EAO) and a variety of EA participants including Indigenous nations, industry associations, EA practitioners or consultants and, Non-Governmental Organizations to seek input on the challenges of the current EA process, the opportunities for improvement, and recommended changes. At these meetings, the EAO introduced drafts of a conceptual EA model as a possible future state for discussion purposes.

In summary, the EAO had the following meetings and workshops:

- Fourteen government-to-government meetings with representatives from 67 Indigenous groups;
- Eleven meetings with seven industry and business associations, including 63 representatives;
- A full-day workshop with 44 EA practitioners with expertise in various aspects of EA; and
- Two workshops with 33 representatives of non-governmental organizations.

This report provides an overview of the key themes that the EAO heard during these direct engagements. More detailed summary notes from each meeting and workshop are available at www.eao.gov.bc.ca/revitalization.

INDIGENOUS GROUPS

We heard the following overarching themes from Indigenous groups:

- Indigenous governments need to be formally recognized as decision makers in the EA process, and provided predictable and sufficient capacity funding to fully participate;
- Early engagement can improve the efficiency and effectiveness of the EA process by enabling the development of positive relationships between proponents and Indigenous groups, and ensuring Indigenous information requirements inform the design and development of projects; and
- Assessment plans should be collaboratively developed with Indigenous groups, and include the options of collaborative EAs and Indigenous led assessments.

The following sections provide a high-level overview of the topics frequently discussed during engagements with Indigenous groups. Additional detail can be found in the meeting summaries and that are available online (www.eao.gov.bc.ca/revitalization).

Capacity Funding

Indigenous groups expressed the need for sufficient and predictable capacity funding to enable their full participation in the EA process. Some Indigenous groups indicated they also require funding support to engage in government-to-government negotiations around the EA process.

Indigenous groups stressed the requirement for capacity funding to support early Indigenous involvement in the EA process, to more effectively inform project design, information requirements, study design, and other EA procedural options before significant amounts of time and money have been invested by the proponent. In addition to project specific capacity funding, Indigenous groups highlighted the need for base capacity funding to ensure Indigenous groups can maintain in-house expertise in between EAs and other land and resource management activities. Some Indigenous groups indicated that retaining in-house expertise has significant advantages over hiring consultants on a one-off basis, by having someone provide that can provide consistent direction to proponents, has a better understanding of Indigenous information and decision-making requirements, and is better positioned to bring the traditional and community knowledge of that group to the table.

Indigenous groups suggested funding should be provided by the proponent as well as the Province. For capacity requirements related to collaboration or engagement in the EA process with the Province, most nations expressed the view that funding should be ensured by the Province, but paid for by the proponent. For collaborative activities between the proponent and Indigenous groups, such as studies and co-drafting of applications, for which levels of effort may be more variable depending on the nature of the collaboration and complexity of the project, some Indigenous groups expressed a preference for negotiating funding levels directly with the proponent. Indigenous groups also identified revenue sharing agreements with the Province and benefits agreements with the proponent are other potential sources that ensure ongoing funding and benefits, particularly once projects proceed to development and operation. Most Indigenous groups indicated that the majority of capacity costs should be funded by the

proponent, however cautions were raised that this provision of funding needs to be transparent and should not be viewed as fulfilling consultation obligations.

Early Engagement

Many Indigenous groups identified the importance of early engagement in the EA process to find out about projects early and ensure their concerns are heard and addressed. Indigenous groups spoke of opportunities during early engagement that could improve the overall efficiency and effectiveness of the EA process, such as relationship building among the parties, opportunities for partnerships and collaboration and identifying approaches to consensus-based decision making. Indigenous groups expressed the need to have a formal requirement for early engagement, including legislated obligations on the EAO and the proponent, before an EA can commence.

Indigenous groups indicated that identifying Indigenous information requirements, including traditional knowledge was an important aspect of early engagement. Indigenous groups indicated that early engagement could also include a site selection processes, early project design conversations and an opportunity to assess the degree of alignment of a project with Indigenous land use plans, cumulative effects, as well as strategic and regional EAs. Some Indigenous groups described a need for an early consensus-based decision point where a project can be assessed in terms of their readiness to proceed to an EA based upon whether concerns identified during early engagement were addressed.

Information Requirements

Indigenous groups highlighted the need to have appropriate information collected early in the process to inform Indigenous decision makers regarding the potential impacts and benefits of a proposed project to their communities. Indigenous groups want to be involved in identifying what information needs to be gathered, and in some cases, want to gather this information themselves.

Indigenous groups stressed the need for EAs to be informed by Indigenous knowledge as well as western science based knowledge with dispute resolution if there are conflicts between these systems of knowledge. The integration of Indigenous knowledge into the EA process was seen by some Indigenous groups as a key requirement for informed consent. This includes applying traditional knowledge to project design to identify risks and appropriate mitigations. Some Indigenous groups also felt that Indigenous decision makers should have the ability to request additional information in the same way that provincial decision makers can. It was suggested that information needs to be presented in a manner that is acceptable to Indigenous groups rather than through large data submissions or dispersed through very long technical applications.

Indigenous groups expressed concern about the proponent's involvement in determining information requirements. These groups saw defining information requirements as a role of the regulator, and in the case of EAs, something that should be determined collaboratively between the EAO and Indigenous groups. Some participants highlighted specific types of information they would like to see in an EA including benefits to Indigenous communities, social and health impacts, impacts to culture, impacts to

peaceful enjoyment, and alignment with Canada's climate goals.

