



## Terms and Conditions Workshop

March 14, 2011

Tree of Peace Friendship Centre

Report prepared by Terriplan Consultants for the Mackenzie Valley Land and Water Board

## Mackenzie Valley Land and Water Board



### Table of Contents

Opening Comments.....	1
Terms and Conditions Working Group .....	1
Group Discussion.....	1
Summary of Group Discussion .....	4
Break-out Group Discussions on Identified Problem Areas/Issues.....	6
Next Steps.....	7
Closing Remarks .....	7
Appendix A: AGENDA .....	i
Appendix B: TERMS AND CONDITIONS WORKING GROUP PRESENTATION .....	iii
Appendix C: PARTICIPANT LIST .....	vi
Appendix D: BREAK-OUT GROUP FLIPCHART NOTES .....	ix



## Opening Comments

The Terms and Conditions Workshop, held at the Tree of Peace Friendship Centre in Yellowknife, was hosted by the Terms and Conditions Working Group of the Land and Water Boards of the Mackenzie Valley. Kathy Racher opened the meeting with a brief introduction and overview of the day's agenda (Appendix A).

The goal of the workshop was to seek formal input from participants on the Terms and Conditions Working Group's goals and approach; to identify issues Reviewers have with Terms and Conditions (TCs); and to begin a discussion on how to address issues with TCs.

## Terms and Conditions Working Group

A presentation was made by Mark Cliffe-Phillips on the Terms and Conditions Working Group and its members, purpose, and the progress to date and future projects (Appendix B).

### Terms and Conditions Working Group Members:

Mark Cliffe-Phillips (WLWB)	Helga Harlander (GWLB)
Shannon Hayden (MVLWB)	Elaine Briere (MVLWB)
Angela Love (SLWB)	Crystal Thomas (SLWB)
Johnny Edwards (GLWB)	Brett Wheler (WLWB)

The purpose of the Terms and Conditions Working Group is to develop terms and conditions for permits and licences that provide clarity, consistency and certainty for the Boards and their clients.

The scope of the Working group includes identifying a clear and consistent approach for the development of:

- A common approach for creating new Terms and Conditions;
- A common template for Land Use Permit and Water License Conditions; and
- A common and consistent approach to orphan measures.

The expected results of this Working Group are a new standard list of TCs and guidelines for TC development.

**Characteristics of the ideal Term or Condition:**

- Clearly part of your mandate or governing legislation
- Has a clear purpose and rationale
- Is practical and enforceable
- Matches the scale of the project
- Does not repeat existing regulations or legislation

**Activities and Findings to Date**

To date, the Working Group has obtained and reviewed the current standard lists of TCs used by the MVLWB, SLWB, GLWB and the WLWB. These lists have been reviewed for inconsistencies and rationales.

The Working Group has also met with Inspectors to discuss the effectiveness of TCs and identified the Land and Water Boards' and Inspectors' main issues surrounding TCs.

The Working Group has uncovered many inconsistencies in TCs between Boards that can be resolved by the Working Group. A much bigger problem is that many of the TCs currently used are of questionable effectiveness. The Working Group has already identified some typical problem areas in the TCs through:

- Daily work experiences
- Conversations with reviewers and other stakeholders
- Meetings with INAC Inspectors

**Group Discussion**

The group was asked what they thought of the information in the Working Group's presentation as well as how they thought Working Group's approach might help their organizations. The following is a summarized list of the key comments and concerns raised during this plenary discussion:

It is good that the Working Group is looking at TCs; there was some confusion in the GNWT over what the Working Group was doing, so this clarification is appreciated.

One needs to be cautious when working with the MVRMA and be mindful of overlapping legislation and instances where TCs are taking precedent over legislation. It is important to remain aware of the legal structure.

You have to be careful not to exclude anything, as some proponents may not be aware of all the legislation. If something is not expressed in the TCs, a proponent may not be aware that it is required by the legislation.

The NEB has begun integrating the “prescriptive” approach, so it’s not a case of one or the other, but how to balance them.

