Improvements to the Performance of the Federal Regulatory System
Issues and Research Scoping Workshop

- Ottawa, December 10th, 2008 -

Workshop Summary Report

Submitted to:

Major Projects Management Office
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1 Introduction

1.1 Purpose & Context

The Major Project Management Office (MPMO) at Natural Resources Canada is leading collaborative work to improve the performance of the overall regulatory system for major resource projects in Canada. A key component of this initiative is to conduct research and analysis on short- and longer-term policy, regulatory and/or legislative options to improve the federal process. In looking to advance improvements to the regulatory system, this initiative will analyze the broad regulatory system from start to finish (pre-submission through to follow-up and monitoring).

The MPMO hosted an issues and research scoping workshop on December 10th, 2008 in Ottawa. The objectives of the workshop were:

- To identify areas where the federal regulatory process for major resource projects needs to be improved, both in the short-term (1 year) and the longer-term (2 to 3 years)
- To identify short- and longer-term policy research requirements in support of improvements

The Agenda for the workshop is provided in Appendix A.

Twenty-three individuals with a range of perspectives and experiences concerning the regulatory process for major resource projects participated, including some from industry associations, environmental non-government organizations (ENGOs), academia, and environmental assessment (EA) practitioners. These participants, as well as staff from MPMO, the federal regulatory community and Stratos, attended the workshop[1] (see Appendix B for a list of the participants.)

This report provides a summary of perspectives and ideas expressed and exchanged during the workshop. The workshop was not organized as a formal consultation nor was it intended to reach consensus among the interests and expert participants. However, the report does identify areas of general agreement arising from the discussion.

1.2 Workshop Opening

Jill Baker, Director Policy Research, welcomed participants on behalf of Philip Jennings, Assistant Deputy Minister MPMO. Ms. Baker also provided an overview of the MPMO, its mandate, and introduced the objectives of the workshop.

[1] Comments regarding the range of participants and the nature of the workshop included:

- One NGO participant noted that there were only three environmental NGO participants.
- Others noted that this was not a formal consultation, and that the range of interests and expertise from other sectors included additional environmental voices.

Ms Baker emphasized that improving the regulatory process requires an integrated and systems-based approach and collaboration between all key federal agencies with responsibilities relating to major resource projects: Natural Resources Canada (NRCan), Environment Canada (EC), Transport Canada (TC), Fisheries and Oceans Canada (DFO), Indian and Northern Affairs Canada (INAC), the Canadian Environmental Assessment Agency (CEAA), the Canadian Nuclear Safety Commission (CNSC), and the National Energy Board (NEB)[2]. The MPMO mandate includes developing and implementing immediate improvements to the regulatory system (many of which are now underway), as well as research and policy for long-term improvements involving structural changes to the system.

Ms. Baker then provided a brief presentation on the MPMO's policy options work, setting out the broad objectives and goals.

2 Current Federal Regulatory Process

To set the stage for a plenary discussion, Robert Boulden of Boulden Environmental Consulting provided an overview of the existing federal regulatory process. Mr. Boulden reviewed the key acts and regulations of the federal regulatory system and touched on some of the sources of complexity in the current system.

Following the presentation, there was a roundtable discussion in plenary to address: what is working well; what could be improved in the short-term; and what could be changed in the longer-term within the federal regulatory system.

Each participant offered their initial perspectives on the existing federal regulatory system, in response to one of the questions posed above. Overall, participants emphasized the need for improvements in efficiency and effectiveness of regulatory processes given the increasing investment in new energy (including renewables) development, other resource development, and transportation and urban infrastructure development by:

- focusing on the key features and issues for each project in the EA process;
- improving the knowledge base on regional and local environmental conditions available to new projects,
- improving expertise within federal departments and agencies; and
- ensuring that regulatory outcomes are linked to the achievement of key policy objectives, especially those addressing climate change and the relationship between energy and climate change.

Participants stated that they were encouraged by the creation and role of the MPMO and were ready to engage with the office to further improve the regulatory system.

[2] These agencies are parties to the *Memorandum of Understanding for the Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Project*

The main messages and themes expressed by the participants are summarized in the following sections.