Participants described the challenge of applying traditional knowledge to EAs when there was a risk that the disclosure of that knowledge could harm the Indigenous group or the traditional knowledge holder. Some Indigenous groups suggested that laws to protect traditional knowledge as intellectual property should be created and that fair compensation of traditional knowledge holders should be required.

Impact Assessment Process

Some Indigenous groups expressed distrust with the way in which EAO assesses the potential impacts of a proposed project, indicating they had no confidence in the proponent and the EAO to fairly and accurately assess impacts to Aboriginal or Treaty rights. Some Indigenous groups suggested that proponents should not have any role in assessing impacts to Aboriginal and Treaty rights, as they do in the current model. Indigenous groups emphasized the need to have the option for Indigenous-led assessment of impacts on Aboriginal and Treaty rights. Some indigenous groups suggested that co-drafting of the impacts to Aboriginal rights section of the assessment report with EAO was a useful tool to ensure Indigenous perspectives are represented accurately.

Another common theme of discussion was regarding how Indigenous groups are engaged in the EA process. The "consultation" model was seen by some as a lower standard that is superseded by the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP) that limits engagement and only effectively involves Indigenous groups if there is potential for impact on Aboriginal or Treaty rights. Indigenous groups suggested that EAO should move away from a "consultation" model to a "co-stewardship" model where Indigenous groups are recognized as having a legitimate governance role over their lands. Indigenous groups indicated they must live with the impacts of projects in their territories and should thus have a greater role in determining whether or not, and how, a project proceeds through the EA process, as well as determining how their communities should benefit from the project. Indigenous groups also spoke to the need for impact assessments to include assessing alignment with Indigenous laws. Overall, many Indigenous groups spoke to the need for major projects to more effectively benefit their communities since, in many cases, their communities bear the brunt of the impact of a project. Some Indigenous groups indicated that Impact Benefit Agreements (IBAs) should be a required component of the EA process.

Indigenous groups also raised concerns about timelines associated with the EA process. Most Indigenous groups indicated that 180 days for application review may in some cases not be enough time for Indigenous communities and Indigenous decision makers to assess the impacts of a proposed project. Some participants suggested that guidelines should be used instead of timelines. Others indicated that the EA legislation needs clearer criteria, including the role of Indigenous decision makers, for extending or suspending the process.

Decision Making

Indigenous groups strongly emphasized that Indigenous governments need to be formally recognized by the Province and the proponent as decision makers and co-regulators of a project. Indigenous groups stressed that this was an essential component of Indigenous decision making which is a key aspect of UNDRIP.

Several Indigenous groups highlighted the need to define what “free, prior, and informed consent” (FPIC) means in the context of EAs and what would happen in situations where consent is not achieved, including the role of dispute resolution processes. Some Indigenous groups indicated that FPIC should not be interpreted as a veto but rather as a process by which Indigenous governments are continually engaged as decision makers and are fully informed about a project’s potential impacts and benefits. This would allow Indigenous governments to manage project impacts through the life of a project and obtain fair benefits from the project. Other Indigenous groups saw FPIC as a legal requirement where a “no” means a project will not proceed. Some Indigenous groups expressed concern that if an Indigenous decision is not binding in Provincial law, then proponents will not have an incentive to meet Indigenous procedural and information requirements.

Indigenous groups highlighted the need for transparency around what informs decision makers. Some Indigenous groups expressed an interest in decision-making criteria for Indigenous and provincial decision makers that could be developed on a project-by-project basis or through government-to-government agreements between Indigenous governments and the Province. The decision-making criteria for provincial decision makers could be identified in legislation. Indigenous groups stressed the need for greater transparency in how the pillars of an EA (environment, health, social, heritage, economy) are weighted and how technical reviews inform decision makers. Some Indigenous groups highlighted the importance of IBAs not being finalized until all project details and effects are known. Others indicated benefit agreements with proponents should be in place at the very early stages of a project. Participants also highlighted a need for an opportunity for Indigenous and provincial decision makers to meet prior to making a decision on a project.

Cumulative Effects, Strategic, and Regional Assessments

The cumulative effects of multiple projects in an area was a common theme of discussion with many Indigenous groups. Many participants indicated that a project-by-project approach to cumulative effects assessment does not adequately account for the regional or strategic context, particularly when multiple projects are under review concurrently. Indigenous groups suggested that in other circumstances, the high volume of sub-EA threshold activities might cumulatively have a significant impact on a region without ever triggering the need for an EA. Indigenous groups proposed improvements that would allow the EA process to more effectively account for the regional context.

One suggestion was for a more proactive approach to conducting regional EAs. Some Indigenous groups suggested that if the province is aware of or is encouraging development within a region, a regional EA should be done to proactively identify any major issues that could prove problematic for project EAs. Participants stated that approach would allow issues to be addressed before a proponent invests

significant time and money in a project that would have a low likelihood of proceeding.

Another suggestion was for the EA legislation to clearly define how EA processes are informed by strategic land use planning processes and identify triggers to require regional or strategic assessments in certain circumstances such as extensive exploratory permitting or significant increases in economic development. Indigenous groups also highlighted a need for increased clarity regarding how EA decisions are informed by cumulative effects assessments, strategic assessments, land use planning, and Indigenous land use plans and laws.