Land and Water Boards are mandated to look at cumulative impacts on a per project basis. The problem right now is that we do not have a lot of baseline data in the NWT from which to measure impacts. We can do better, but need resources to do the research.

This workshop is a good process. Our problem (PWNHC) is that we do not have the information we need a lot of the time, so we ask that a developer does an archaeological assessment. If this assessment is not in the permit, PWNHC cannot make sure it gets done. We would like to be able to communicate with the Boards so that this type of work is occurring and is completed.

It seems that if a TC is more goal-based, a Board will have more responsibility in terms of enforcement. This will also have an effect on INAC.

There has been confusion around land use permits and what can be included in the TCs. When tying the TCs to land claim definitions of *impacts* and *environment*, sometimes there is a gap. Boards might want to look at amending their list to catch things that are not being put into land use permits and water licences. Overarching definitions are not always linked and need to be examined.

In the NWT there are Acts from the 1990s and Regulations from 1970s. We have a clear purpose, which is good, but we also need to address the gaps between the Regulations and the Acts, or at least get that process going. Having a good catalogue of recurring or regular TCs might be a good idea.

We really need clarity; if everyone is clear on what can and cannot go into TCs, it makes it easier for enforcement.

A new list of standard TCs would be helpful; there are a lot of overlapping issues, so it is important that all the Boards and Regulators are aware of all the standard TCs.

TCs have been very prescriptive in the past, so one of the things that the Boards are investigating is other areas where we can be better and putting together recommendations on other tools we can use to be more effective. There are overlapping jurisdictions in a lot of cases, so we may want to look at integrating processes and closing gaps. There are lots of activities up for discussion in addition to TCs.

If you move away from TCs, then you start to lose your ability to enforce. There is legislation that falls more under GNWT jurisdiction, but if we assign TCs to organizations that do not have the ability to enforce, the TC is useless. We need to protect the environment.

TCs do not have to be overly specific; *protecting wildlife* can cover a large variety of activities. Goals can be as ‘fuzzy’ as TCs, so there has to be clarity and a process to identify what is an affective goal. Be clear on how a goal can be achieved.

When it comes to legislation, you have to be cautious of stepping on another organization’s authority, but you can specify that a proponent will follow other existing legislation. This is better than coming up with TCs that duplicate existing legislation. Clarity of goals is important.

Is it fair to say that, generally, TCs are prescriptive? We need to clear up any confusion there and make sure everyone understands the definitions of *prescriptive* and *goal-based* TCs.

We have started at the back end, and we also need to look at the front end – at the issues we are trying to cover with the TCs. Wildlife, for example, is one of those issues that falls between the cracks, and so we need to really get down to definitions so we can identify where the problems are and the TCs that need to be fixed to address those problems.

You cannot have a prescriptive TC that will apply to every situation.

INAC has no problem communicating with other officers regarding offences, but we cannot do anything other than contact those who have enforcement authority. We need to address roles and how they are dealt with in TCs.

What is the definition or difference between TCs that are “impractical” to enforce and those that are just difficult to enforce?

We used to have some TCs that had to do with flight heights, for example. Inspectors on the ground have difficulty enforcing that, and proponents are not always able to comply. There were also conflicting conditions in Transport Canada’s legislation.

Normally if there is a concern, it is because there are overlapping issues with a condition. Sometimes conditions were being applied to issues for which they were not originally conceived. There was a push during the Mackenzie Gas Project to make sure all TCs could apply to everything. Now, there are other things we are looking at, including management plans and other jurisdictions we can assist.

Everything has legislation; what inspectors are looking for is a list of *operational statements* that go with the Regulations. Is there a way for ENR and other agencies to come up with a list of operational statements (like DFO has, for example) to lay out for the reviewer and proponent what they have to do to be in compliance with various legislation? Can we streamline the legislation into operational statements that are applicable to projects?

There are various ways of enforcing land use plans and water permits. When we look at enforcement, we look at inspectors, and do not want to overlap with INAC, but the Boards can conduct enforcement through other means such as suspension of licences. We are limiting ourselves if we think the only way

to enforce is by inspectors and court action. Some of the things we think are unenforceable actually are and we need to explore more of our options as Boards.

