

Role of the SRRB in Environmental Assessment

Reflections and Recommendations



Prepared for
Sahtú Renewable Resources Board

Prepared by
Shauna Morgan
The Pembina Institute

October 2012

PEMBINA
i n s t i t u t e



Disclaimer

This document is an independent report prepared exclusively as information for the Sahtú Renewable Resources Board.

The views and opinions expressed in this report are those of the author(s).

The information, statements, statistics and commentary (together the ‘information’) contained in this report have been prepared by the Pembina Institute from publicly available material and from discussions held with interviewees and members of the RRCs and SRRB. The Pembina Institute does not express an opinion as to the accuracy or completeness of the information provided, the assumptions made by the parties that provided the information or any conclusions reached by those parties.

The Pembina Institute have based this report on information received or obtained, on the basis that such information is accurate and, where it is represented to The Pembina Institute as such, complete.

About the Pembina Institute and Pembina Public Sector Services

Leading Canada’s transition to a clean energy future.

The Pembina Institute is a national non-profit think tank that advances clean energy solutions through research, education, consulting and advocacy. It promotes environmental, social and economic sustainability in the public interest by developing practical solutions for communities, individuals, governments and businesses. The Pembina Institute provides policy research leadership and education on climate change, energy issues, green economics, energy efficiency and conservation, renewable energy, and environmental governance. For more information about the Pembina Institute, visit www.pembina.org

The Pembina Institute
Box 7558
Drayton Valley, Alberta
Canada T7A 1S7
Phone: 780-542-6272

As part of Pembina Consulting, the consulting arm of the Pembina Institute, Pembina Public Sector Services provides advice and support to all levels of government on initiatives that enhance existing energy and environmental policy, and support a large-scale shift to more sustainable energy production and consumption. Our unique positioning stems from a combination of technical expertise, policy analysis, a grounded understanding of environmental trends and an understanding of different stakeholder interests. We strive to act as a bridge between a diverse set of stakeholders through identifying common solutions.



Table of Contents

Introduction	1
Overview of project.....	1
Project approach and methodology.....	2
Interview results: reflections on the SRRB	3
The SRRB to date	3
Working with Renewable Resource Councils.....	8
Profiles of other Wildlife Management Boards	16
Dealing with industry applications.....	21
Analysis of points of influence	21
<i>Diagram 1: Importance of and SRRB / RRC Influence over six aspects of the oil/gas development process.....</i>	<i>28</i>
Strategy for reviewing shale oil applications	29
Advocating for and participating in cumulative impact assessment	31
Cautionary tales from Alberta.....	35
Broader strategy	38
Building strong networks at the community level	38
Staffing implications	42
Summary of recommendations to the SRRB	44
Appendix A. Interview questions.....	48
Appendix B. Interviewees.....	50



Introduction

Overview of project

The Sahtú Renewable Resources Board (SRRB) has asked for assistance in developing strategic options for how best to fulfill its role and responsibilities in relation to licensing and permitting applications and research in the Sahtú Settlement Area.

Specifically, the SRRB is seeking a set of potential answers to the following questions:

- What is, or should be, the SRRB's role? What specific value-added input does the SRRB provide to inform decision-making about resource development in the Sahtú Settlement Area, given the broader consultation framework laid out in the Sahtú Dene & Métis Comprehensive Land Claim Agreement and the shifts occurring as a result of amendments to the Mackenzie Valley Resource Management Act (MVRMA)?
- What kinds of information should the SRRB gather as the basis for its input?
- What kind of system should the SRRB have in place in order to best fulfill its role? What are the human resource needs and operational requirements associated with this system?

In considering these questions, the Pembina team has taken into account the limitations inherent in the SRRB's budget and legislated mandate, while recognizing the potential for the SRRB to access any supplementary funds that may be necessary for the Board to fulfill its mandate appropriately.

Within the Sahtú Dene & Métis Comprehensive Land Claim Agreement, the SRRB has special responsibilities with respect to wildlife, forestry management, and Aboriginal harvesting in the Sahtú Settlement Area. As a co-management board, the SRRB can establish policies and propose regulations regarding commercial or subsistence harvesting and wildlife-based tourism, and it can provide advice and/or the approval of plans related to conservation areas, parks, and endangered species. The SRRB also conducts research and assists other researchers studying aspects of renewable resources in the Sahtú Settlement Area.

The SRRB is reviewing its role in the context of significant shifts occurring in the resource economy and the regulatory environment in the Northwest Territories (NWT). There has been a rapid increase in resource development in the Sahtú region, particularly related to shale oil resources.