Strength of Claims Assessments

Some Indigenous groups expressed the view that the strength of claims (SOC) assessment process, outlined under the consultation framework set out by the courts in *Haida Nation v. British Columbia (2004)* is inherently disrespectful as it perpetuates a framework of questioning the existence of Indigenous rights, and requiring groups to “prove” their rights. SOC assessment is seen by some Indigenous groups as positioning the Province as the party that assesses what an Indigenous group’s rights are or are not, and often as an arbiter between Indigenous groups who disagree with one another. Some Indigenous groups said that their involvement in an EA seems to be proportional to their SOC assessment, and a unilateral determination by the Province of low SOC can often mean little to no input into how a project proceeds, even if there is potential for impacts to their community members.

Indigenous groups suggested that they should be able to self-select and determine their own level of involvement in an EA, including resolving overlap disputes with one another without the intervention of the Province, and reserve the use of SOC assessments only where agreement cannot be reached. Other Indigenous groups, however, indicated that SOC assessments are necessary, mandated by the courts, and should be done as early as possible to avoid subsequent legal challenges, and to provide clarity regarding the Indigenous groups participating in an EA process. These participants suggested that if there is significant dispute over the result of an SOC assessment the parties should focus on assessing impacts and only address strength of claim in cases of conflict.

Compliance, Enforcement and Monitoring

Ongoing post-EA oversight of a project was a common topic of concern. Indigenous groups identified a need for stronger oversight throughout the life of a project, including evaluation of the effectiveness of EA Certificate conditions. Indigenous groups expressed the need to have the relationship between the EAO and permitting agencies to be better defined, including the EAO’s role in providing broader oversight of projects.

Some Indigenous groups expressed concern with permitting processes and suggested that permitting may benefit from EA conditions that are binding on subsequent permitting. It was suggested that there maybe should be a stronger connection between progress in an EA and exploratory permits that may be issued concurrently, including the ability for the EAO to halt exploratory permitting associated with a reviewable project if there are significant deficiencies with the EA process or substantial impacts associated with the

permitting. Many participants also expressed a need for ongoing Indigenous involvement in project oversight including roles for independent Indigenous nation monitors working with the EAO rather than through the proponent.

Government-to-Government Agreements

Indigenous groups identified the need for flexibility in how they work with the Province in the EA process, and need for legislation that enables different approaches depending on the needs of the Indigenous processes and governance structures, including the criteria by which projects are determined to be reviewable. Indigenous groups stressed the importance of government-to-government agreements that can serve as the basis for the conduct of the parties throughout the EA, and clarify Indigenous approaches to EAs, including collaboration and other processes.

Indigenous groups suggested that these agreements could cover topics such as: what types of projects are reviewable; roles and responsibilities in the EA process; capacity funding requirements; technical review processes; how impacts to Aboriginal rights and title are assessed; how Indigenous knowledge, laws, land use plans, and development objectives can guide the EA process; as well as decision making and dispute resolution mechanisms. Some Indigenous groups identified examples of territorial agreements for collaborative EAs, hybrid Indigenous-EAO led EAs and, in some cases, full substitution of Indigenous-led EAs for Provincial EAs as potential future opportunities under government-to-government agreements.

The Environmental Assessment Office

Indigenous groups felt that EAO needs to be positioned within government in a way that increases transparency and independence from political interference. Some Indigenous nations see EAO as having a conflict of interests, since the Province typically stands to gain significantly from many projects going forward through increased revenues. These participants thought that increased independence for EAO from political influence would improve trust in the agency and increase the legitimacy of the EA process.

Some Indigenous groups suggested EAO should be a regulator over all aspects of a project throughout its full lifecycle. This could include authority to halt exploratory permit issuance if there are significant problems with an EA.

Participants also recommended that EAO focus on hiring staff with specific technical expertise and consider placing some staff in regional offices to better develop relationships with Indigenous groups, local communities and stakeholders.

INDUSTRY AND BUSINESS ASSOCIATIONS

We heard the following overarching themes from industry and business associations:

- Investor confidence should be a key consideration in EA revitalization, and this is supported through an EA process that provides certainty and predictability;
- Many aspects of the current EA process already successfully and effectively support public confidence and participation; and
- An effective EA process should maintain sufficient flexibility for individual proponents to employ new or innovative approaches for the planning and development of their projects, including the ways in which proponents build and advance relationships with Indigenous groups and stakeholders.

The following section provides a high-level overview of the topics that were frequently raised during engagement with industry and business representatives. Additional detail can be found in the meeting summaries that are available online (www.eao.gov.bc.ca/revitalization).

Public Confidence and Engagement

Many associations questioned whether there is truly a general lack of public confidence in the current EA process, or whether this perceived lack of confidence is the result of a few vocal critics disagreement with some previous EA decisions or a misunderstanding of how EA is presently undertaken. Industry representatives suggested that some of the criticisms of the process may not be related to structural issues with the EA process and could be addressed through improved communication regarding topics such as the scope and purpose of the EA process, the role of other regulatory processes, and the independence of the qualified professionals who conduct technical studies for EAs. Industry participants also noted that some critics may not be aware that there is a considerable amount of project-specific information and data available on the EAO's website, as it is sometimes difficult to locate.

Regarding changing the process to enhance public confidence, suggestions included the following:

- The EAO could provide proponents with a list of pre-approved consultants from which to hire particular subject matters experts to conduct the necessary studies;
- The EAO could hire additional experts to participate in a group, and review and comment on some, specific highly-contentious issues; and
- Proponents and the EAO could do more to provide publicly accessible information about projects and the key effects of project to help better educate the public.