There is a good group at this workshop, so we need to look at all our tools. We are a group who revolve around TCs, so we need to really look at our process for developing a good TC. We need to look at all the linkages and TCs as specific tools in our toolbox.

There are people here in the development, advisory and enforcement sides of TCs. We should look at other issues, but we also have a good group here to take a good look at TCs.

The legislation in the North was designed to give a single regulator jurisdiction over a specific area – e.g. PWNHC and archaeology. The key is to look at what we can do under the current design of the legislation, and maybe look at the legislation itself and how it is worded. We need to address how the existing legislation is keeping agencies separated and not allowing them to work together.

One of the key ideas is to prevent regulatory duplication, not create it. We also have to reconcile what inspectors feel comfortable enforcing. We need to clarify the differences between what a Board can do, and what is outside their jurisdiction.

When it comes to the TCs part of the discussion and identifying issues, it is important to bring in the people who deal with these issues. Holding workshops like this on a routine basis is a good thing.

### Summary of Group Discussion

The group identified issues with TCs and categorizing them by topic. Participants were asked to respond to the following question:

*What problems have you encountered related to terms and conditions in Water Licences and Land Use Permits?*

#### KEY ISSUES

##### **Uncertainty in interpretation of mandates**

- Lack of common understanding of mandates
- Lack of clarity on Boards' mandates
- Lack of clarity on LWB mandates
- Unclear relationship between INAC inspectors and Board oversight
- Appropriateness of field modifications/decisions
- TCs shouldn't be a dumping ground
- Standard TCs
- No consistent interpretation of act amongst Boards
- Scope of TCs
- Conflicting mandates between Boards and Reviewers
- Lack of clear definition on wildlife habitat

- Definitions of impacts and environment are not linked to Act
- No consistent interpretation of Acts among Boards
- Uncertain of what is covered in standard TCs

**Unfinished integrated resource management system**

- Lack of integration between air, land, water, and agencies
- No process for deciding accountability
- Lack of Integration of land use plans, land use permits, water licences, etc. with TCs
- Are cumulative effects covered?

**Lack of effective enforcement and follow up**

- Overlapping jurisdictions
- Overlapping mandates
- Jurisdictional Overlap and reluctance to act
- “Narrow enforcement”
- Lack of understanding of enforcement options
- Lack of understanding of jurisdictional gaps and overlaps
- Issues with enforceability and consistency
- Lack of compliance and training

**Lack of Adaptive Management Mechanisms**

- Lack of tracking and reporting on mitigative measures
- Lack of tracking of non-compliance of TCs for certain proponents
- Lack of sufficient rationale from Boards and/or Reviewers
- Effectiveness and tracking of TCs and best management practices
- LWB process for EA commitments and recommendations
- Measuring effectiveness of TCs (i.e. enforcement)
- Management and Monitoring plans don't fit

**Unclear and Inconsistent Terms and Conditions**

- Inconsistencies between TC on similar projects
- Inconsistent TCs between licences and permits
- Overly specific TCs
- Regulating impacts instead of cause/source
- Focus on enforcement rather than issues
- Problems with TC wording
- Relevance and applicability of TCs
- Conditions that are unable to be met
- Lack of clarity or knowledge of where TCs belong (LUP or WL?)
- Not enough creative freedom
- Inconsistency between Boards and activities

**Lack of Clarity on Board Processes**

- Lack of/ineffective of communications and relations between communities, reviewers and Boards
- Lack of process for dealing with change
- Lack of clear communication of LWB reasons for decisions

**Outdated Legislation and Regulations**

- Legislation and Regulations are outdated
- Regulations need to be updated to match legislation

