

**Final Report Summary Report:
Environmental Assessment Revitalization Workshops
with Environmental Assessment Practitioners and
Non-Government Organizations**

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Executive Summary

The BC Environmental Assessment Office (EAO) held two workshops in Vancouver to get input on Environmental Assessment Revitalization (EAR). On March 28, 2018, 44 Environmental Assessment (EA) Practitioners participated in a one-day workshop. This was followed by a workshop for Non-Government Organizations (NGO) on March 29, 2018, attended by 21 participants. During the workshops, the EAO sought input on a variety of topics including:

- How to achieve the objectives of the revitalization process; and
- A conceptual model of an updated process.

The workshops included presentations by EAO staff (to provide background and context) and others and facilitated group discussions, break out groups and table discussions.

EA Practitioner's Workshop

Improving public confidence and transparency was a key theme throughout the day's discussions. Topics included the need for more robust and transparent decision-making, early screening of projects using higher-level (non-project) assessments as a framework for evaluation and the need for better public engagement and communication throughout the EA process.

In terms of new legislation, participants felt that updated legislation needed to be able to stand the test of time and should:

- Have a clear purpose statement;
- Balance flexibility and clarity;
- Lay out a predictable process and clear expectations; and
- Include definitions for key terms such as sustainability.

There was also discussion of the need for a decision-making framework. Suggestions on items to be considered in decision-making included criteria for decision-making, thresholds and linkages to government policy, land use plans (LUP), higher-level EAs (e.g., strategic assessments). Participants also proposed that the reasons for the decision should be clearly described including the decision-making criteria and trade-offs that were made. Examples included the Federal EA decision-statement or the reasons for decisions issued by court judges.

Good science-based information was identified as key to improving public confidence as well as protecting the environment and supporting sustainable development. Issues identified related both to credibility of the data and the volume of information. Suggestions to address these included conducting 3rd party reviews of information, having government experts analyze the data or requiring independent studies. To address the volume of information, practitioners suggested better scoping early in the process to focus the process on the important issues. EA practitioners noted that requisite sharing of data and establishment of a central government database would both improve transparency and be used in EAs, cumulative effects assessments and higher-level assessments.

Better public engagement and communication at all stages of the process was identified as important to improving public confidence and transparency. Participants noted that from a public perspective, much of the EA process occurs "behind closed doors", with opportunities for input at key stages but with no view through to the discussions and thought process around the assessment of impacts and

decision-making. Early engagement that incorporates an opportunity for public input into the process design, finding a way to incorporate a public voice at the working group table and more user-friendly information were all suggestions aimed at improving public engagement. It was however, noted that there would be some challenges with including the public in the working group, including selecting the right representatives (e.g., community association, etc.), ability of members of the general public to understand the technical discussions and the lack of participant funding. Other suggestions to improve public engagement and communication included use of community advisory groups, citizen science and creating more user-friendly information packages using more visuals and graphics. Participants also felt that there was an increased role for the EAO in public engagement, particularly during early engagement, clearing up misinformation and in explaining how feedback is incorporated. Finally, more transparent compliance and enforcement was seen as both helping to build public confidence and protect the environment and encourage sustainable development.

EA practitioner's felt it was important that a revitalized EA process include recognition of Indigenous rights, government's commitment to United Nations Declaration on the Rights of Indigenous People (UNDRIP) and reconciliation activities. There was discussion about whether this should be in the EA legislation itself or provided in a guidance document. Some participants suggested that it was important to include First Nations throughout the process and be flexible to adapt to different communities and interests. Key questions that came up included how the EAO envisioned incorporating First Nations decision-making and how the need for confidentiality around First Nations information would be balanced with the need for transparency, particularly when it is key to the final decision. Better guidance on collecting and incorporating traditional knowledge was also identified as a need of EA practitioners.

On the topic of protecting the environment and encouraging sustainable development, EA practitioners identified the need for good baseline information and supported the use of higher-level and cumulative effects assessment to assist in environmental protection. A clear process with timelines was seen as essential for sustainable development as participants felt that proponents would be hesitant to advance projects without some certainty around timelines. Practitioners also supported the idea of clear criteria and/or thresholds to measure projects against.

Finally, participants identified a need for better continuity and transparency throughout the project regulatory life-cycle (as the project moved from EA to permitting, compliance and enforcement and finally decommissioning). Participants note that a better system is needed to effectively transition both information and relationships as the project moves from the EA process into the detailed permitting and compliance stages. Participants suggested that measurable and enforceable mitigations that follow the project throughout its life-cycle as well public compliance reporting could assist with addressing this need.

NGO Workshop

Public confidence and process transparency were a key focus of the NGO workshop. Participants noted that public confidence has been undermined by numerous factors including a lack of transparent decision-making, limited opportunities for real involvement by the public, a lack of confidence in “proponent science” and a perceived lack of enforcement.

Transparent decision-making was seen as fundamental to public confidence. The public needs to understand the reason for the decision, how the decision was made and how their input was considered. Participants indicated there is a need for explicit decision criteria, a clear framework for decision-making and a requirement for the reason for decision to be made public. In addition, “no” must be seen as a legitimate outcome of the process. There was discussion about the influence of politics on decisions but participants were split on how to address this.