Some participants specifically cautioned against engaging multiple technical experts in the same domain to represent the interests of differing Indigenous groups and stakeholders.

Implementation of UNDRIP and Reconciliation

All associations sought additional clarity regarding how UNDRIP would be implemented in EA without creating process uncertainty. Many associations emphasized that advancing and implementing UNDRIP is a large and complex undertaking that reaches far beyond the scope of EA. While recognizing the need for advancing reconciliation, participants noted that it is important that EA stick to assessing and managing project effects and not try to solve all aspects of reconciliation.

Many associations were particularly interested in getting clarity on how the concept of consent would be interpreted and implemented in the EA process and how the EAO would seek consensus with Indigenous groups throughout an EA. Associations emphasized the need for clear criteria to determine when and where Indigenous group-led EA processes would be conducted and a better understanding of how these assessments would be integrated into the provincial EA process. Participants were particularly interested in receiving clear, timely direction from the province regarding which Indigenous groups they would be required to engage for an EA and how these groups should be engaged. Concerns were also expressed about creating additional leverage points and complexity in the EA process that could undermine proponents' relationships with Indigenous groups and their efforts to establish agreements and could also create process uncertainty.

Associations also sought additional clarity regarding how Indigenous groups would be engaged in decision-making throughout the EA process and during the final decision whether to issue an EA Certificate and raised a need for a mechanism for effective decision-making if disagreements cannot be resolved through voluntary dispute resolution.

One Project, One Assessment

Many associations expressed support for a single process that aligns the BC EA process, federal EA process (e.g. substitution), and any assessment approaches taken by Indigenous groups, noting that in addition to efficiencies, this is important to investor confidence. Participants sought certainty regarding how the provincial and federal assessment processes would interface and align and emphasized the need for tight linkages between EA and permitting processes.

Process Certainty and Flexibility

Associations said that the implementation of the current BC *Environmental Assessment Act* has been very effective at balancing industry's need for process certainty with their need for the flexibility to conduct EAs for different projects in different contexts. Participants noted that an uncertain or overly-complicated process could impact the economic viability of projects and undermine investment decisions. Industry representatives also voiced concern regarding the potential for a longer EA process and many emphasized the need for timeline and process certainty. We also heard that it is important to establish achievable timelines, recognizing that some projects may take longer than others. Allowing for additional time for some more complex projects is preferable to a model that relies on timeline suspensions and extensions, which creates uncertainty.

Although participants generally supported the concept of an EA process that places greater emphasis on scoping EAs to place greater focus on key issues, they sought clarity regarding how this could effectively be achieved. Some associations raised the concern that issues that were resolved early in the EA could resurface at later stages, requiring additional, unanticipated studies, time, and resources. It was also suggested that well-understood, lower impact projects be subject to less intensive EAs. Some industry representatives expressed frustration that EAs can lead to circular conversations/debates and it can be difficult to determine when an issue is resolved. They spoke to an interest of being sure to be able to close off issues, and proceed with the process knowing that the process will not go backwards – that more information does not always resolve conflicting views, and any EA has to have a clear process and criteria to be able to resolve these situations efficiently and fairly. It was noted that the EA regulator can be in a difficult position in terms of when to consider an issue adequately addressed, but the regulator needs this decisive authority for EAs to be effective.

Role of the Environmental Assessment Office, Proponents and Technical Experts

Associations noted that under the current Act, proponents can creatively resolve issues and iteratively design and develop projects through the EA process. They cautioned against changes that would remove or distance proponents from this role and noted that it would undermine investor confidence. Likewise, some participants said that the ability to make the decision regarding whether a project is ready to enter the EA process is important to investors. Some associations noted that under the current process, proponents have the ability to develop and enter into agreements with Indigenous groups and said that proponents must continue to play this role in EA.

Early Engagement, Project Description, and Readiness Gate

The early stages of the EA process generated considerable discussion. Associations requested certainty about timelines, scope of activities, role of the EAO, criteria for determining adequacy of engagement activities, and information requirements for early project descriptions.

The timing of information-sharing with Indigenous groups and stakeholders was a key concern. Associations noted that although conceptual high-level discussions are possible at early stages in project development, formalizing these discussions would be challenging because stakeholders and Indigenous groups ask questions that proponents cannot yet address in detail. Associations also noted that depending upon industry type, business type and associated requirements (e.g., financial disclosure requirements, decision-making requirements of multi-national corporations, partnerships with many large corporations), proponents have differing legal abilities to disclose information and recommended that EA requirements need to be permissive enough to accommodate this range of proponents.

Some participants noted that early engagement activities are currently led by proponents and that they should continue to be led by proponents without involvement from the EAO; although others noted that there may be opportunities for the Province to facilitate discussions with Indigenous groups regarding economic partnerships and the level of economic accommodation that a project can support. Some associations also recognized the role the EAO could play in establishing government-to-government

agreements with Indigenous groups in advance of an EA to create process certainty. There was also some support for a “gated process” to pre-screen projects and to provide proponents an early indication of success and potential issues, but some associations noted that it is important to investor confidence that proponents have the right to propose projects and attempt to resolve issues through an EA process. In the event that a project could not proceed into the EA process, associations wanted clear reasons for decision, and a process to enable a proponent to return into and resume the process at this stage.