**Scoping**

- Scope of a licence

**Orphaned measures**

- New, or from EA

***Areas of Environmental Protection:***

- Wildlife
- Treaty Rights
- Water Quality
- Air Quality
- Archaeological Sites
- Fish Habitat
- Land
- Wildlife Habitat
- Economic wellbeing
- Traditional Knowledge
- Environment as defined by MVRMA
- Resources
- Proponent Reporting
- Cultural wellbeing of Mack Valley Residents
- Cumulative Impacts
- Water Quantity
- Aquatic Habitat
- Human Health
- Species at Risk
- Species at Risk Habitat
- Vegetation Cover
- Aboriginal Way of Life
- Ecological Processes

**Break-out Group Discussions on Identified Problem Areas/Issues**

Participants were divided into five break-out groups to address some of the key issues identified in the group discussion:

1. Uncertainty in interpretation of mandates
2. Lack of Effective Enforcement and Follow Up
3. Lack of Adaptive Management Mechanisms
4. Unclear and Inconsistent Terms and Conditions

5. Lack of Clarity on Board Processes

**Questions for break-out groups:**

1. Which areas of environmental protection are impacted by the problems we identified?
2. How or why do these problems affect the effectiveness of LWB terms and conditions?
3. What are some solutions to the identified problems? (e.g. TCs, management plans, guidelines, discussion papers, legislative updates, cross-organizational working groups)
4. Who should be involved?

**Next Steps**

Some of the next steps for the Terms and Conditions Working Group include:

- Continued review and refinement of current TCs
- Research into TCs used by other jurisdictions (e.g., NEB, Nunavut Water Board etc.)
- Write a summary paper on key issues, findings from previous steps, and provide recommendations that agencies can use to inform their own reviews or recommendations.

**Closing Remarks**

The facilitators thanked everyone who came and participated, as this was a great opportunity to gather expertise on TCs outside of a specific project. Participants have clarified some of the Working Group's tasks and a number of agencies and organisations that need to be involved in the Working Group's next steps have been identified.

Discussions from this workshop's plenary and break-out groups have been compiled and collected into this report which has been sent to all workshop attendees. This report will also be posted on the public registry.

**Appendix A: AGENDA**

**REVISED Agenda for Terms and Conditions Workshop – March 14, 2011, Tree of Peace**

Time	Agenda Item	Lead
9:00 – 9:10	Opening comments	Facilitator
9:10 – 9:35	The Terms and Conditions Working Group (WG4): <ul style="list-style-type: none"> <li>• Background, mandate and progress</li> <li>• Findings: <ul style="list-style-type: none"> <li>• WG4 concerns about existing T&amp;C's</li> <li>• What an ideal Term and Condition looks like</li> <li>• Need for input from reviewers</li> </ul> </li> </ul>	WG4
9:35 – 10:15	Group Discussion 1: <ul style="list-style-type: none"> <li>• Questions, thoughts etc on WG4's goals, approach and findings</li> </ul>	Facilitated discussion
10:15 – 10:30	<b>HEALTH BREAK</b>	
10:30 – 12:00	Group Discussion: <ul style="list-style-type: none"> <li>• Discussion on key problem areas in water licence and land use permit terms and conditions (e.g., areas of inconsistency, overlapping jurisdiction etc.)</li> <li>• What are some general ideas on how to resolve the identified issues?</li> <li>• Problem areas or issues identified by the group will be prioritized and some will be selected for further discussion by break-out groups in the afternoon.</li> <li>• Each break-out group should contain at least one representative of each key organization</li> </ul>	Facilitated discussion
12:00 – 1:00	<b>LUNCH (on your own)</b>	
1:00 – 1:15	Summary of group discussion before lunch: <ul style="list-style-type: none"> <li>• Decision on which priority issues will be the subject of break-out groups this afternoon</li> </ul>	Facilitator
1:15 – 3:00	Break-out group discussions on identified problem areas/issues <ul style="list-style-type: none"> <li>• These discussions will be guided by a series of questions to better define the issues and to come up with potential solutions (depending on progress, a group may tackle more than one issue)</li> </ul>	Facilitated discussion
3:00 – 3:15	<b>HEALTH BREAK</b>	
3:15 – 4:15	Group discussion: <ul style="list-style-type: none"> <li>• Debrief of results from break-out groups</li> <li>• Discussion of outstanding issues</li> <li>• Discussion on further work and recommended next steps</li> </ul>	Facilitated discussion
4:15 – 4:30	Closing remarks	All