2.1 Integrate policy objectives into regulatory practice

The system has been ineffective at dealing with the key issue – climate change.

Participants indicated that the current regulatory system does not reflect more recent government of Canada objectives, is hampered by the lack of clear federal policy, especially those related to climate change and sustainability in general. On the one hand, there is a vacuum in terms of federal policy on energy and the energy-environment links. On the other hand certain recent statutes such as the *Federal Sustainable Development Act* and the *Kyoto Protocol Implementation Act* should have a bearing on how federal departments approach their regulatory mandates. One participant emphasized that the regulatory process for major projects is not effective unless it addresses climate change. Although some recent panel reviews have considered sustainability, one participant stated that sustainability considerations need to be formalized in the regulatory system.

We have missed a generation of investment required for more sustainable living.

A few participants noted that while projects need to be scrutinized for their climate change impacts, the regulatory system must also be efficient at approving projects that directly contribute to Canada's climate objectives, such as clean energy projects and large public transit projects. Improvements to the efficiency of the regulatory system for such projects will help Canada achieve its carbon emission reduction objectives.

One participant noted that for some projects such as nuclear development the regulatory process becomes a forum for policy debate. This participant suggested that more clarity is required on related policy issues, so that the regulatory process can focus on how industry can function safely and in a way that protects the environment, within the context of policy which is established through non-project processes.

2.2 Focus on key issues

Several participants agreed that a more focused regulatory process is required. For most projects being considered for approval, there are usually only a few key issues that make a difference to the decisions and final project approvals. The regulatory system could be improved by ensuring that, to the degree possible, these key issues are identified early and communicated to decision-makers to guide regulatory process decisions. One participant stated that the *Canadian Environmental Assessment Act* is not an effective piece of legislation for achieving this.

Another participant indicated that smaller issues can be dealt with in project life-cycle through a total quality management system that is put in place after EA decisions, or through later regulatory approvals, rather than in the EA stage.

2.3 Improve knowledge base

The government needs to go back to what government is good at – collecting knowledge and establishing baselines. This would improve quality.

From the perspective of many participants, the role of the Federal government in providing the underlying information to support regulatory processes has been diminishing, especially in terms of setting environmental objectives and conducting the research to support these objectives. Participants made specific reference to cumulative effects assessments and state of the environment reporting as areas where governments have not kept pace with needs.

2.4 Improve expertise

[Federal EA practitioners] are risk averse and end up studying everything …

A number of participants identified technical expertise among federal EA practitioners as an area for improvement, one that cannot be addressed through legislative change. One participant specified that federal practitioners need to have experience with the management of large projects, and knowledge of the sectors and types of projects with which they are dealing, in addition to expertise in the regulatory process itself. Concern was also expressed about the level of turnover among these government officials which reduces institutional memory.

2.5 Strengthen strategic/overarching processes (meta-level processes)

A few participants agreed processes above the project level, including strategic environmental assessment (SEA) and land-use plans, should be strengthened and should be linked more effectively to project assessments. Some concern was expressed that SEA, thus far, has been mainly a paper exercise.

2.6 Other Issues:

- One participant stated that there is currently a separation between policy and regulatory authority with respect to Aboriginal peoples, and that the federal

government has a legal obligation to address this by integrating Aboriginal rights into the regulatory process.

- Regulatory processes need to ensure good environmental performance and respect ecological thresholds.
- More clarity is required regarding the implementation of the precautionary principle and adaptive management in the EA process.
- Many participants indicated that federal regulatory agencies seem more focused on process than on environmental and broader sustainability outcomes.
- One participant stated that the federal EA and permitting/licensing processes still have duplication, and that a single review process should be an option.
- Harmonization with provincial regulatory systems cannot be ignored and needs to be addressed in any broader review of the regulatory process.
- Assessments need to be triggered earlier, during the planning process, and more coordination between federal triggers is required.

3 Key Regulatory Issues for MPMO to Address

Following the roundtable plenary discussion, participants divided into small groups to discuss the following:

- Based on your experience (overall or sector-specific) what are the key issues that hinder the federal regulatory process from being more effective and efficient?
- What previous, on-going, or proposed initiatives of departments or agencies represent positive steps towards improving the situation?