Compliance and Enforcement, Certificate Amendments, and Permitting Processes

Many associations said that there is a need for greater clarity and communication regarding linkages between the EA process and other permitting processes, which issues must be resolved during an EA versus those that can be addressed during permitting, and the roles of the EAO and other agencies in compliance and enforcement. Some associations suggested that compliance and enforcement should place a greater emphasis on adverse effects rather than specific compliance criteria. Participants also noted that permitting can trigger the need for multiple amendments to certified project descriptions and that this creates an onerous amount of “red tape” that does not support the intent of EA. Participants also discussed the value of expanding monitoring beyond compliance to include how effectively conditions are mitigating adverse effects. It was also suggested that the EA is a planning process and should not include compliance and enforcement activities.

Higher-Level Assessments, Cumulative Effects, and Data

Some associations noted that strategic EAs, regional assessments, and planning are important for addressing broader public policy issues. Participants expressed that project-specific EAs should not be expanded to include these broader public policy issues as this would add uncertainty to EAs and undermine investor confidence. They also noted that these processes are useful for informing EAs, but cautioned against making these prerequisites for an EA to proceed, noting the time it could take to complete these assessments.

Industry suggested it may be beneficial for project proponents to share data that is collected over the course of an EA. It was noted, however, that collecting this information into a usable public platform would be a large undertaking and that some types of data (e.g., specific locations of certain wildlife species) might be sensitive and should be managed accordingly.

ENVIRONMENTAL ASSESSMENT PRACTITIONERS

The EAO engaged EA practitioners (or consultants) at a one-day workshop in Vancouver. We heard the following broad overarching themes:

- New EA legislation needs to balance clarity with the flexibility needed to stand the test of time and to address project-specific and regional variation;
- It is important to have a predictable EA process with clear expectations regarding EA methods and engagement activities; and
- The EAO and the Province could improve EA practice and quality by providing additional clarity and guidance on new and evolving priority areas for assessment (e.g. social impacts).

The following section provides a high-level overview of the topics that were frequently raised during the workshop with EA practitioners. A more detailed summary is available at www.eao.gov.bc.ca/revitalization.

Role of the Environmental Assessment Office, Proponents and Technical Experts

Many EA practitioners were of the view that public confidence is undermined by the belief that EAs are too proponent-driven and by concerns that professionals hired by proponents are unduly influenced by proponents. In response, we heard differing opinions regarding potential changes to the roles and responsibilities of the EAO and proponents. A small minority of participants suggested that the EAO should conduct all of the necessary data collection and analysis. Others suggested that proponents should continue to gather data and conduct analysis, but that the EAO, with support from other government agencies or 3rd party experts, should lead the identification of impacts.

Public Confidence and Engagement

Improving public engagement was identified as important to enhance public confidence. EA practitioners noted that both the EAO and proponents could improve their communication practices and recommended the following: reconsidering the efficacy of tools such as open houses; developing non-technical summaries of project applications; directly responding to misinformation in the public domain; increasing the accessibility and frequency of compliance and enforcement reporting; directly involving the public in project planning (e.g. community mapping exercises) and post-certification monitoring (e.g. citizen science); and more effectively communicating the EA process, the role of the EAO and the role of permitting processes.

Process Certainty and Additional Guidance

EA practitioners identified a clear, predictable EA process as a priority. Some participants expressed support for a mechanism to pre-screen projects to provide proponents an early indication of success, and thus avoid unanticipated certificate refusals at the end of a lengthy EA process. Although we heard some support for scoping EAs to place greater emphasis on key issues there was also uncertainty as to whether

this could be achieved and concern that previously-resolved issues would resurface at a later stage, resulting in an increasingly expensive and lengthy EA. We also heard a number of questions regarding how EAs led by Indigenous nations would be implemented, or linked to provincial EAs, and how collaborative decision-making would be practically undertaken and not create process uncertainty.

Some EA practitioners noted that while there are often guidelines regarding what information should be collected or an EA, there is often little guidance describing expectations regarding data analysis and interpretation for EAs. EA practitioners also identified a need for concrete guidance documents on topics including Indigenous engagement, public engagement, conducting cost-benefit analysis, assessing cumulative effects, and social impact assessment topics (e.g., gender based analysis) and many agreed that additional guidance would be required in regard to how traditional knowledge should be collected, used and shared, and how confidentiality could be maintained without undermining the transparency of a decision.

New Environmental Assessment Legislation and Decision-Making

EA practitioners emphasized that EA legislation should strike a balance between providing details regarding process, timelines, and decision-making and allowing the needed flexibility to “stand the test of time”. While there were no consensus views, some participants suggested that the legislation should include a purpose statement similar to the proposed changes to the federal legislation (e.g. sustainability), direct reference to the implementation of UNDRIP, and definitions of key terms. Other participants cautioned against legislation with too much detail and against defining terms that will be further defined by the courts and other processes.

We heard that transparent, consistent, and timely decisions are key considerations for public and investor confidence. EA practitioners made suggestions including excluding significance determinations from proponent and EAO reports as these determinations imply “acceptability” and requiring decision-makers to clearly set out the criteria for their decisions including how positive and negative effects were balanced.

Early Engagement

Participants noted that there is the potential for a greater role for the EAO during early engagement and suggested that a regional EA presence may help build trust and credibility with Indigenous groups and local residents. They also cautioned that at these early stages, proponents often do not have enough information to support a discussion and thus, stakeholders are not interested in engaging.

Compliance and Enforcement, Permitting Processes, and Certificate Amendments

EA practitioners identified the following aspects of compliance and enforcement as areas for improvement: developing conditions that are measurable and enforceable; tracking proponent commitments throughout the life of a project; increased monitoring including EA Certificate compliance; and mitigation effectiveness. Many participants also suggested increased publicly available reporting of

monitoring findings, either by the EAO or proponents.