**Appendix B: TERMS AND CONDITIONS WORKING GROUP PRESENTATION**

## Working Group 4 Terms and Conditions

Members

Mark Cliffe-Phillips (WLWB)	Helga Harlander (GWLB)
Shannon Hayden (MVLWB)	Elaine Briere (MVLWB)
Angela Love (SLWB)	Crystal Thomas (SLWB)
Johnny Edwards (GLWB)	Brett Wheler (WLWB)



Update to the MVLWB- Working Group 4- Terms and Conditions- Yellowknife Dec 11, 2008

## Purpose

- To develop terms and conditions for permits and licences that provides clarity, consistency and certainty for the Boards and its clients.



Update to the MVLWB- Working Group 4- Terms and Conditions- Yellowknife Dec 11, 2008

## Scope

To identify a clear and consistent approach for the development of:

- New Terms and Conditions;
- A common approach for creating new Terms and Conditions;
- A common template for Land Use Permit and Water License Conditions; and
- A common and consistent approach to orphan measures.



Update to the MVLWB- Working Group 4- Terms and Conditions- Yellowknife Dec 11, 2008

## Product Expectation

1. New standard condition list; and
2. Guidelines for terms and condition development.



Update to the MVLWB- Working Group 4- Terms and Conditions- Yellowknife Dec 11, 2008

## Progress

- Obtained and reviewed the current standard lists of terms and conditions (T&C's) of the MVLWB, SLWB, GLWB and the WLWB
- Reviewed for inconsistencies, rationales
- Met with Inspectors to discuss effectiveness of T&C's
- Identified the LWB's and Inspector's main issues for T&C's



Update to the MVLWB- Working Group 4- Terms and Conditions- Yellowknife Dec 11, 2008

## Some findings to date

- Uncovered many inconsistencies in T&C's between Boards – these can be resolved by WG4
- A much bigger problem is that many of the currently used T&C's are of questionable effectiveness



Update to the MVLWB- Working Group 4- Terms and Conditions- Yellowknife Dec 11, 2008

### Examples of ineffective T&C's

Type of problem	Potential effect
No clear purpose or rationale	Permit/licence contains T&C's that are unnecessary
Proponent doesn't always know how to achieve the T&C	Doesn't get done right or at all in practice
So prescriptive that innovation is inhibited	Proponent not able to employ new best practices or technology

### Examples of ineffective T&C's

Type of problem	Potential effect
Repeats what is already stated in the regulations or legislation	Redundant and runs the risk of contradicting legislation or regulation
Not enforceable because it isn't clearly within the LWB legislated jurisdiction and authority	Environment not adequately protected (i.e., everyone thinks that some aspect of environmental protection is covered by permit/licence when in fact it is not)
Not practical to enforce	Doesn't get enforced and is therefore useless


### Based on WG4's analysis, these are the characteristics of an "ideal" term or condition

- Clearly part of our mandate and legislation:
  - Land Use Permit conditions are listed in Section 26 of the MVLUR;
  - Water Licence conditions are listed in Section 15 of the NWTWA
- Have a clear purpose and rationale
- Are practical and enforceable
- Match the scale of the project (e.g., more prescriptive for small projects and more goal-based for larger projects)
- Do not repeat what is already stated in regulations or other legislation

### Identification of "problem areas" in T&C's of licences and permits

WG4 has already identified some typical problem areas in the T&C's through:

- Our daily work experiences
- Conversations with reviewers and other stakeholders
- Meetings with INAC Inspectors



Update to the MVLWB- Working Group 4- Terms and Conditions - Yellowknife Dec 16, 2008

### Now...we are seeking your input formally...


- on WG4's goals, approach and findings to date
- to identify issues reviewers have with T&C's
- to at least begin a discussion of how to resolve issues in a non-project specific forum



Update to the MVLWB- Working Group 4- Terms and Conditions - Yellowknife Dec 16, 2008

### Next Steps

- Some depend on the outcome of this workshop!
- Continued review and refinement of current T&C's
- Research into T&C's used by other jurisdictions (e.g., NEB, Nunavut Water Board etc.)
- Write summary paper on key issues, findings from previous steps, and provide recommendations.