Participants identified a range issues that hinder the federal regulatory system from being more effective and efficient. In many cases, participants elaborated on issues identified in the initial plenary session. A number of positive government and departmental initiatives were cited as steps towards improving the regulatory processes.

3.1 Key Short-and Long-term Regulatory Process Issues

People capacity

Participants expressed concern about the lack of experience and skills among some federal regulatory practitioners, which is manifested as risk aversion, asking for more information, unwillingness to move forward in process steps, and reluctance to allow the EA process to focus on a small number of issues of importance. Some participants attributed this capacity issue to the rate of turnover among staff in certain departments and agencies. Others stated that expertise was too "dispersed" among federal departments and agencies.

Data/information capacity

Participants identified a range of issues related to information limitations in the regulatory process including lack of availability of regional baseline environmental data and information, insufficient clarity on information requirements at different stages of the process, and lack of information sharing between agencies. The issues identified include:

- A lack of good baseline information, information on thresholds and consistent indicators, which was attributed to not managing and consolidating information from previous EAs and a lack of national and regional 'state of the environment' reporting;
- A lack of clarity among proponents regarding the level of information required at each stage or aspect of the regulatory process (e.g. for an environmental impact assessment (EIA) versus a regulatory approval);
- Insufficient knowledge sharing and transfer between agencies and levels of government, and within agencies between different demographics; and
- A lack of knowledge related to specific projects and regions among Ottawa-based federal practitioners. A certain level of knowledge is needed to effectively scope the issues and to focus the EA, and a lack of knowledge leads to 'paralysis' in the process and delving into detail where it is not required.

Some participants added that information on process performance from previous EAs is also lacking and having such information may lend itself to improving performance of the system.

Timelines

Participants identified a range of issues related to timelines and schedules for EAs and regulatory approvals, including:

- EAs are being triggered too late for some projects;
- The Federal Coordination Regulations are not being followed adequately; and
- Delays in the regulatory process represent a significant cost for the industry and for the public as well. More certainty is required and this should be reflected in project agreements (e.g. by setting time limits).

Lack of integration with land use planning processes and other higher level processes

Some participants stated that there is a "planning gap", and a lack of regional plans to provide a basis for cumulative assessments and the context for specific project EA. A challenge that was identified is that all provinces do not conduct land use planning consistently, and furthermore, that the federal government often does not have the mandate to set a planning requirement.

Some participants warned that SEA and regional assessment should not be viewed as a panacea to address current deficiencies. Rather, ways must be found to effectively incorporate them or link them to current processes.

Lack of integration of climate change and sustainability objectives in regulatory system

It was noted that there are significant gaps in federal policy objectives related to climate change, energy and sustainability. Therefore, policy objectives in these areas are not formally integrated into the current federal regulatory system. A specific suggestion was for sustainable development and climate change benefits and impacts to be included in Environmental Impact Statements (EIS).

Some participants indicated that SEA could help to identify key issues at an early stage of the regulatory process for major projects.

Participants drew a distinction between the regulatory system being consistent with, and reflecting, current policy - and pushing policy issues into project EAs. Some participants expressed concern about policy debates occurring within the EA process, a consistent point brought up throughout the workshop.

Lack of integration of Aboriginal rights and S.35 consultation requirements in regulatory system

Some participants stated that there is a 'lack of respect' in the regulatory system for major projects for the constitutional provisions and Supreme Court of Canada decisions which define Aboriginal rights. Also, the EA process does not sufficiently utilize Aboriginal traditional knowledge. It was suggested that more clarity be provided regarding application of S.35 consultation requirements[3] in the EA and other federal regulatory processes.

Duplication and lack of coordination

Several participants raised the issue of duplication among agencies, and in the treatment of issues (e.g. crown consultations) between the EA process and the subsequent regulatory processes. There was also a perception among some participants of a lack of sharing and trust between federal agencies.