NGO participants made a number of varied recommendations including that the updated legislation should include a clear purpose statement, decision criteria and thresholds and take a sustainability approach (e.g., promoting sustainability as opposed to just avoiding adverse impacts). There was also strong support for the establishment of clear criteria/thresholds that reflect international commitments (e.g., Paris Accord, Human Rights, etc.), and ecological limits (to be set through regional and/or cumulative assessments). Participants also felt that the scope for EA’s should be broadened to include the full range of impacts as well as consideration of both upstream and downstream effects.

Throughout the day there was significant discussion around the quality of the information used in EAs and participants expressed a high level of distrust in “proponent science.” Participants in the workshop suggested that although proponents should pay for the studies need to inform EAs, the consultants/scientists conducting the studies and analyzing the data should be independent of proponents. Some suggested that consultants should be selected from a pre-approved government list and with government providing oversight and the analysis. Access to information was also identified as a concern by NGO workshop participants. Many felt that the volume of information, the reliance on electronic media and technical nature of the data often inhibited effective participation by the public. Recommendations to address these issues included creation of mandatory summaries, ensuring hard copies of the material are more easily available and potentially hiring an independent scientist to represent the public interests.

NGO participants also suggested that engagement and communication with the public should be improved as currently there are limited windows for the public to engage and it is difficult for a lay person to read through and understand the vast amounts of material within the legislative timeframe. It was recommended that the process be revised to include opportunities for public engagement throughout the process, including on the working group. Participants supported the idea of early engagement in the EA and the concept of getting public input into the engagement process. The lack of participant funding was seen as a key barrier to participation pitting “wall street funded proponents” against community groups raising money from “cupcake sales”. Participants also noted that the EAO should take the lead in the engagement process in order for government to hear feedback directly from the public.

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.

NGO participants expressed that the goals of environmental protection and sustainable development should be explicitly recognized in legislation along with clear criteria and thresholds. Higher-level assessments (e.g., regional, strategic, etc.) and cumulative effects assessments were identified as tools to protect the environment and promote sustainable development. Participants felt that there should be clear criteria for triggering higher-level assessments and that these criteria should include the ability to evaluate the impact of multiple small projects (which otherwise would not trigger review). A good understanding of baseline conditions was also seen as critical. It was suggested that a higher-level body be established to oversee strategic assessments and collection of baseline information.

Participants expressed the view that the EAO should be more independent and that compliance and enforcement should be separated out from individual ministries (who also had mandates to promote industry as this could be a conflict). Participants also suggested that there should be more substantial penalties for non-compliance with EA certificate conditions, requirement for bonds in the event of major disasters, more transparency (public reporting of compliance) and a role for the public in compliance and enforcement.

Participants in the NGO workshop also had comments on the EAR process itself raising concerns that the process has limited opportunity for public input. Specific concerns included the timing of engagement (e.g., the public is not being consulted at the same time as First Nations), and the reliance on electronic engagement and participants also suggested a second public comment period on the intention paper.

EA Practitioner Workshop – March 28, 2018

Participants

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Advisian	Margaret Scott
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Dillon Consulting Limited	Richard Pope
Dillon Consulting Limited	Caroline Wrobel
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EDI Environmental Dynamics Inc.	Jennifer Prive
Environmental Resources Management	Leslie Bol
Environmental Resources Management	Justin Page
International Association of Impact Assessment	Glenn Brown
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Golder Associates Ltd.	Sandra Witt
Golder Associates Ltd.	Roxanne Scott
Hatfield Consultants	Angus Johnston
Hatfield Consultants	Jasmine Mason
Hemmera	George Meadows
Hemmera	Ruth Hardy
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Jacobs Engineering Group	Paul van Velzen
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Knight Piésold	Oscar Gustafson
Knight Piésold	Chris Brodie
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LGL Group Limited	Bob Bocking
Morrison Hershfield	Don McCallum
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PGL Environmental Consultants	Bridget Dunne
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SNC- Lavalin	Eileen Miranda
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Stantec Inc.	Lyle Thompson
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Overview

On March 28, 2018, the EAO held a workshop with EA practitioners to get input on revitalization of the Birth Columbia EA process. The workshop was attended by 44 EA practitioners, an observer from the First Nations Energy and Mining Council and representatives of the EAO. The workshop began with opening remarks by the EAO's Assistant Deputy Minister Scott Bailey. The opening remarks were followed by a presentation by an Executive Project Director from the EAO, Nathan Braun, who provided an overview of the EA revitalization (EAR) process, the scope of EAR and activities to date. This was followed by a facilitated¹ group discussion focusing on the questions:

- What should EA legislation be designed to achieve; and,
- How should these goals be expressed in legislation and how should decision-makers apply them?

A second presentation by Nathan Braun provided additional background including information on the recent Federal government EA review, feedback received by the EAO over the years on challenges with the existing legislation. The group then broke in to smaller groups with facilitated discussions at each table around key themes including the goals of the EAR process, the regulatory continuum for projects and higher-level assessments.

Following a lunch break, Nathan Braun provided an overview of a conceptual model that the EAO has been working on to show what a revised process might look like. Following the presentation, the room was divided into four breakout groups to comment on specific sections of the proposed new model.