Update to the MVLWB- Working Group 4- Terms and Conditions - Yellowknife Dec 16, 2008

**Appendix C: PARTICIPANT LIST**

PARTICIPANT LIST	
NAME	ORGANISATION
Todd Paget	GNWT – ENR
Simon Toogood	GNWT – ENR
Glen MacKay	GNWT – PWNHC
Nicole McCutcher	GNWT – ENR
Albert Bourque	GNWT – ENR
Scott Stewart	INAC
Wayne Starling	INAC
Clint Ambrose	INAC
David Purchase	GNWT – ENR Forest Management
Patrick Clancy	GNWT – ENR
Nathen Richea	INAC
Lindsey Cymbalisky	MVLWB
Dan Carmichael	INAC
Loretta Ransom	GNWT – ENR
Claudia Haas	GNWT – ENR
Claire Singer	GNWT – ENR
Lorraine Seale	INAC
Shannon Ward	MVLWB
Lynn Boettger	MVLWB
Roberta Judas	WLWB
Stephanie Poole	Akaiicho Treaty 8
Todd Slack	YKDFN
Gavin More	GNWT – ENR
Jane Fitzgerald	EC
Stacey Lambert	EC
John Edwards	GLWB
Terri Bugg	GNWT – ENR
Veronique D'Amours Gauthier	NWTWB
Corrie Gibson	DFO
Martin Haeefe	MVEIRB
Karin Clark	WRRB
Leonard Debastien	SLWB
Elaine Brière	MVLWB
Shannon Hayden	MVLWB
Kathleen Graham	MVLWB
Sarah Baines	MVLWB
Angela Plautz	MVLWB
Jane McMullen	GNWT – ENR
Crystal Thomas	SLWB
Sarah Olivier	DFO
Rick Walbourne	DFO
Rebecca Chouinard	MVLWB
Doris Eggers	GNWT – ENR
Heidi Wiebe	SLUPB

FACILITATORS	
NAME	ORGANISATION
Mark Cliffe-Phillips	WLWB
Kathleen Racher	WLWB
Ryan Fequet	WLWB
Patty Ewaschuk	WLWB
Sara Elsasser	WLWB
Brett Wheler	WLWB
Adrienne Cartwright	Terriplan (Recorder)

**Appendix D: BREAK-OUT GROUP FLIPCHART NOTES**

**Break Out Group #1 – Uncertainty in interpretation of mandates**

- who does what (many regulations) (over regulated)
- don't know who does what (under regulated)

Greatest uncertainty on the following issues:

- Air Quality
- Human Environment
  - o Health
  - o Social
  - o Cultural well being
  - o Way of life

Uncertainty in each others' mandates results in:

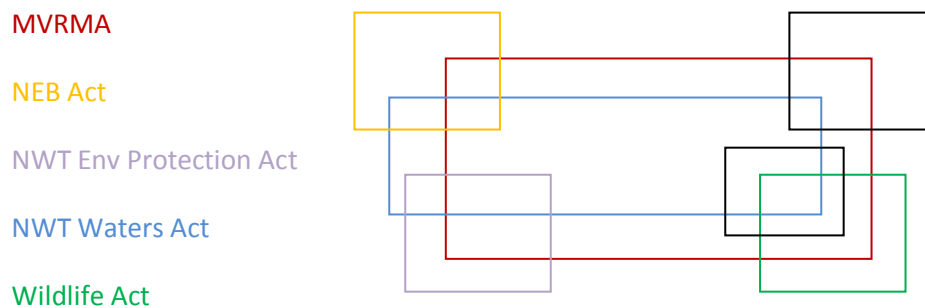
- inconsistency and uncertainty in TCs
- Reviewers don't understand how they can help the Board; don't really understand what the Board wants and therefore reviewers tend to give the Board all sorts of advice that might not be needed or wanted. Reviewers may be wasting their time and the Boards' time.
- Must define (organizational) mandate vs Regulators Authority vs Enforcement vs Legislated Mandate
  - o Recognize that an organization's mandate may be way bigger than its legislated authority. For example, EC has guidelines available for many practices such as incineration, but does not have the legislated authority to enforce them. This is true of other organizations as well. Also, land and water boards have the authority to do preliminary screenings but then cannot regulate all the activities of the project
- The more uncertainty in knowing the mandate, the more the organisation is conservative with respect to what they are willing to do (i.e. stretch mandate etc)

What to do?