Given this context, the SRRB's mandate to protect all wildlife in the Sahtú seems immense and overwhelming. The boom-and-bust cycles of resource development present human resource challenges for the SRRB, since the Board must be able to respond quickly with adequate expertise and scale its work up or down appropriately. The Board must have a clear sense of its priorities and be able to divide responsibilities efficiently amongst its own staff and Board members, while leveraging an engaged network of partners and resource people.

Additional contextual considerations for the SRRB include the planned elimination of the Sahtú Land and Water Board (and centralization of responsibilities under the Mackenzie Valley Land and Water Board), as part of the amendments being made to the Mackenzie Valley Resource Management Act. Another important consideration is the devolution of resource management responsibilities from the federal to the territorial government, expected to proceed during the fall of 2012, which may require new forms of coordination between the SRRB and the Government of the Northwest Territories (GNWT). These topics were discussed during interviews, and reflections have been provided below.

Project approach and methodology

Overall, the approach to this project was to start from the context-specific and work towards broader recommendations.

The Pembina team began by meeting with Board staff to discuss project background, clarify project scope, identify key informants to be contacted for interviews, and agree upon interview questions.

Pembina's lead interviewer proceeded to conduct 15 interviews by phone and in person. The primary purpose of the interviews was to gain insight into the role played by the SRRB in the past, as well as identify value-added input that the SRRB would be best positioned to provide in the future. Interviews were conducted with similar Boards in other regions in order to provide some comparative analysis, including human resource needs and operational requirements (e.g., areas of expertise required for staff vs. contractors). For a list of interviewees, see Appendix B.

In addition, the author attended a workshop for Renewable Resource Councils (RRC) in Norman Wells (September 4-7) and a combined RRC meeting / SRRB meeting in Fort Good Hope (September 17-21) where informal interviews were conducted with RRC members, Board members, and other resource people. Transcripts from interviews with Board members conducted earlier this year by the SRRB Executive Director were also reviewed.

Meanwhile, the Pembina team was asked to review an application that was before the Board; specific comments were provided on this application and presented at the SRRB's Board meeting. Pembina also identified and mapped out specific points where the SRRB and RRCs could have influence over the resource management decision-making process within the Sahtú region.

This report summarizes the reflections and insights collected during the interviews and provides a set of recommendations and considerations for the SRRB that are grounded in the specific challenges facing the Board and RRCs.



Interview results: reflections on the SRRB

This section summarizes insights gained from the 15 formal interviews, as well as numerous informal conversations with RRC members, Board members, and resource people.

The SRRB to date

What the SRRB has done well

It is important to recognize what the SRRB has done well in the past, so that the Board can build upon, revive and/or learn from this foundation.

Interviewees noted that the SRRB has gone through both periods of high productivity and periods of low activity and organizational paralysis. Overall however, the SRRB has succeeded in gaining a high degree of respect and credibility amongst people in the region. It has brought harvest management decisions ‘home’ to a regional level, where those decisions have more legitimacy than those made in Ottawa or Yellowknife. One indicator of this success is that, according to several informants, the Regional Superintendent for GNWT-ENR would be very unlikely to go against decisions recommended by the SRRB. The SRRB has made some clear and important decisions based on the best available science and community knowledge, even when those decisions have not been popular in all communities. To this end, the SRRB managed to organize one of the few large public hearings on wildlife ever held in the NWT, a hearing on caribou held in 2008 in Fort Good Hope.

SRRB staff have worked hard over many years to begin developing good rapport with the Renewable Resource Council (RRC) members and staff. These relationships were established in part by reserving one day a week for phoning RRCs and other key organizations (“Phone Fridays”) and visiting the communities.

With regard to SRRB participation in environmental assessment, the Environmental Assessment specialist on staff would attempt to get community input on all permit applications. The RRCs would submit their own letters of comment, and over time began to take more initiative in writing their own letters. The EA specialist also established a filing system (on computer and on paper) to track projects over time, which was especially helpful when permits came up for renewal.

Several interviewees pointed to the harvest study as an important initiative. The SRRB coordinated a harvest study with each of the Sahtú communities up until about 2004, and hired a local coordinator in each of the communities to collect and record data on a monthly basis. The purpose of the study was to track the location and abundance of animals. According to one of the local coordinators employed at the time, it was a key tool for protecting wildlife and an important way to maintain regular communications between the SRRB and the RRCs. Unfortunately, the study never resulted in a final report like those produced in the Gwich’in region or in Nunavut.