Participants expressed frustration with the amendment process and suggested that the scope of issues considered under an amendment should be limited to the potential effects of the proposed amendment.

We heard that the interface between the EA process and other regulatory processes is unclear. EA practitioners advocated for improved clarity regarding issues considered in an EA and a more efficient approach to transferring approved projects from an EA to permitting. There was also some discussion of how to simplify and improve compliance and enforcement of EA Certificates and all project permits with suggestions including transferring all compliance and enforcement to the regulatory agencies or alternatively, housing all compliance and enforcement responsibility in one agency.

Higher-Level Assessments, Cumulative Effects, and Data

While acknowledging the challenges (e.g., establishing thresholds), many participants were of the view that managing cumulative effects is integral to achieving sustainability, protecting the environment, and improving public confidence and that this is best done through tools such as strategic and regional assessments and land use planning. It was also suggested that new EA legislation should include a clear linkage between project specific assessments and higher-level assessments (e.g. regional variation in the reviewable projects). Suggestions for better management of cumulative effects included ongoing monitoring, mandatory Province-wide data repositories, clarity regarding responsibility (i.e., proponents or government) for and jurisdiction (i.e., level of government) over cumulative effects.

Availability of data was discussed as an issue and an opportunity in EAs. Participants discussed that for some topics of assessment (e.g., social impacts) there is a lack of data and how some pre-existing data can be difficult to access (e.g., wildlife data). Potential solutions for these challenges included a central repository for all government data, requiring proponents to share data, and monitoring post-EA effects (and accuracy of predictions) to establish new data sets.

NON-GOVERNMENT ORGANIZATIONS

We heard the following broad, overarching themes from Non-Government Organizations (NGOs):

- There is a lack of public confidence in the EA process and resulting decisions;
- The purpose of EA should be specified in legislation, and include sustainability and public interest; and
- There is a need to address broader public concerns through regional planning and cumulative impact assessments.

The following section provides a high-level overview of the topics that were frequently addressed during engagement with NGOs. A more detailed summary is available at www.eao.gov.bc.ca/revitalization, which outlines a wide set of comments.

Public Confidence and Engagement

NGO representatives said that improved public engagement is integral to enhancing public confidence in EA and they identified a lack of public and community-level engagement funding as a key impediment. In addition to the provision of capacity funding, participants recommended that the EAO take a more active role in public engagement activities to ensure decision-makers receive unfiltered feedback.

Other recommendations included engaging members of the public early in EAs to plan project-specific engagement activities, and including local knowledge-holders and public advocates on the EAO's project working groups. The large volume of highly-technical information generated during an EA was also identified as a barrier to meaningful public engagement, with some participants suggesting mandatory non-technical versions of applications and key supporting materials, while others pointed to the need for funding to support better public engagement.

While there was strong support for Indigenous involvement in the process (including a decision-making role) and support for implementing UNDRIP and advancing reconciliation, the group focused less on this area believing that Indigenous nations themselves were in the best position to provide feedback on this topic. However, there was one cautionary note raised in terms of inadvertently fueling tension between public and Indigenous nations if opportunities are not provided for both to participate and the reasons for different levels of participation is not fully articulated.

Role of the Environmental Assessment Office, Proponents and Technical Experts

Many NGO representatives expressed the view that the current EA process is overly proponent-driven and that the reliance on proponent-funded studies undermines public confidence. Although participants generally agreed that proponents should continue to bear the cost of technical studies, some emphasized the need to sever the financial relationships that link proponents and the technical experts (consultants) who produce these reports. Participants suggested a range of possible solutions including: having government administer a list of pre-qualified technical experts; flowing funding for technical studies

through the EAO, and then having the EAO hire the technical experts to produce supporting studies; or, requiring proponents to provide additional funding to the Province, local communities, and Indigenous groups to hire additional technical experts to review proponents' materials.

Some participants raised the concern that the EAO is susceptible to the political leanings of the government of the day, and that this undermines public confidence in the EA process and Ministers' decisions. Although participants did not come to consensus on potential solutions, several participants discussed options to change in the EAO's position within government or to establish a "watchdog" agency to oversee or audit the work of the EAO.

New Environmental Assessment Legislation and Decision-Making

Most NGO representatives expressed the view that new EA legislation should set out a clear purpose, such as protecting the environment and supporting sustainability, and that this purpose statement should inform decision-making. Decision making criteria, such as in relation to greenhouse gas emissions ("climate test") and human rights were discussed. Some participants recommended limiting the discretion of political decision-makers to keep politics out of decision-making, although not all agreed. At a minimum, it was felt that decision-makers must be prepared to be clear and transparent about their reasons for decision. In addition to increased transparency, participants suggested establishing a clear decision-making framework that sets out the criteria and information to be considered. To restore confidence, the public must believe that "no" is a possible outcome of the EA and have the right to appeal decisions without putting themselves into financial jeopardy. There was also a suggestion that decision-making move geographically closer to the people that would be most affected by a project.

Participants also recommended that new EA legislation should define key terms (e.g., adverse effects, public interest), and incorporate broader government commitments and priorities (e.g. Paris Accord, human rights, climate test, gender-based impacts). It was also suggested that EA legislation should move away from only consideration of individual adverse effects to a sustainability approach. NGO representatives also suggested that the legislation should become umbrella legislation so that permits issued under other legislation would be required to meet the goals of new EA legislation and project decisions.