The following summary aims to capture the many themes and ideas that were discussed at the workshop and does not necessarily represent the unanimous views of all participants.

Summary of Workshop Input

Improving Public Confidence

Improving public confidence and transparency was a key theme of the day. Participants identified numerous ways this could be achieved, including:

- Increasing transparency in decision-making;
- Using strategic assessments, cumulative effect assessments and/or land use plans (LUP's) to screen projects for potential showstoppers early in the process (e.g., project incompatible with LUP);
- Increasing independence of the EAO;
- Improving public engagement and communication;
- Tightening scoping of topics to be considered (focused on the key issues); and,
- Ensuring EAs are informed by strong science and data analysis.

¹ Jane Newlands of SJN Consulting

Decision-making

Robust decision-making and increased transparency around how decisions are made was identified as a key way to increase public confidence in the process. Suggestions included:

- Requiring decision-makers to issue a “reasons for decision” similar to what a judge does in court case;
- Establishing a decision-making framework with clear decision criteria;
- Requiring clear identification of the factors considered in the decision similar to the Federal process;
- Using strategic assessments, cumulative effects and LUP’s to screen projects;
- Include guidance in the legislation around limits of power (e.g., as it relates to First Nations rights);
- Clearly reporting how positive and negative effects are balanced in decision-making; and
- Recognizing the role that values and trade-offs play in decision-making.

Although there was support for an EA process that supports collaborative decision-making with Indigenous groups, there were questions regarding how decisions would be made and the impact on timelines.

Structure of the EAO and its position within government

At the workshop, participants discussed the structure of the EAO itself and its position within government. Some participants suggested considering whether the EAO should continue to be located under Ministry of the Environment and Climate Change Strategy given the Ministry’s mandate is much narrower in scope than EAs. Suggestions included establishing an EA regulator that:

- Reports to a committee of Ministers who represented the five pillars;
- Reports directly to cabinet; and
- Is an independent assessment authority similar to the BC Utilities Commission, although it was noted that there are benefits to having the EAO nested within government and that establishing an independent authority may undermine collaboration with provincial ministries.

Participants also noted the importance of ensuring that each pillar is supported with sufficient expertise, which may include developing more internal expertise at the EAO as opposed to relying on other ministries.

It was also suggested that consideration be given to the value of establishing a single agency with a mandate to conduct project-based EAs and to track all compliance and enforcement for those projects, including all associated permits granted under other provincial regulatory bodies.

Public engagement and communication

Improved public engagement, transparency and communication at all phases of the EA process were identified as key ways to enhance public confidence. Recommendations to improve public engagement included:

- Having the EAO lead engagement during EAs as opposed to the proponent who is often viewed as biased;

- Including public representation on working groups although it was noted that it would be challenging to determine who would represent the public (e.g., neighbourhood association, elected officials, or?) and have the ability to participate at a technical level;
- Increasing opportunities for direct public participation through measures such as the establishment of community advisory panels, and the use of specific tools including citizen science, participatory geographic information systems (GIS); and
- The need for funding for public participation in the process.

Several participants also commented on the challenge of using public confidence as a measure given that it is difficult to measure.

The need for improved transparency and communication also came up several times during the workshop. It was noted that more information was not necessarily better and that very large volumes of information can be regarded as an intentional attempt to discourage meaningful public participation. Suggestions to improve communication included:

- Using tools and/or visual representations to shape the information into something more meaningful to the public – for example, an interactive tool that shows how the project affects various interests;
- Using interactive mapping to support EAs, as well as to support cumulative assessments;
- Providing more information on the EA process itself;
- Having the EAO communicate more proactively, including directly addressing misinformation, reporting back what was heard and how it was incorporated into the EA and reporting monitoring and compliance processes in general, activities and results;
- Providing better information on how feedback was used to make changes to the project; and
- Translating technical reports into lay language and including more graphics.

Participants also noted that although the EAO Project Information Center website (EPIC) is useful for sharing and housing information, it is not a public communications tool (e.g., a tool that helps build the lay public’s understanding of the project and its impacts).

Scoping of EAs, science and data analysis

There were several comments regarding the large volume of information required to conduct an EA and the benefits of better and earlier scoping of the issues and associated studies to increase the focus on key issues and to improve the quality of data. Participants felt that this would help increase confidence and transparency. Other recommendations included:

- Equally considering each of the five pillars during EAs; and,
- Establishing a clear process to resolve issues and formally close them out so they do not need to be revisited later in the EA.

The need for strong science and data analysis to inform EAs was identified as key for both enhancing public confidence and supporting sustainability. Key issues included:

- Credibility of data – There is a perception in the public that the EA process is too driven by the proponent’s “story” and that proponent’s hire consultants to tell the story in the way that they prefer. Suggestions to address this included:

- Having 3rd party review of reports;
- Using government experts to define data needs and/or analyze data; and
- Requiring independent studies.
- Availability of data – Participants supported establishment of provincial databases and suggested that all data including social, biophysical and chemical data that is collected as part of EA’s and government-led projects should be publicly available with some limitations (e.g., location of certain wildlife species under pressure from hunting) to support project-based EAs, higher-level assessments, cumulative effects assessments and LUPs.