Another example of positive collaboration between the SRRB and communities was the moose tick survey spearheaded by the Fort Good Hope RRC. The RRC worked with University of Calgary researchers and ENR Wildlife Management staff to prepare a research study proposal. The RRC presented its proposal to the SRRB Board; it was well received and the study was funded.

The Great Bear Lake Management Plan was another noteworthy initiative where the SRRB was an active partner and played a useful role, according to one of the founders of the project. The SRRB agreed to initiate research studies that would support the efforts of the Great Bear Lake Management Plan Working Group, helped to develop a research and monitoring plan, and supported community capacity building.

In addition, SRRB staff were highly involved for about four to five years in the “Take a Kid Trapping” program, working directly through the schools (not the RRCs). This involvement was discontinued due to conflicts with the schools and other coordinators.

Challenges

Interviewees also expressed frustration at what the SRRB has failed to accomplish over the years, for example:

- Lack of meaningful input into certain environmental assessment processes (e.g., Selwyn mine);
- Weak input into the Land Use Planning process;
- Weak input into discussions about National Parks and protected areas;¹
- Lack of communication to public and lack of engagement with media; and
- Failure to lead or direct the research agenda for wildlife in the Sahtú. (One interviewee emphasized: “The SRRB should be telling ENR what to research.”)

According to one person based in the region, there has been low attendance by community members at SRRB Board meetings, and limited success in engaging active harvesters who may be busy out on the land and less likely to attend meetings. There may be a widespread perception that only RRC members are welcome to attend meetings since they are the ones who are specifically invited and paid to attend. As a result, the SRRB may not be getting input from a good cross-section of community members, especially in Norman Wells.

It has been a challenge for the SRRB to maintain momentum and continuity due to the high turnover of Executive Directors over the years (with approximately 9 EDs since the inception of the Board). It has also been a challenge to keep SRRB staff, with one factor being the difficult housing situation in Tulita (high cost and low availability).

¹ Technically, the SRRB’s mandate dictates that the Board gets input into a park management plan, once decisions have already been to establish the park and the boundaries have been set. However, the SRRB may have been able to play a more influential role in high-profile debates that have taken place about boundaries, for example, highlighting research about wildlife habitat requirements.

Interviewees also observed that SRRB Board members have had trouble maintaining momentum. There has been low activity and engagement by Board members in between Board meetings; in the past few years these meetings have been only twice a year. Also, Board members in the past have rarely communicated with people in the communities.

Relationship with the GNWT

As the other main wildlife manager active in the Sahtú region, the territorial department of Environment and Natural Resources (GNWT-ENR) has worked closely with SRRB. Their relationship has evolved significantly over the years.

Before the Land Claim was signed in 1993, the GNWT-ENR used to fund community Hunters & Trappers Associations (HTAs) to help support the purchase of equipment, gas, etc. The HTAs used to meet with GNWT-ENR on a regular basis. Some strong informal relationships were established between community leaders and regional government officials, which led HTAs to have a significant amount of informal influence.

Once the Land Claim was signed in 1993, the RRCs were established and the HTAs were phased out. GNWT-ENR continued making annual grants to the RRCs, but this funding was still designed to help support a community hunt and help people get out on the land. Representatives from ENR agree that funding levels are minimal given today's workload and the new responsibilities that RRCs have acquired under the Land Claim.

When the SRRB was first established, GNWT-ENR helped the Board get on its feet by helping them hire their first two wildlife biologists. The two agencies worked closely for a few years, with the SRRB contributing funds to ENR research. Then the Board realized that it was inefficient to employ wildlife staff to duplicate ENR work, when this research would be better undertaken by government. At that time the SRRB replaced its biologists with an environmental assessment specialist and a communications officer. Recently two SRRB staff members had been staying in Norman Wells, working from within the ENR office.

Going forward, it is unlikely that SRRB staff will be working in such close proximity to GNWT-ENR, since the preference is to have staff based in the Tulita office. One respondent suggested, however, that the SRRB establish a research centre in Norman Wells, with the Norman Wells RRC sharing space with GNWT-ENR.

Several interviewees observed that the SRRB is often mistaken for being just another 'government' agency. This may be related to the Board's overlapping work with GNWT-ENR. It is also probably related to the bureaucratic model that has been set up through the Land Claim, which tends to create distance between community members and the organizations (such as the SRRB) set up to represent and serve them.