Process Flexibility and Timelines

Participants supported the idea of having different timelines for different projects and raised that there should be an opportunity for parties other than the proponent to request suspensions/extensions. NGO representatives stated that the current 180-day application review period is too short, especially when project design changes are made within that timeframe. NGO representatives noted that their organizations and the general public are not as well-resourced as proponents and often need more time to review material.

Early Engagement and Readiness Gate

Participants supported a revised EA process that places greater emphasis on the early engagement phase in the conceptual model and having the public involved in process planning to help focus on what is really relevant.

There was overall support for a readiness gate, with a variety of early decision-making factors suggested, including: species-at-risk, climate reduction targets, Aboriginal rights and title, and established ecological limits or thresholds.

Environmental Assessment Scope and Methods

Some NGO representatives suggested that EAs should assess a broader range of social, health, and human well-being effects, including considering intersectional gender impacts, impacts to human rights, and positive social and economic benefits. Participants also suggested that the scope of EAs should be expanded to include upstream and downstream effects of a proposed project and to account for future climate change and climate change adaptation. Participants also expressed concern that there is currently an over-reliance on using the same environmental models, and suggested a peer review of the models and incorporation of model uncertainties into decision making.

Compliance and Enforcement, Permitting Processes, and Certificate Amendments

NGO representatives expressed the view that current EA compliance and enforcement efforts are not effective, that there needs to be additional post-certification monitoring and improved communication of monitoring. Participants suggested that compliance and enforcement activities be led by an independent regulator, that there should be a role for the public in monitoring and that members of the public should have the right to take a proponent to court in the face of non-compliance. There should be modernized compliance and enforcement provisions in legislation, including better tools for compliance violations. It was suggested that proponents be required to put up bonds for accidents and malfunctions and that there be greater support for communities faced with major accidents and malfunctions.

NGO representatives expressed concern that a project can receive an EA Certificate, with some important issues seeming to be deferred to permitting. NGO representatives said that there should be a public process to address Certificate amendments and ensure that changes do not negatively impact local communities and that compliance requirements are updated to reflect the changes.

Higher-Level Assessments, Cumulative Effects, and Data

NGO representatives identified a need for strategic assessments and regional assessments and recommended establishing criteria for conducting such higher-level EAOs, such as new industry or sectoral booms, exceedance of biological thresholds, public concern, and regional ecological decline. Participants identified potential benefits of higher-level EAs, including: the opportunity to establish regional or local

objectives or thresholds to promote resilience or recovery; providing a mechanism to inform project assessments regarding sustainability objectives; and the opportunity to consider cumulative impacts of multiple small projects or a sector (e.g. placer mining, independent power projects). Although some participants saw a role for regional land use plans in setting EA criteria, others felt the land use planning process is too lengthy. It was also suggested that a body be established for leading the high-level assessments and planning work. Higher level assessments and planning were seen as key tools to help managed cumulative effects. It was also raised that there is a need to consider watersheds and economic zones that cross provincial and international borders.

NGOs noted that there are currently significant data gaps that need to be addressed. Basic information on the current level of development and states of ecosystems is lacking, as is some regional-level data. Participants recommended that regional baseline studies should be carried out to better understand the impacts already experienced, particularly in areas of intensive resource development.

To facilitate assessment of cumulative effects it was suggested that all provincially regulated projects need to be registered on a central database so there is one place to map all the different kinds of projects so cumulative effects can be determined.

APPENDIX – WHO WE MET WITH

The EAO held direct government-to-government meetings with following Indigenous nations (including or representing the listed Indigenous groups):

- Carrier Sekani First Nations
 - Nadleh Whut'en First Nation
 - Nak'adzli Whut'en
 - Saik'uz First Nation
 - Stelat'en First Nation
 - Tl'azt'en Nation
 - Ts'il Kaz Koh First Nation
- Citxw Nlaka'pamux Assembly
 - Ashcroft Indian Band
 - Boston Bar First Nation
 - Coldwater Indian Band
 - Cook's Ferry Indian Band
 - Nicomen Indian Band
 - Nooaitch Indian Band
 - Shackan Indian Band
 - Siska Indian Band
- Gitanyow Nation
 - Lax Gibuu
 - Biiyosxw
 - Wii Litsxw
 - Malii
 - Haizimsque
 - Gwass Hlaam
 - Siidox
 - Lax Ganeda
 - Gamlaxyeltxw
 - Watakhayetsxw
 - Gwinuu
 - Luuxhon
- Ktunaxa Nation Council
 - ?akisq'nuk First Nation
 - ?aq'am

- Tobacco Plains Indian Band
 - Yaqan Nukiy
- Lake Babine Nation
- Nisga'a Nation
- Stk'emlupsemc te Secwepemc
 - Skeetchestn Indian Band
 - Tk'emlúps te Secwépemc
- S'ólh Téméxw Stewardship Alliance
 - Aitchelitz Band
 - Chawathil Band
 - Cheam First Nation
 - Kwaw-Kwaw-a-pilt First Nation
 - Leq'a:mel First Nation
 - Scowlitz First Nation
 - Shxw'ōwhámel First Nation
 - Shxwà:y Village
 - Sq'ewá:lxw First Nation
 - Skowkale First Nation
 - Skwah First Nation
 - Soowahlie Indian Band
 - Squiala First Nation
 - Sumas First Nation
 - Tzeachten First Nation
 - Yakweakwioose First Nation
- Tahltan Nation
 - Iskut Band
 - Tahltan Band
- Takla First Nation
- Tsay Keh Dene Nation
- Tseil-Waututh Nation
- Treaty 8 First Nations
 - Blueberry River First Nations
 - Doig River First Nations
 - Halfway River First Nation
 - McLeod Lake Indian Band
 - Prophet River First Nation
 - Saulteau First Nations