Some support was expressed for expanded use of the substitution provision in the federal EA process whereby the EA process (not the decision) is delegated to a more suitable legislative platform and agency. The assessment of the Emera Brunswick

[3] The common law has interpreted section 35 of the Constitution Act, 1982 as placing a fiduciary duty on the Crown vis-à-vis First Nations. This fiduciary duty has been found by Courts to require federal and provincial governments to engage in meaningful consultation with Aboriginal peoples before making decisions that have the potential to impact their aboriginal or treaty rights. Failing to consult during all stages of a project or an environmental assessment has been found to violate section 35.

pipeline by the National Energy Board (in lieu of the CEAA process) was cited as an example.

3.2 Steps towards Improving the Situation

A number of current and /or recent federal government initiatives were noted as positive steps towards improving the federal regulatory review process. Several participants commended the MPMO and the Major Projects Deputy Ministers Committee for the steps taken thus far to improve the regulatory system. Other ongoing and proposed initiatives that represent positive steps towards improvement included:

- The example of EA substitution that was used in the NEB application review for the Emera Brunswick pipeline EA;
- The use of a 'single' process in the north (Yukon, Northwest Territories, and Nunavut), including the early involvement of regulators in these processes;
- The designation by DFO of specific individuals in its regional offices for EA processes as part of its risk management framework;
- The Canadian Council of Ministers of the Environment's (CCME) development of a framework for regional assessments (a public report is expected soon);
- NRCan's GeoConnections geo-referenced database for environmental information;
- NEB's outreach activities; and
- CEAA's Research and Development program.

4 Research Needs to Address Key Regulatory Issues

Participants divided into small groups to discuss research needs addressing the following questions:

- Based on the issues for regulatory improvement identified earlier, what practical policy analysis and research needs to be pursued:
    - In the short term (1 year)
    - Over the longer-term (2-3 years)
    - What do you perceive as priorities?

4.1 Short-term

Participants identified the following activities and issues for short-term research:

- Identifying and applying interim environmental limits and ecological thresholds;
- Examining mechanisms for triggering EAs at an earlier stage of the process;
- Pre-defining information requirements at each stage of the regulatory process;
- Compiling lessons-learned and 'post-mortems' on past projects (both 'good' and 'bad') to look into the critical issues, risks, and results of the regulatory process, as well as examining strengths and weakness of both the project proposal (project description and EIS) and the process;

- Identifying policy gaps at the federal level and how to fill these voids (e.g. climate change, cumulative effects);
- Determining how to achieve federal policy objectives through EA and regulatory processes; and
- Identifying indicators and collecting data on regulatory process performance.

4.2 Longer-term

Participants also identified the following activities and questions for longer term research:

- Exploring the development of separate regulatory processes and requirements for government and private sector projects;
- Reviewing federal EA triggers to improve the efficiency and effectiveness of this stage of the EA process;
- Examining the potential use of full-cycle regulator substitution to:
    - Find further opportunities for effective substitution; and
    - Examine the concept of "best placed jurisdiction";
- Conducting a system-wide review of the federal regulatory framework, including all steps from first contact to final permits, as well as consultation requirements, to answer the questions:
    - What are we doing and why?
    - What is meaningful to the public?
- Developing consistent ecological thresholds and indicators;
- Developing standards and/or harmonizing requirements for baseline information, including compatible formats for receiving information from different projects, especially for cumulative effects management;
- Examining the use of regional assessment, including the following questions:
    - How to incorporate it into the EA process?
    - Where does a lack of regional assessment data create EA/regulatory problems?
    - What is needed to build regional data capacity?
    - Identification of best practices in regional assessment, with Aboriginal input (examples can be drawn from Northwest Territories and Quebec).
- Examining the reasons for variations in timeframes for completing EAs such as:
    - Scoping issues, including variation in scope during assessment;
    - Decisions by proponents;
    - Differing information requirements from provincial and federal departments and agencies; and
    - Duplication of effort in the review process.
- Examining requirements for monitoring of project impacts, after EA and regulatory approval, to achieve transparency and to ensure accountability for project outcomes; and
- Exploring and reviewing alternative governance models for the EA and regulatory review processes (e.g. permanent CEAA tribunal, similar to the NEB).