It will be necessary for the SRRB to clearly distinguish itself from the GNWT and cut through some of those bureaucratic constraints that prevent the Board from working effectively with the RRCs. At the same time, it is becoming more important than ever for the SRRB to maintain a good working relationship with the GNWT-ENR, since devolution will shift some significant federal land management responsibilities from the federal to the territorial government. While interviewees did not expect that devolution would change a great deal at

the regional level in terms of wildlife management, it would mean the GNWT gains control over issuing leases for oil and gas and mineral exploration and extraction. This is an important consideration if the SRRB and/or RRCs become more actively involved, for example, in consultation before the Call for Bids is issued and before exploration leases are granted. Once devolution is implemented, those discussions will happen with the GNWT rather than AANDC, and it would be beneficial to ensure that the GNWT understands the expectations of the SRRB and RRCs with regard to those consultations. Those GNWT decision makers will likely be in Yellowknife rather than in the Sahtú; however, it is possible that officials in Yellowknife will be more responsive to local concerns than officials in Ottawa.

This could be considered the beginning of a new era in the relationship between the SRRB and the GNWT; it would be wise to carefully re-think how these two organizations can best collaborate and support one another, while maintaining their distinctive mandates.

Niche and priority issues for the SRRB going forward

Broadly speaking, many interviewees felt that the SRRB is ideally placed to act as a bridge, facilitating two-way understanding between traditional knowledge holders and decision makers within co-management boards, government agencies, and funders of research (such as the Environmental Studies Research Fund (ESRF)). It was noted that community members often do not feel comfortable asking government scientists for help in understanding what is going on; the SRRB can be a go-to organization for clear and credible explanations.

In addition, the SRRB can play a critical bridging role *within* the Sahtú. This is obviously a big challenge since people within and amongst Sahtú communities have many different and sometimes conflicting priorities. Decision-making is decentralized, to the point where each community may negotiate a separate self-government agreement. However, as a widely respected body with a mandate that is virtually unchallengeable (no one in the Sahtú would question the need to protect wildlife), the SRRB has an opportunity to bring together divergent groups such as the RRCs, the Land Corporations, the Sahtú Secretariat Inc., the Sahtú Land Use Planning Board, and the Sahtú Land & Water Board. Interviewees felt there is a need to break through some of the organizational silos and the silos between Sahtú communities, especially with regard to issues like caribou and water, where impacts will be felt across boundaries.

Several interviewees commented that the SRRB's wildlife-focused mandate provides a natural opportunity to engage many community members, since wildlife is a topic that interests most people. Wildlife is important to people's day-to-day life; people have expertise in this area and they like to talk about it. On their own, the Sahtú Land & Water Board and the Review Board can have difficulty attracting participation if subjects or processes do not seem tangible, but the SRRB can use wildlife as a key hook to get community members involved in those broader resource management decision-making processes.

With regard to environmental assessment, it was felt that the SRRB has more freedom than GNWT-ENR at Review Board hearings to clearly present regional issues and concerns with regard to wildlife, since GNWT representatives have to filter their comments through many layers of bureaucracy.

The SRRB could also play a useful role in working directly with industry and regulators to design and coordinate an adaptive management system. One respondent noted that adaptive management can be very powerful if it is done well and sincerely, and it can even save companies a lot of money. The SRRB could contribute to the development of standards and guidelines for monitoring, including clear lines of communication and reporting (to oversight bodies other than just the company). In the past, the SRRB has sometimes helped to facilitate conflict resolution. In one case, an RRC monitor noticed a problem but was not getting any response from the federal inspection officer or the company. The SRRB arranged a phone conversation with representatives from the RRC, the company, and the relevant agency, who were able to work out a suitable solution together.

With regard to research, one government representative felt that SRRB should be driving the agenda as far as research priorities. The ESRF representative emphasized that all parties at the Research Fund are eager to get input from the SRRB on how traditional/local knowledge can feed into the development of research proposals and decision-making, specifically in relation to oil and gas development. Several people emphasized that the SRRB should ensure research is applied and relevant to decision-making.

Currently, there is huge need for baseline research related to impending oil and gas development,² such as seasonal habitat requirements for caribou. Industry is especially interested in boreal caribou research, since the draft national recovery plan suggests limits on disturbance that could limit certain kinds of industrial activity.

People felt it is a good idea for the SRRB to organize research camps out on the land with both traditional knowledge experts and western science experts, to encourage collaboration and facilitate cross-checking between different expert perspectives. It was suggested that the SRRB could partner with broader research and stewardship initiatives (such as the Water Stewardship Strategy) to leverage funds and ensure RRCs are engaged in those initiatives.