- West Moberly First Nation
- Tsimshian Nations
 - Gitga'at Nation
 - Gitxaala Nation
 - Kitselas First Nation
 - Kitsumkalum First Nation
 - Lax Kw'alaams Band
 - Metlakatla First Nation
 - Tsimshian Environmental Stewardship Authority

The EAO also met with the following other Indigenous groups:

- First Nations Major Projects Coalition
- Métis Nation of British Columbia

The EAO met with the Minister's Advisory Council on Indigenous Women.

The EAO met with following industry and business associations (with attendee organizations):

- Association for Mineral Exploration British Columbia
 - Allegiance Coal Limited
 - Amarc Resources Ltd.
 - Bennett Jones LLP
 - Don Bragg, Prospector
 - Ecofish Research Ltd.
 - Hemmera
 - Imperial Metals Corporation
 - New Gold Inc.
 - One-Eighty Consulting Group Inc.
 - Sage Resource Consultants Ltd.
 - Teck Resources Limited
- Business Council of BC
 - Association of Mineral Exploration British Columbia
 - BC Hydro & Power Authority
 - Business Council of British Columbia
 - Bennett Jones LLP

- Blake, Cassels & Graydon LLP
- Borden Ladner Gervais LLP
- Cascadia Port Management Corporation
- Cenovus Energy Inc.
- Clean Energy BC
- Council of Forest Industries
- Enbridge Inc.
- Fasken Martineau DuMoulin LLP
- FortisBC
- Global Public Affairs
- Hemmera
- Independent Contractors and Businesses Association of BC
- Innergex Renewable Energy Inc.
- Kerr Wood Leidal Associates Ltd.
- Keystone Environmental Ltd.
- Lafarge Canada Inc.
- Marine Harvest Canada
- McCarthy Tetrault LLP
- MEG Energy
- Mining Association of BC
- Resource Works
- Stantec Inc.
- Steelhead LNG
- Suncor Energy Inc.
- Teck Resources Limited
- TransCanada Pipelines Limited
- Urban Development Institute Pacific Region
- Vancouver Terminals
- West Fraser Timber Co. Ltd.
- Canadian Association of Petroleum Producers
 - ARC Resources Ltd.
 - Canadian Natural Resources Limited
 - Canbriam Energy Inc.
 - Canadian Natural Resources
 - ConocoPhillips Canada
 - EnCana Corporation
 - Progress Energy Canada Ltd.

- Shell Canada
- Clean Energy BC
 - Boralex Inc.
 - BluEarth Renewables Inc.
 - CSR Environmental
 - Hemmera
 - Innergex Renewable Energy Inc.
 - SNC Lavalin
- Canadian Energy Pipeline Association
 - Canadian Energy and Pipeline Association
 - Enbridge Inc.
 - Global Public Affairs
 - Inter Pipeline Ltd.
 - Pembina Pipeline Corp.
 - TransCanada Corporation
- Coal Association of Canada
 - Atrum Coal Limited
 - Coal Association of Canada
 - Conuma Coal Resources Ltd.
- Mining Association of British Columbia
 - Centerra Gold Inc.
 - Coeur Mining Inc.
 - Graymont Ltd.
 - HD Mining International Ltd.
 - IDM Mining Ltd.
 - Imperial Metals Corporation
 - Mining Association of BC
 - New Gold Inc.
 - Seabridge Gold
 - Taseko Mines Limited
 - Teck Resources Limited

The EAO's workshop with environmental assessment practitioners included one or more representatives from the following companies:

- 49th Parallel Planning
- Advisian
- Arrowsmith Consulting
- Associated Environmental
- Big Sky Consulting
- Compass Resource Management
- Dillon Consulting Limited
- Ecofish Research
- EDI Environmental Dynamics Inc.
- Environmental Resources Management
- Glenn Brown
- Golder Associates Ltd.
- Hatfield Consultants
- Hemmera
- Jacobs Engineering Group
- Janie Bergeron Consulting
- Knight Piésold
- LGL Limited
- Morrison Hershfield
- PGL Environmental Consultants
- Pierce Lefebvre
- SNC-Lavalin
- Stantec Inc.
- The Firelight Group
- Ventus Consulting Inc.

The EAO's workshop with NGOs included one or more representatives from the following:

- Amnesty International
- BC Wildlife Federation
- Bulkley Valley Stewardship Coalition
- Concerned Citizens for Quesnel Lake
- Dodge Cove Improvement District

- Dogwood BC
- Douglas Channel Watch
- Ecojustice
- Environmental Law Centre, University of Victoria
- Fair Mining Collaborative
- Fraser Basin Council
- Friends of Morice Bulkley
- Friends of Wild Salmon
- Georgia Strait Alliance
- Northwest Institute for Bioregional Research
- Organizing for Change
- Outdoor Recreation Council
- Sierra Club
- Skeena Conservation Trust
- Skeena Fisheries Commission
- Skeena Wild
- Suskwa Research
- T Buck Suzuki Environmental Foundation
- West Coast Environmental Law