5 Discussion of International Approaches: Lessons for Canada

To set the stage for this discussion, Robert Connelly, of Connelly Environmental Assessment Consulting, provided a comparative overview on approaches for triggers and decision-making in EIA in various jurisdictions (all were federations): Austria, Australia, Germany, India, Switzerland, United States of America, the European Union (EU), and Canada.

Participants explored the following questions in small discussion groups:

- Are the federal triggers for EA still relevant?
  - How can reviewable projects be triggered early enough to avoid delays in assessments?
  - Can responsible authorities make better use of the EIA process to gather information to reduce the time they need for permits or authorizations or funding decisions?
  - Do the triggers result in the inclusion of too many small projects?

- Is self assessment for major projects still appropriate?
  - Would efficiencies and greater consistency be obtained with a single EIA decision?
  - Would this improve subsequent regulatory decisions and improve harmonization with others?

5.1 Are the federal triggers for EA still relevant?

Participants recognized the strengths and weaknesses of Canada's federal triggers and the list approach used in other jurisdictions.

A range of issues related to Canada's approach to triggers was identified in the discussion groups:

- Regulatory permit and authorization-based triggers may result in a succession of triggers throughout the life of project and potentially result in many small project EAs.
- The approach to triggers can result in the exclusion of departments with mandates for issues which may be impacted by the project (e.g. exclusion of Parks Canada).
- There are situations where the triggers may result in a process-driven EA where the information provided by the proponent may be of poor quality because it serves the process rather than addressing key issues.
- There are some inconsistencies between regional offices of certain departments in their interpretation of whether there is a trigger or not for specific projects and project types. Applying triggers early in the process is a challenge if there are

disagreements on whether a trigger exists (which often stems from information requirement differences among departments).

Some participants held the view that the current approach to triggers is logical as it captures all areas of federal jurisdiction. However, others noted that the funding trigger in particular can lead to overlap with provincial jurisdiction. It was suggested that the funding trigger be re-examined and consideration be given to limiting the funding trigger to SEAs.

Several participants expressed openness to the idea of a list-based approach, such as those used by Australia and the EU, but identified the following caveats:

- Using criteria such as "matters of national significance" (as is used in Australia) would require a high-level policy discussion and agreement;
- The list must be clear to be more efficient. Specifically, a short list with risk-based "on ramps" (conditions for inclusion) is preferable to a long list with "off-ramps" (conditions for exclusion); and
- A list approach may function best in the context of gradual technological development, but may be weak in handling rapid change in technology and the nature of projects.

5.2 Is self-assessment for major projects still appropriate?

Many participants saw an opportunity to address some of the deficiencies in the current regulatory process, which is based on self-assessment approach, by adopting a single decision-maker model. The following potential benefits were identified:

- Having a single assessment agency with decision-making authority could solve current problems associated with triggers as they would hold the mandate to trigger an assessment;
- Regulatory decisions and monitoring would still reside with the regulator, but the regulator would be more focused on their mandate which may reduce delays;
- By avoiding situations involving multiple responsible authorities (RAs), there may be more consistency in the process across Canada (including the conduct of Crown consultations), and efficiency in making decisions; and
- The conduct of a single site-wide EA may prevent a series of smaller EAs arising from regulatory triggers associated with various elements of the project implemented over time.

Some participants stated that their support for a single decision-maker model was conditional on increasing efficiency, maintaining or improving effectiveness, and not downloading responsibility to third parties.

Participants also recognized the potential drawbacks of a single decision-maker model. The agency created could become very large and inefficient, and lead to jurisdictional

conflicts with the provinces. Some participants indicated that a single decision-maker model would function best with a relatively short list of inclusion projects (high level projects). The CEAA federal EA coordinator could have a role in issuing decisions under this model.

Other ideas for decision-making were also put forward:

- More sector-specific agencies could be set up to be single decision-makers for each sector – building on the concept of full life-cycle regulatory boards such as the NEB and the CNSC.
- The federal government could limit its EA jurisdiction to transboundary issues, thereby devolving more EA responsibility to the provinces and territories.