When asked about key information gaps that the SRRB could help to fill, most respondents emphasized the need for traditional-knowledge-based research that is meaningful to decision makers; for example, traditional knowledge that is geo-referenced, compiled and analyzed so that there is more than just anecdotal evidence. In addition, there is a need for greater insight into how elements of the environment work together; for example, land–water interactions.

In terms of priority issues, it was widely felt the SRRB should focus its research efforts on baseline data collection and impact monitoring related to oil and gas activities. This could include toxics monitoring, aquatic health monitoring, water quantity levels, and monitoring disturbances and loss of habitat for wildlife such as caribou, grizzlies, and Dall sheep. Both government and community representatives emphasized that the focus should be on cumulative impacts. It will be critical to determine thresholds beyond which wildlife will not be supported; for example, related to water quantity and quality, contiguous areas of habitat, and buffer zones for wildlife. It is also important to consider the interactions between cumulative impacts and accelerating climate change. One respondent noted that while many codes of

² A representative from the Review Board said that MVEIRB could potentially provide a letter of support for SRRB applications for funding to conduct baseline research.

practice exist in terms of cumulative impact thresholds, the biggest challenge is applying them in a meaningful way so they actually feed into on-the-ground monitoring, adaptive management, and decision-making.

Other ways the SRRB can address cumulative impacts is through participation in wildlife management planning, land use planning, and parks/protected areas planning. Respondents noted that the SRRB should be playing a key role in the development of the Bluenose East caribou management plan, in the Great Bear Lake Fisheries Management Committee, and in the five-year review of the Land Use Plan (once it is finalized).

The SRRB could also play a useful role in decisions around parks and protected areas. The SRRB is typically not invited to participate in negotiations around the establishment of parks (or the determination of boundaries); its formal role comes later with the development of the park management plan. However, RRCs are usually involved in these negotiations, and the SRRB can take a more active role in supporting RRCs. In the case of the Nááts'ich'oh National Park Reserve, the Tulita and Norman Wells RRCs have been involved in negotiations since the beginning, whereas SRRB staff felt it was not appropriate to get involved at that time. The boundary chosen by the federal Minister provides relatively little habitat protection, and now local leadership is trying to bring everyone back together to decide what to do about the boundary. The SRRB could contribute to these efforts by providing research/ studies supporting the need for a different boundary.

Working with Renewable Resource Councils

SRRB staff and Board members have clearly identified that one of the SRRB's top priorities going forward is to deepen its collaboration with and support for local RRCs in both research and resource management. The SRRB's mandate within the Land Claim directs the Board to "involve RRCs and participant harvesters to the greatest extent possible" (section 13.8.40) and to build their capacity to engage in integrated resource management. It is also simply a way for the SRRB to stay relevant in communities across the Sahtú region, where decisions are being made.

It was also pointed out, however, that the SRRB still has own independent decision-making authority; the Board should not abdicate this authority to RRCs, and it should not be afraid to disagree with them.

At the other end of the spectrum, the Board should be careful not to do too much on the RRCs' behalf. RRCs should be encouraged to take more initiative (e.g., issuing their own responses to industry applications) and use their mandates and existing resources more fully. Some respondents noted that there is a widespread misconception amongst community members that the co-management Boards are there to take care of issues *for* them, so community members do not have to pay much attention. It may be necessary to actively break down the idea that people in authority have things taken care of, that if the Land & Water Board approves a project it must be safe, and that within all of the complex structures that have been established, someone somewhere must be protecting wildlife. The SRRB therefore faces the challenge of supporting RRCs and harvesters without reinforcing dependency or complacency.

Roles and key challenges of RRCs up to now

The predecessors to RRCs were the local Hunters' and Trappers' Associations, which were regarded as quite influential within communities and sometimes as de facto governing bodies. HTAs were formed in order to protect harvesting rights, which were threatened by colonial rules and structures, government restrictions, loss of culture, and lack of money for equipment and gas. It is worth noting that the protection of *harvesting* has not always been clearly aligned with the protection of *wildlife*, since government agencies have sometimes enacted restrictions on harvesting with the stated goal of protecting wildlife. This may have made the transition from HTAs to RRCs problematic.