Higher-level assessments

The need for higher-level assessments, cumulative effects assessments and LUPs was also identified as important to improving public confidence. These are discussed further below.

Advancing reconciliation with Indigenous Groups

Participants noted that it is important that the legislation be clear about Indigenous rights, the goal of reconciliation and government’s commitment to UNDRIP including “free, prior and informed consent”. There was some discussion about whether new EA legislation should attempt to define these terms or provide a reference to other documents or pieces of government legislation. The rationale for this included the requirement to continually update the legislation as First Nations case law continues to evolve and as government policies change) and to avoid the potential for inconsistent definitions between different pieces of legislation. Participants felt that even if not formally defined in the legislation, the EAO needs to provide proponents guidance on expectations and appropriate methods to engage First Nations. In addition, participants noted that new EA legislation should recognize the strategic engagement agreements government has previously signed with Indigenous people. Other comments included:

- The importance of establishing a flexible process that provides opportunities for First Nations to have varying formalized roles in EAs, as needs could differ between communities;
- Initiating First Nations involvement early in the EA process and requiring that it continue for the full project life-cycle, including involvement in monitoring and ongoing post-certification engagement;
- Clearly recognizing First Nations interests in valued component selection and in the assessment of alternatives; and
- Increasing funding for First Nations participation and improving transparency regarding how funding levels are set.

The incorporation of traditional knowledge throughout the EA process was identified as key to moving towards reconciliation with First Nations. Discussion topics included the need for additional guidance materials and a common understanding of:

- How traditional knowledge should be used in EAs and incorporated with western science-based studies; and
- How traditional knowledge could be shared and how confidentiality could be maintained while supporting transparent decision-making, particularly in cases where a decision relies upon that data.

Participants also identified a need for EA practitioners cross cultural and traditional knowledge training.

Protecting the environment and supporting sustainable development

Many of the elements participants identified to improve public confidence also came up during the discussion on how to protect the environment and encourage sustainable development. Examples included good decision-making, early project screening using LUP's and higher-level assessments and the importance of credible science and analysis. Other factors discussed included the importance of the following:

- A timely but robust process;
- Cumulative effects assessment;
- Linkages between EA and regulatory permitting; and
- Compliance and enforcement.

A robust process with timeline certainty

The need for consistency and the need for timely decisions were identified as key requirements for both protecting the environment while promoting sustainable development. Participants spoke about the need for a clear framework for identifying and mitigating potential impacts that is transparent for both proponents and participants. The ability to pre-screen proposals to give proponents an early indication of success and avoid failures at the end of the process was seen as a tool that would both increase certainty for proponents but also build confidence as projects that are inconsistent with objectives, violate ecological thresholds or environmental commitments could be screened out or identified as having a lower likelihood of success early in the process.

There was debate around whether the EA process should continue to focus on significance and/or mitigation of adverse effects or if it should be an evaluation of costs and benefits. While most participants felt the process should not become simply a cost-benefit analysis, it was recognized that when making decisions, decision-makers weigh the costs and benefits to determine if a project is in "the public interest" or "justifiable in the circumstances" and that these trade-offs should be explicit. The need for not only a clearer characterization of a projects benefits and costs but how those costs are apportioned was also noted. This is particularly important to understand as a couple of participants noted the costs are often disproportionately experienced by vulnerable groups.

Participants noted that additional EAO guidance documents for proponents would assist in creating a robust, timely process. Potential topics include:

- Public and First Nations engagement;
- Traditional knowledge studies;
- Cost-benefit analysis;
- Cumulative effects assessment; and
- Gender-based analysis.

Cumulative effects

Although challenging, participants believed that managing cumulative effects well is key to achieving both sustainability and improving public confidence. Participants noted that new legislation should include a clear linkage between project specific assessments and regional cumulative effects.

Participants believed that cumulative effects assessments provide a key tool to assist regulators in meeting the goals of protecting the environment and encouraging sustainable development. They felt information on cumulative effects could provide regulators with a better understanding of the ecological limits in different areas so they can more effectively evaluate the impact of additional development. Having good cumulative effects data was also seen as a tool for providing proponents an early indication of their project's viability as it could indicate whether the area is at or near capacity and the level of mitigation that might be required to make their project viable.

Suggestions for better management of cumulative effects included:

- Convening EA subject matter experts (e.g., biologists) post-certificate, to discuss the effects they are seeing in the field;
- Requiring proponents to provide their data to government and First Nations to develop a data bank, to support future EAs, government-led cumulative effects assessments and First Nations-led cumulative effects assessment;
- Clarifying responsibility for cumulative effects (most indicated that this should be the responsibility of government rather than the proponent given its broader land use management scope);
- Taking advantage of past studies or work that has been done to date (e.g., 1990's sensitive areas mapping exercise was available online until 2013);
- Establishing a process for on-going monitoring of cumulative effects;
- Establishing thresholds for cumulative effects;
- Clarifying linkages and cooperation between the provincial and federal level governments;
- Recognizing the link between cumulative effects and the ability to practice Aboriginal rights; and
- Establishing thresholds.