1. Define reg. instruments/authority and limitations of those (for all organizations)
    - a. E.g. incineration activities is within LWB authority but air quality monitoring is not – grey area
  2. Then look at gaps
    - a. Gaps within mandate
    - b. Gaps outside of mandate
- Hearings – tell reviewers what kinds of info we want in LWB permits vs. bringing us info in a public forum or advice to proponent
  - Preliminary Screening – use of LWB process to ensure all relevant mandates are satisfied
  - Not clear what information is necessary for regulating permits vs. just making comments to the proponent
  - Example of Nunavut project certificate

- A lot of the environmental protection areas are not being addressed by any regulation or mandate
- State our own: mandate; legislative mandate; regulatory authority AND your understanding or expectations of other organizations
- Get folks to commit to handle some aspect even if they don't have a regulatory Authority
- Who can/should stretch your mandate
- LWBs must define difference between preliminary screening mandate vs. regulatory mandate
- Possibly go on an issue-specific basis to bring relevant parties together to discuss the overall best way to address gaps and issues
- 

\*\* diagram by Todd P \*\*:



**Mandate** does not equal **Policy** does not equal **Regulatory Authority**. Therefore, must be defined to establish boundaries.

**Break Out Group #2 – Lack of Effective Enforcement and Follow Up**

1. Which areas of environmental protection are impacted by the problems we identified?

Some participants believed that all areas are affected, except economic.

Others pointed out that if we look broadly beyond just INAC enforcement, lack of effective enforcement affects all areas, including economic.

It was noted that even if we are just thinking about INAC's enforcement role, economic issues come into play if there were a compensation issue that required follow-up.

This issue is related to lack of clarity in mandates.

2. How or why do these problems affect the effectiveness of LWB terms and conditions?

Communication between LWB and inspectors on terms and conditions related to management plans

- TCs about inspector discretion/operational or field calls require more communications
- TCs not being enforced if inspectors believe it's outside INAC's jurisdiction
- 

3. What are some solutions to the identified problems? (e.g. TCs, management plans, guidelines, discussion papers, legislative updates, cross-organizational working groups)

Systemic solutions beyond terms and conditions:

- Clarify mandate
- Clear enforcement roles → education, outreach (e.g. MOUs)
- Remove unenforceable conditions (INAC or not)
- Ensure INAC is enforcing all legitimate conditions
- Board exercise authority/threat to suspend licences and permits → Requires good communication between Board and inspectors
  - o Get inspection reports quickly
  - o Inspector inform LWB and other regulators of problems
  - o Joint inspections by multiple authorities
  - o Better communication from proponents on problems
- Good relationship with proponents
- Whistle-blower legislation, anonymous hotline, or other tools to allow employees and public to report.
- Devolution

Solutions related to terms and conditions:

- Report non-compliance and follow up: can this be a TC?
- Can penalties be written into licences and LUPs? (not necessarily, \$\$)
- Summary, convictions, procedures for non-compliance of TCs
- Good communication between LWB and inspector on discretionary decisions (required in the TC or MOU)
- Monitor discretionary decisions and evaluate, adjust
- LWBs honour agreements and provide rationale
- LWBs communicate how comments dealt with from all Boards
- Better web access to reasons, etc?
  - o Multiple inspectors per project ('revolving team' for certain industries), which may remove any existing bias
- Broad toolbox beyond INAC's role

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**Break Out Group #3 – Lack of Adaptive Management Mechanisms**