There was some support for making all proponents responsible for undertaking EAs, as is done in the Australian system. However, others expressed concern about there not being sufficient oversight or independent analysis of decisions under such a system.

A few participants suggested that any decision regarding which decision-making approach for EA is appropriate in the future (self assessment vs. single decision maker) should be informed by a more complete analysis of the regulatory framework. It was their view that other issues, such as triggers, should be resolved first.

6 Cumulative Effects and Regional Assessment

To set the stage for this discussion, Robert Connelly provided an overview of cumulative effects and regional assessments, including requirements under the *Canadian Environmental Assessment Act* (CEAAct) concerning cumulative effects, cumulative effects assessment challenges at the project level, and the potential benefits and implications of conducting regional assessments.

In the plenary discussion that followed, it was reported that there have been almost no court decisions that have further defined cumulative effects under the CEAAct. One participant also noted that since interconnection is a fundamental part of most Aboriginal cultures, Aboriginal systems and approaches may provide useful insights for understanding and defining cumulative effects.

Participants explored the following questions in small discussion groups:

- Is there a role for the federal government in regional assessments where major projects are planned?
- Could project level assessments be streamlined or even eliminated under certain conditions where regional assessments are undertaken?
- Should there be a legislative link between regional assessments and project level assessments to create an incentive to undertake regional assessments?

6.1 Role for the Federal Government in Regional Assessments

Participants expressed strong support for regional assessments. In addition to the potential benefits identified in the presentation, participants viewed regional assessments as an opportunity to:

- Gather and consolidate traditional ecological knowledge (TEK) for the region;
- Build relationships with communities and stakeholders early on and create an environment of collaboration and shared responsibility; and
- Predict stakeholder concerns in advance of new project proposals.

There was general agreement that the federal government should have a role in regional assessments where major projects are planned, however there were differing viewpoints on the nature of the role. Some participants indicated that this role should primarily be one of providing input in areas where it has expertise related to a specific mandate (e.g. national parks, fisheries) or a responsibility such as fiduciary obligations concerning Aboriginal peoples. Others envisioned an additional management role to ensure consistent monitoring and dissemination of information. Some participants also stated that the federal role may vary by jurisdiction, and should be based on the relevance of federal input.

Most participants saw an opportunity for streamlining project level assessments where regional assessments are undertaken, but only a few stated that project-level assessments could potentially be eliminated. Some participants suggested that if a regional assessment has been completed, the project-level assessment within that region should be focused on project-specific mitigation measures.

There were mixed views on whether a legislative link is required between regional assessments and project-level assessments. Some participants stated that regional assessments should be done in coordination with a wide range of stakeholders. Some participants also indicated that the non-legislative incentives for conducting regional assessments (e.g. improved efficiency for project assessments, better baseline data, and better stakeholder relations) would be sufficient. Other participants believed that a legislative link would provide a more effective incentive and would identify who is responsible for the regional assessment. These participants also suggested that government and industry should share responsibility. However, it was noted that in Northwest Territories the legislative link between land-use plans and project assessments is not always effective and that there is a reluctance to approve land-use plans to avoid linkages to projects.

7 Summary and Conclusions

7.1 Areas for Improvement

Participants expressed support for the objectives and approach of the MPMO and the short-term steps taken thus far to improve the federal regulatory process for major resource projects.

The workshop confirmed the current understanding of a number of keys areas for improvement such as:

- the need to reform the regulatory system to one that is performance-based and outcomes-oriented with a clear linkage to policy objectives;
- uncertainty around the determination of scope of projects and environmental assessments and the resulting delays; and
- duplication of processes within the federal system, as well with the provincial and territorial systems.

Participants identified a number of areas where the federal regulatory process for major resource projects needs to be improved. Major themes emerging from the workshop discussion included:

Focus on key issues

Several participants agreed that a more focused regulatory process is required – one in which a small number of key issues are identified early and are communicated to decision-makers to guide regulatory process decisions. This focus on key issues was viewed primarily an effectiveness issue, which would also drive efficiency.