Linkages to regulatory permitting process

Participants noted a need for stronger, more transparent links between the EA process and subsequent project stages (e.g., permitting, construction and operations) along with increased transparency along the full project lifecycle. Participants noted that it is unclear how a project, along with the information collected in the EA, is transferred to different permitting agencies, how the information and mitigations discussed during the EA are transitioned into permit conditions and ultimately, how projects are monitored for compliance and enforcement. Participants suggested there needs to be a clear process to transition a project from the formal EA process to specific ministries for permitting and a better system to transfer the information collected during the EA process permitting agencies (particularly as some of those permitting agencies may not have been involved in developing the EA conditions). Key issues discussed include:

- The inability of permitting agencies to participate in working group meetings throughout the EA. It was noted that it is important to have permitting agencies present early in EA to educate parties (e.g., proponents, First Nations, EA practitioners, stakeholders) the role that agencies and their regulatory frameworks will play in the life of the project. However, often these agencies do not have the resources to participate in all EAs; and
- The ability to transition a project effectively from the EA to the permitting stage without losing information, and ensuring relationships developed during the EA are maintained.

Compliance and enforcement

Participants suggested that the following compliance and enforcement related suggestions would support protecting the environment and would encourage sustainability:

- Establishing “measurable and enforceable” mitigation measures that travel with a project through the entire regulatory process and that this could be achieved through increased use of “commitment tables” that list the specific mitigation measures that the proponent has committed to and that are linked to the project throughout its entire lifecycle;
- Implementing a transparent process by which the EAO follows up to see if the management plans (required in project conditions) are properly completed and implemented by the proponent and to evaluate if the mitigations are effective;
- Implementing better mechanisms to let the public know whether EA commitments have been met:
 - For lower risk activities, proponents could be required to report at given intervals on the status of their commitments and these reports could be published by the EAO on EPIC and/or other media. Implementation of self-reporting requirement could be facilitated with standardized templates;
 - For higher-risk activities, proponents could be required to conduct third-party audits on the status of their commitments, also to be published;
- Conducting regulatory permitting processes simultaneous to the EA process and such that they can feed into the EA process;
- Legislating requirements for proponent to make monitoring data (any needed for a permit) publicly available; and
- Delegating all compliance and enforcement to responsible regulatory agency.

Conceptual Model Breakout Session

This section summarizes the specific comments or recommendations on the conceptual model itself. General comments from the afternoon’s discussion of the conceptual model are included in the themes discussed above.

Members of the group noted that although the process is shown as linear, it is in fact, a circular process with decisions being made throughout the process. In some cases, conclusions about what is important can happen during information gathering and analysis phase.

Topic 1: Pre-EA, early engagement and early decision

To support engagement, participants suggested that the EAO should:

- Establish regional offices to support relationship building and to build trust and credibility with local communities;
- Take a bigger role in early engagement; and
- Provide information to proponents on topics such as pre-existing land use plans and First Nations agreements and the type of concerns First Nations in the area have raised in previous engagements.

In regard to early engagement, participants noted that a lack of details in initial project descriptions may be an engagement challenge. Some said that they often hear “come back when you have a project plan/design” to support discussion.

Early screening and higher-level assessments

Although early screening was a popular concept with participants, there were some concerns around government potentially screening out proposals too early. Concerns related to whether there could be sufficient information to make an informed decision at such an early stage and that a proponent should be given the opportunity to identify an innovative way to make it work). For example, participants thought some proponents may be very creative and flexible in changing their project design and/or identifying mitigations that allow them to avoid the showstopper altogether. In contrast, some participants suggested that the EAO needs to be confident enough to say “no” at the readiness test stage and questioned whether there really are showstoppers that would rule out a project or whether this should be just an early signal to the proponent of “significant challenges”.

It was noted that strategic EAs, regional assessments, cumulative effects and LUP’s, along with clear thresholds could provide a mechanism for early screening of projects (e.g., either by informing an early “no” to proponents or to help identify potential red flags).

Other suggestions included:

- Conducting strategic EAs to provide a needed venue for the public to voice concerns about industry or policy direction so these concerns are do not need to be addressed during project-level EAs;
- Strategic EAs or regional assessments should be undertaken for substantial new government economic initiatives (e.g., LNG, commercial recreation), allowing for public input on these broader strategic initiatives;
- Using higher-level assessments to establish thresholds and decision criteria;
- Closely linking project-level EAs to regional and strategic EAs (with FN involvement/support) and that addressing this in EA legislation; and
- Giving increased weight to LUPs and official community plans in EAs, although there is a risk that individual plans and the associated data to become outdated.

The strong linkage between higher-level assessments and management of cumulative impacts was noted by participants who said that higher-level assessments and good baseline data are needed to do cumulative effects assessment in project-based EAs. Participants suggested that cumulative effects should be evaluated within the context of an existing plan at the regional level stating that cumulative effects of existing activities should be evaluated first, and then the potential project-specific effects should be evaluated within this context.

There were also questions regarding who should be responsible for higher-level assessments and LUP. Some participants suggested that this should be done by an independent assessment authority although others were of the view that it could be done by the EAO or the Ministry of Forests, Lands, Natural Resource Operations and Rural Development if they were provided additional resources.