Tree of Peace

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1. Probably all of them → problem is lack of information
2. TC may be outdated – not best practice
  - Ineffective
  - Not credible
  - Not useful
  - Misunderstood
  - Waste of money and time
  - Prevents evolution of TC no feedback or evaluation
  - Changes aren't systematic and lack data, rationale
3. Starting Point – list of TC with rationales
  - Continuing forum/group/mechanism for learning from the past and communicating changes – standing meetings?
  - Evaluation process for each TC with lead – someone accountable for each one, take account of new data
  - Need performance indicators – what is an effective TC?
  - Can effectiveness be measured for every TC?
  - Need resources to implement performance measurement – people, time
4. Inclusive – LWBs, government, Aboriginal groups, NEB, other regulators, people in EA world, industry, land use planning boards, etc.
  - Everyone needs to know results
  - Not everyone needs to evaluate/measure
  - Changes in practice, policy etc need to have clear reasons for decision so there is a clear record for future reference
  - Applies to everyone, not just LWBs
  - Clarity in decision making process

## Evaluation should:

- Link back to EA (if applicable); land use plan (if applicable)
- Incorporate review of effectiveness/quality of reviewer's advice to Boards
  - Advice needs to be based on clear rationale, common definitions, clear purpose
  - Would development/use of standard advice help boards?

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**Break Out Group #4 – Unclear and Inconsistent Terms and Conditions**

(LWB; LUP; Land Owners; Wildlife - EC, GNWT; RRBs; RRCs; ENR – EA, EP, Forest)

1. Forest Resources
  - Old conditions

- Taxing resources
- LUP rationale conflicts with Forest Territorial Regulations
- Discussion between parties

## 2. Wildlife and Habitat

- Incineration management plan
  - Rationales?
  - Mitigate source rather than impact
  - Proper link to appropriate legislation
  - Wildlife management plan
- LWB provide direction on other mandates → review comment table
  - Lack of consistent process with wildlife conditions
    - Requires standard conditions \*can cause problems
    - Standard process for developing TCs
  - Staff turnover of Boards and Reviewers
  - Clear and consistent process
    - Guidelines and policy

## **AREAS**

### Archaeological Heritage/Cultural Resources

- PWNHC; Parks; Communities; LUPB; ECE
- Inconsistency (e.g. setback)
- Ask Glen
- Inconsistent requirements of management plans and reports (everyone dependent)
  - Schedule of submittal
  - Review schedule
- Guidelines can help → crossover working group

### Air Quality

- EC; ENR
- Lack of jurisdiction
- Source control can help – currently inconsistent
- Legislation required

### Inconsistency between LWBs

- Include NWT Water Board, Nunavut and Yukon

### Legacy Conditions

- Dependent

- Conditions need rationales that fit the mitigation's intent

#### Socio-Economic

- MVEIRB; GNWT – HSS, ECE; Communities and Aboriginal Governments; Agencies
- Lack of connection between MVRMA and MVLUR or NWTWA (update legislation)

#### Water Quality

- EQC – inconsistency and consistency
- Appropriateness within licence
- Process required for determining when EQCs are required and what parameters are sampled
- Review draft water licences

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### Break Out Group #5 – Lack of Clarity on Board Processes

#### All Areas...

- How advice from reviewers becomes/influences a TC
  - o TC vs. recommendations
- Areas outside LWB jurisdiction are most vulnerable
  - o Archaeology (26(1))
  - o Socio-economic (outside)
- Links to clarity of mandate

#### SOLUTIONS

- Board to solicit reviewer input RE: process changes... to be reviewed by Board and inspectors
- Proponent and Board response made public in timely manner – review process is public
- Boards with feedback and clarify in RFD, 'usual' TCs
- WG4/Boards → Internal process, clarity among board staff and maintenance of institutional knowledge
- Standardize/Clarify process for Board-inspector dialogue RE: TC and reviewer comments
- Formalize process for developing and updating Standard TC
  - o Review by all (including proponents) and provide rationale
- Clarify board-inspector-proponent processes during operations (for inspectors, enforcement, etc)