Policy gaps: Addressing climate change, energy, and sustainability

The federal regulatory process needs to be grounded in, and formally and explicitly address, key policy objectives related to climate change, energy, and sustainability more broadly. It was recognized that there are currently policy gaps in these areas that can contribute to inefficiency and ineffectiveness in the regulatory review process.

The federal government's role as provider of environmental data and information

Many participants viewed the provision of complete, reliable, and standardized data and information on the state of the environment and environmental standard setting as a core role for the federal government and that this role needs to be strengthened.

Expertise of federal EA practitioners

There is a lack of technical expertise and capacity among federal EA practitioners in terms of sector-, project-, and regional-specific knowledge. Exceptions were noted, such as DFO's regional focus and expertise. Lack of expertise in some cases leads to practitioners being risk-averse, which in turn leads to slow decision-making and a lack of focus.

7.2 Policy Research Needs

Participants identified a range of short- and longer-term policy research needs to support improvements to the federal regulatory process for major resource projects, including the following:

Short-term

- Identifying and applying interim environmental limits and ecological thresholds
- Compiling lessons-learned and 'post-mortems' on past projects (both 'good' and 'bad') to identify the critical issues and results of the regulatory process, as well as examining strengths and weaknesses of both the project proposal and the process in each case
- Developing indicators and collecting data on regulatory process performance

Longer-term

- Reviewing federal EA triggers with a view to improving the efficiency and effectiveness of this stage of the EA process
- Examining the potential use of full-cycle regulator substitution, including the concept of "best placed jurisdiction"
- Developing consistent ecological thresholds and indicators
- Examining gaps and best practices in regional assessment and how to incorporate it into the EA process
- Examining reasons for variations in timeframes for completing EAs such as scoping issues, decisions by proponents, information requirements, and duplication of effort in the review process
- Exploring alternative governance models for EA and for regulatory review processes (e.g. permanent CEAA tribunal, similar to the NEB)
- Conducting a system-wide review of the federal regulatory framework, including all steps from first contact to final permits, as well as consultation requirements

At the close of the workshop, participants expressed a willingness to engage further with MPMO on improving the federal regulatory process for major resource projects.

Appendix A – Agenda

IMPROVEMENTS TO THE PERFORMANCE OF THE FEDERAL REGULATORY SYSTEM ISSUES AND RESEARCH SCOPING WORKSHOP

International Development Research Centre (IDRC), Pearson Boardroom
8th Floor, 150 Kent Street, Ottawa, ON
December 10, 8:45 to 4:15

Objectives of the Workshop

- To identify areas where the federal regulatory process for major resource projects need to be improved, both in the short term (1 year) and the longer term (2 to 3 years)
- To identify short and longer term policy research needs to support improvements

Context

The Major Project Management Office (MPMO) at Natural Resources Canada is leading collaborative work to improve the performance of the overall regulatory system for major resource projects in Canada. A key component of this initiative is to conduct research and analysis on short and longer term policy, regulatory and/or legislative options to improve the federal process. In looking to advance improvements to the regulatory system this initiative will analyze the broad regulatory system from start to finish (pre-submission through to follow-up and monitoring).

8:45 Welcome
(Jill Baker on behalf of Phillip Jennings, Assistant Deputy Minister, MPMO)

9:00 Overview of the MPMO Policy Research
(Jill Baker, Director MPMO)

9:15 The Federal Regulatory Process: An Overview of the Existing System
(Robert Boulden, Boulden Environmental Consulting)

9:30 Discussion of Current Regulatory Processes (Plenary)

The desired outcome of improving the federal regulatory system is to have a system that is efficiency, effective, accountable, transparent, timely and predictable.

- Within the existing federal regulatory system:
  1. What is working well?
  2. What could be improved (short term)?
  3. What needs to be changed (longer term)?

10:00 Key Regulatory Issues for MPMO to Address (Small Groups)

- Based on your experience (overall or sector-specific) what are the key issues that hinder the federal regulatory process from being more effective and efficient?
- What previous, on-going or proposed initiatives of departments or agencies represent positive steps towards improving the situation?

10:45 Break

11:00 Research Needs to Address Key Regulatory Issues (Small Groups)

- Based on the issues for regulatory improvement identified earlier, what practical policy analysis and research needs to be pursued:
  - In the short term (1 year)
  - Longer-term (2-3 years)

- What do you perceive as priorities?