Topic 2: Process planning, information gathering and analysis

Data

Concerns were raised about the volume of data collected for EAs currently, relative to the information that is needed to inform decision making. This issue was similar to the morning discussion on scoping and the need to focus on what is important rather than sheer volume. Participants also noted the importance of having government databases to share data between proponents and First Nations and to support higher-level assessments and cumulative effects monitoring.

Roles and responsibilities

While participants expressed the view that the proponent could continue to be responsible for gathering data, many felt that the EAO (and other government agencies) should take a bigger role in the analysis of data. It was also noted that the EAO had a role to play during information gathering and analysis, both in facilitation of planning and overseeing data collection.

Resources

Participants noted that government capacity would need to be increased to carry out all aspects of the proposed process set out in the conceptual model. This includes, not only EAO staffing and resources, but those of permitting agencies as well.

Co-Led EA's

It was noted that EA's co-led by First Nations could be effective where First Nations make-up majority of population but could be more of a challenge in other areas.

Topic 3: Impact assessment and decision making

Impact assessment and significance determination

Many participants expressed the view that the EAO should lead the impact assessment stage in the conceptual model as the proponent could be seen as bias and inclined to minimize impacts. Regarding significance determinations proponents provided the following range of comments:

- Proponents and their consultants should not assess significance, leaving it to the EAO;
- Ministers should determine acceptability (significance) and the EAO should simply describe potential effects; and
- Significance determinations should not be used to inform EA.

Participants also noted that if significance determinations are retained, a definition is required.

Some participants went even further suggesting that the EAO should also not make recommendations on the acceptability of proposed projects and just describe issues and context in the Assessment Report, leaving decision-makers to make their decision without a recommendation. The Timber Supply Reviews were suggested as an example.

Process certainty

Participants noted that in the conceptual EA model, proponents would be expected to invest a lot of time, effort and money early in the process (during Early Engagement, Process Planning, & Information Gathering and Analysis). They expressed the concern that this investment might not "pay off" (in terms

of time and money) when the project proceeds into the later stages of the EA. For example, based on participants' experiences, issues that are they understood to be resolved early in the process can resurface later in the EA, requiring additional resources and study.

To ensure that the impact assessment and decision-making stage timeframes are in line with expectations, participants recommend considering the following ideas:

- A formalized way to identify, communicate and “prioritize” issues (i.e., identify the critical path issues);
- A formalized “off-ramp for issues” when they are resolved to ensure that “green lights stay green” and issues don’t come back later in the process (e.g., because of new people joining the team);
- A formalized commitment from all parties to establish agreed-upon protocols and methodology and to identify key project issues for the EA; and
- A second “readiness test” between Process Planning and Information Gathering and Analysis to address identified issues.

Topic 4: Post certificate – monitoring and compliance

Compliance and enforcement was identified as a key area to improve public confidence in the system. Participants felt that there needed to be stronger enforcement (e.g., greater penalties) as well as better communication of compliance and enforcement activities. Participants noted a strong link between monitoring and compliance and communication including easily accessible plain language descriptions of how conditions have been met. (i.e., monitoring and compliance doesn’t just need to be done, it needs to be effectively communicated). It was also suggested that reporting and communication requirements should be included in EA certificate conditions.

Other suggestions included:

- Limiting the considerations in amendment process to the scope of proposed changes and scaling the process to match the scale of the proposed changes;
- Increasing reporting of post-certificate socio-economic impacts, data (e.g., labour force data) and cumulative data to assess validity of predictions in applications and to inform future project assessments;
- Increasing community involvement through tools such as community-based citizen-science information gathering;
- Standardizing collection of reporting data to set up testable hypothesis to inform future projects assessments including using a standardized environmental management system to improve consistency and reporting of results.

Non-Government Organizations Workshop – March 29, 2018

Participants

Amnesty International	Fiona Koza
Amnesty International	Lionel Guiltner
Amnesty International	Nadene Guiltner
Amnesty International	Rick Holmes
BC Wildlife Federation	Al Martin
Concerned Citizens for Quesnel Lake	Doug Watt
Dogwood BC	Kai Nagata
Dogwood BC	Noal Amir
Ecojustice	Alan Andrews
Fair Mining Collaborative	Tara Lamothe-Ammerlann
Fraser Basin Council	Steve Litke
Georgia Strait Alliance	Andrew Radzik
Georgia Strait Alliance	Anna Barford
Organizing for Change	Lisa Matthaus
Northwest Institute for Bioregional Research	Pat Moss
Outdoor Recreation Council	Jeremy McCall
Sierra Club	Caitlyn Vernon
University of Victoria	Calvin Sandborn
West Coast Environmental Law	Connor Wear
West Coast Environmental Law	Gavin Smith
West Coast Environmental Law	Anna Johnson

Overview

On March 29, 2018, the EAO held a workshop to get input from NGO's on the EAR.² Twenty-one participants from fourteen different groups attended the workshop in addition to an observer from the First Nations Energy and Mining Council, and observer from the Environmental Assessment Advisory Committee, representatives from the EAO and an independent facilitator.³

The workshop was a mix of presentations, group discussions and smaller break-out groups (table discussions). The workshop was kicked off with an introductory presentation by Nathan Braun, Executive Project Director from the EAO, who provided background on the EAR process, scope of the review and purpose of the day. This was followed by a group discussion focusing on the purpose and goals of the EA with specific input sought on the following questions:

- What should EA legislation be designed to achieve?
- How should these goals be expressed in legislation and how should decision-makers apply them?