11:45 Report Back from Morning Small Group Discussions

- Key Regulatory Issues
- Research Needs

12:15 Lunch

1:00 Approaches to EIA in Federations: A Discussion of Approaches for "Triggers" and Decision-Making

(Robert Connelly, Connelly Environmental Assessment Consulting)

1:15 Discussion of International Approaches: Lessons for Canada (Small Groups)

- Are the federal triggers for EA still relevant?
  - How can reviewable projects be triggered early enough to avoid delays in assessments?
  - Can responsible authorities make better use of the EIA process to gather information to reduce the time they need for permits or authorizations or funding decisions?
  - Do the triggers result in the inclusion of too many small projects?

- Is self assessment for major projects still appropriate?
  - Would efficiencies and greater consistency be obtained with a single EIA decision?
  - Would this improve subsequent regulatory decisions and improve harmonization with others?

2:15 Cumulative Effects and Regional Assessment (Plenary)

(Robert Connelly, Connelly Environmental Assessment Consulting)

2:30 Discussion of Cumulative Effects and Regional Assessment (Small Groups)

Regional assessments offer the potential to improve cumulative effects assessment through the establishment of thresholds and land use plans for various development scenarios.

- Is there a role for the federal government in regional assessments where major projects are planned?
- Could project level assessments be streamlined or even eliminated under certain conditions where regional assessments are undertaken?
- Should there be a legislative link between regional assessments and project level assessments to create an incentive to undertake regional assessments?

3:30 Break

3:45 Report Back on Afternoon Small Group Discussions

- Approaches for "Triggers" and Decision-Making
- Cumulative effects and regional assessment

4:15 Wrap up and Next Steps

Appendix B – List of Participants

Ms. Jill Baker, Natural Resources Canada

Mr. Jeff Barnes, Jacques Whitford

Mr. Robert Boulden, Boulden Environmental Consulting

Ms. Kathleen Cavallaro, Natural Resources Canada

Mr. Len Coad, Conference Board of Canada

Mr. Michael Connell, High Park Group

Mr. Robert Connelly, Connelly Environmental Assessment Consulting

Mr. Roger Constantin, Natural Resources Canada

Mr. Steve Coupland, Canadian Nuclear Association

Mr. Mark Dallaire, Canadian Nuclear Safety Commission

Ms. Ginny Flood, Fisheries and Oceans Canada

Ms. Cathy Gee, Fisheries and Oceans Canada

Ms. Jennifer Grant, The Pembina Institute

Ms. Bonnie Gray Wallace, Wolfwillow Inc. Consulting

Mr. George Greene (facilitator), Stratos

Mr. Pierre Guimond, Canadian Electricity Association

Mr. Steven Hazell, Sierra Club Canada

Mr. David Huggill, Canadian Wind Energy Association

Ms. Lisa Jackson, Natural Resources Canada

Ms. Brenda Kenney, Canadian Energy Pipeline Association

Ms. Heidi Klein, Gartner Lee

Ms. Arlene J. Kwasniak, University of Calgary

Mme Ginnette Lajoie, Cree Regional Authority

Ms. Justyna Laurie-Lean, Mining Association of Canada

Mr. John Masterson, Canadian Association of Petroleum Producers

Mr. Bram Noble, University of Saskatchewan

Mr. James O'Mara, Metrolinx

Ms. Kim Pawley, Transport Canada

Mr. Stefan Reinecke (facilitator), Stratos

Mr. William (Bill) Ross, University of Calgary

Ms. Ila Smith, Parks Canada Agency

Mr. Tim Smith, Canadian Environmental Assessment Agency

Mr. Robert Steedman, National Energy Board

Ms. Elizabeth Swanson, TransCanada PipeLines

Mr. Al Vachon, Canadian Environmental Assessment Agency

Ms. Peigi Wilson, LL.B., Barrister and Solicitor

Mr. Ed Wojczynski, Canadian Hydropower Association

Mr. Bruce Young, Canadian Environmental Assessment Agency