Mid-morning Anna Johnson from Westcoast Environmental Law provided an overview of the Federal EA review and its key outcomes. This was followed by a second presentation by Nathan Braun who provided additional background including feedback received by the EAO on challenges with the existing legislation and EAR activities to date. Discussion after the presentations continued with a focus on the goals of the EAR.

After lunch, Nathan Braun provided an overview of a conceptual EA model that was developed based on past feedback and EA best practices to support engagement. Following a question and answer session and some general comments, the group broke out into small group (table discussions). The key themes discussed included:

- Public confidence and transparency;
- UNDRIP;
- Environmental protection and sustainability;
- The EAO/EA regulator;
- Higher-level assessments; and
- The interface between EA and other regulatory processes.

The following summary aims to capture the many themes and ideas that were discussed at the workshop and does not necessarily represent the unanimous views of all participants.

Summary of Workshop Input

Public Confidence and Transparency

During the workshop, participants identified several factors that could be improved to enhance public confidence in the EA process including:

² In response to requests from regional NGOs, the EAO held an additional workshop with NGOs in Smithers, BC on April 6, 2018. A summary of the April 6, 2018 workshop can be found at <http://www.eao.gov.bc.ca/revitalization/>

³ Jane Newlands of SJN Consulting

- Credibility of decision-making;
- Access to, and credibility of, information used to inform the EA;
- Meaningful opportunities and funding for public involvement; and
- Post-EA compliance and enforcement including reporting of compliance and enforcement activities and findings.

Decision-making

Actual or perceived disconnects between public input and government decisions (e.g., the Site C approvals), were identified as having undermined public confidence in the EA process. Participants noted that in order to enhance confidence, the public must believe that a “no” decision is a possible outcome of an EA process. Other recommendations aimed at restoring public confidence included:

- Legislating a clear and substantive decision-making framework that sets out specific criteria for consideration such as Paris Agreement commitments, climate change commitments, maintaining local fish populations at current levels, etc.);
- Establishing early decision-making tests (or readiness gates) with criteria such as impacts on species-at-risk, impacts to the ability to hit climate reduction targets, Aboriginal rights and ecological limits and thresholds;
- Increasing the transparency regarding how decisions are made, including the criteria used and how information from the public and First Nations was considered;
- Requiring decision-makers to explain their decisions and issue reasons for decision;
- Reducing the geographic distance between decision-makers and those who directly affected; and
- Establishing a process by which the public can appeal the EA process and decisions. It was also noted that any appeal process should provide provisions for the general public to appeal without financial risks.

Access to and credibility of information

Access to and validity of information underlying EA decisions was also an area of concern for participants as was the credibility of proponent data and conclusions. Many of the workshop participants noted that members of the public question the reliability of proponent-funded science and consultants. Suggestions for improvement included:

- Increasing the separation between the proponent and the scientists that conduct the studies for the EA. Many participants felt that the EAO should control the information and oversee the studies with the proponent required to provide the funding. It was also suggested that if proponents continue to lead EAs they could be required to use consultants from an EAO pre-approved consultant list;
- Improving access to information at each stage of the process;
- Providing information in a more user-friendly format that is concise and easy to understand such as requiring plain language summaries/translations with annotations to technical reports; and
- Providing funding for an independent scientist hired to represent public interest.

Early engagement and meaningful participation

Early engagement and meaningful public engagement were identified as key to restoring public confidence and trust. Participants supported the early engagement phase proposed in the conceptual model and supported having the public involved in EA process planning to help focus on what is relevant. Suggestions to improve public engagement included:

- Requiring the EAO to lead public engagement activities to ensure government receives unfiltered feedback on the public's interests and areas of concern;
- Providing participation funding for public because currently the process is viewed as pitting "wall street funded proponents against cupcake-sale funded community groups";
- Improving public representation throughout the process, particularly at the working group level through mechanisms such as a public intervenor/advocate who would sit on the working group and/or a public translator for the process and key issues of the project focus for EA; and
- Varying engagement methods based on community needs. For example, lessening reliance on electronic mechanisms to share information as it discriminates against those who are not computer literate or have access to a computer and in rural areas, considering posting up signs at the post office or notices in the mailbox.

Compliance and enforcement

Many participants noted that to restore public confidence in the EA process, there needs to be more compliance and enforcement and that this information needs to be public. Participants also recommended:

- Imposing consequences of non-compliance that are significant enough to act as a deterrent;
- Requiring proponents to put up bonds for disasters;
- Providing more support for the community in the event something goes wrong (e.g., Mt. Polley);
- Establishing independent regulators to lead compliance and enforcement. It was noted that currently there is a sense that there could be a conflict of interest as the same agencies who support and promote an industry are responsible for compliance;
- Including a role for the public in enforcement, possibly through establishing the right for the public to take a proponent to court in the face of non-compliance; and
- Requiring annual compliance checks post-certificate with results posted publically.

Finally, there should be a public process to address post-certificate amendments and ensure that changes do not negatively impact local communities and that compliance requirements are updated to reflect the changes.

Advancing Reconciliation

There was strong support for First Nations involvement in the EA process including decision-making. There was also support for implementing UNDRIP and formally recognizing the principles and goals of reconciliation. However, the group focused less on this revitalization topic, believing that First Nations themselves were in better positioned to provide feedback on this topic.

There was one cautionary note raised in terms of inadvertently fueling tension between public and First Nations communities if opportunities are not provided for both to participate in EAs and the reasons for

different levels of participation are not fully articulated.

Environmental Protection and Sustainable Development

Participants felt that one of the best ways to ensure environmental protection and sustainable development would be to include these goals explicitly in new legislation along with specific thresholds and criteria. In addition, improving cumulative effects assessment was seen as a key tool for helping protect the environment and promote sustainable development.

New Legislation

Workshop participants recommended that new EA legalisation should articulate the goals of environmental protection and sustainability and formally recognize external environmental commitments (e.g., Paris Accord) and that revitalization should include establishing thresholds established through strategic/regional EA's and cumulative effects assessment.

Participants noted that given the significant threat posed by climate change and the commitments made under the Paris Accord, that there should be a climate test as part of the decision-making criteria – with some suggesting the establishment of a fixed carbon budget that all projects would be required to stay within.

Participants expressed the view that new EA legislation should have a clear purpose statement and incorporate government commitments (e.g., Paris Accord, human rights), have clear definitions and include references specific decision-making criteria. Participants suggested:

- Including a purpose statement along the lines of “BC will meet climate targets, manage cumulative effects and fulfill UNDRIP commitments;
- Adopting a sustainability approach (as opposed to whether or not a project has adverse effects).
- Defining what sustainability means in a BC context;
- Establishing clear objectives at landscape and watershed level to promote resilience in the face of development and climate change;
- Considering use of higher-level EAs, LUPs and cumulative effects assessments to establish objectives and thresholds for various regions;
- Developing a framework for how to apply criteria and make trade-offs; and
- Including a legislated requirement for information from LUPs and CEFs to be considered in project EAs.

Some participants raised a concern that information from LUP might be stale or outdated and suggested caution when using them to set criteria.

Finally, some participants recommended that the legislation should allow for collaborative EAs (e.g., with the provincial and federal governments, First Nations, etc.) and/or some sort of participatory natural resources governance.

Cumulative effects

A good understanding of baseline conditions and cumulative effects assessment was seen as a key tool for protecting the environment and supporting sustainable development. Suggestions included:

- Register all provincially regulated projects on a central database;

- Map all the different kinds of projects so cumulative effects can be determined;
- Address data gaps (participants felt that basic information on current state of development and ecosystems is missing as well as the ability to look regional data on regional levels); and
- Conduct regional baseline studies to better understand existing impacts, particularly in areas of intensive resource development, such as the Northeast.

Higher-level assessment

There was strong support for higher-level assessments (strategic, cumulative and regional assessments) and land use planning to provide context for project level EAs and to evaluate the project's impact on sustainability objectives. Participants noted that:

- Higher-level assessments provide an opportunity to address big picture issues not considered in project specific EAs.
- Look at projects in a way that doesn't just reduce impact but contributes to sustainability.

Participants recommended:

- Establishing clear criteria for triggering higher-level EA. Suggestions of potential triggers included emergence of a new industry (e.g., LNG), biological thresholds could be exceeded, public concern and/or ecological decline;
- Ensuring the EA process has the ability to capture multiple small projects that cumulatively have potential for big impacts (e.g., placer mining, independent power projects);
- Establish criteria and thresholds for specific regions or eco-systems based on higher-level assessments; and
- Establish a body to oversee regional assessments and big picture planning work. It was noted that the scope of this body needs to be broader than EA as there are non-reviewable projects and other policy decisions that should be informed by these big picture assessments.

Finally, there was a question was raised about how to address watersheds and economic zones that cross provincial and international borders. While recognizing it opens up "a big can of worms" to try to apply a provincial EA to another jurisdiction, they felt that there needs to be some way to account for cross border impacts.

EA Regulator

At the workshop, there was discussion of what type of organization and organizational structure is needed to support achievement of the three objectives of EA. Workshop participants were divided over what model would work best. Suggestions included:

- Creation of an independent agency that is arm's length from government like the BC Utilities Commission;
- Creation of an overarching authority that can enable and facilitate collaborative regional assessments ("paddling together");
- Establishment of an independent sustainability authority to ensure rigor of evidence that decisions are based on, and contribute to public confidence, dispute resolution; mandate to achieve a set of goals;

- Creation of co-governance bodies to administer assessments at a regional level; and
- Establishment of EA review panels.

Other Topics

- The need for companies to take on responsibility for externalities (e.g., full cost of their project) – several participants feel that currently costs of projects often become a burden to the community (Mt. Polley).
- A rights-based approach to EA that considers human rights impacts and environmental impacts on equality. Include specific language around how rights are being respected, protected, and fulfilled.
- Need to include Gender Based Analysis to understand the differential impact of a project's environmental, health, social and economic impacts.

Finally, some participants raised concerns with the EA Revitalization Process making the following comments:

- The public is not being consulted at the same time as First Nations.
- The need for a second public comment period on the intentions paper.
- Engaging the public electronically misses a large part of the population.