Renewable Resource Councils were set up under the Land Claim with the mandate of participating in the protection of wildlife and habitat, including the collection and provision of data related to harvesting. RRCs are primarily accountable to beneficiaries and resident harvesters. The SRRB is mandated to involve and support the RRCs; however, the structural relationship between the local RRCs and the regional SRRB is not clearly laid out in the Land Claim. The SRRB used to have a policy of bringing in RRC members to participate in at least one Board meeting per year; however, this has not happened for a few years, according to one longstanding Board member.

One SRRB Board member told a story about people in Deline saying that they wanted the power of the HTAs back. This is ironic because the RRCs have more formal, legally enforceable power than the HTAs ever did; however, they have not always found ways to fully exercise that power. Many bureaucratic structures were set up under the Land Claim that some feel have hindered community members from being able to make their voices heard.³ Land Claim implementation is still ongoing, which means there are still opportunities for people in the Sahtú to change course and return to what was originally intended in the Land Claim; RRCs should play a key role in this.

The Land Claim also split up decision-making responsibilities amongst separate organizations in each Sahtú community, which allows for more local decision-making, but it can also divide people into silos and hinder cooperation across broader issues. One respondent noted that the challenge of addressing cumulative impacts requires organizations to pool their resources, data and expertise; this is particularly challenging in the Sahtú region.

While RRCs receive some federal funding through Sahtú Secretariat Inc. and continue to receive minimal funding from the GNWT to support harvesters, each RRC is only able to support one part-time or full-time staff person on a regular basis. To some extent, the RRCs have evolved into non-profit contractors—renting out vehicles, contracting out community monitors to accompany projects, and distributing funds and equipment for community harvesting activities. Some Board members have suggested that RRCs should be allowed to evolve into full-fledged businesses, without the limits imposed by non-profit status. If such a change were legally possible, it would be a tricky balance for RRCs to maintain a focus on

³ Ruairaidh Carthew, *Beyond Bureaucracy: Collaborative Relationships in the Transition to Co-Management, A Case Study in the Sahtu Region*, 2007. Master's Thesis, Centre for Transdisciplinary Environmental Research, Stockholm University.

wildlife protection if they could also receive increasing amounts of profit from the shale oil boom. On the other hand, if RRCs were more independent in their funding sources they might be able to counterbalance the power currently held by Land Corporations, which do not seem to consider wildlife protection as part of their mandates (see below for more discussion about the relationship between RRCs and Land Corporations).

It is a big shift for RRCs to go from supporting harvesters and managing quotas, to dealing with a shale oil boom that could have very significant implications on wildlife habitat. Some commented that communities used to see oil and gas exploration as relatively benign, creating lines in the bush that could even help with harvesting. It is critical that the SRRB work with RRCs to ensure communities understand the differences between relatively limited exploration in the past for conventional resources, and the unconventional play happening now.

A former SRRB staff person described a learning process that took place from about 2006 to 2008 regarding responses to referrals. At first, SRRB staff would really have to push RRCs to submit comments; then RRCs began to take more initiative and would sometimes come to the SRRB with their own questions. RRCs would still often submit comments outside the wildlife protection mandate (e.g., regarding economic benefits, monitors, or spiritual/cultural aspects), so the SRRB would make its own separate submissions.

An important role of the RRCs in relation to industry has been coordinating community monitors. Access and Benefits Agreements (ABAs) often require companies to hire a certain number of monitors to accompany their operations, and the RRCs are usually the ones to make these arrangements on behalf of the community. Permits and licenses are usually silent about community monitoring requirements, so it is often unclear what aspects of operations monitors must be checking, and who they should be reporting to and communicating with. According to RRC representatives, companies often tell monitors what they can and cannot look at and where they should be. Monitors often submit their checklist reports to companies only, and rarely communicate their observations to the AANDC inspector, the RRC, or any other community organizations. This issue is addressed in more detail in subsequent sections of this report, in terms of how the SRRB can contribute to improving the system.

Relationship between RRCs and Land Corporations

Under the Land Claim, four Dene and three Métis Land Corporations were set up to implement the Claim. Many community members seem to believe that the primary role of the Land Corporations is to look after the economic interests of beneficiaries. Local or district Land Corporations negotiate Access and Benefits Agreements (ABAs) with companies who want to conduct activities on Sahtú lands and waters within their district. While the Land Claim technically requires ABAs only on Sahtú lands, the Sahtú Land & Water Board generally requires ABAs to be signed before it will issue permits or licenses anywhere in the region.

Importantly, the Land Claim specifies that Land Corporations are to “establish” the Renewable Resource Councils (section 13.9.2). Specific aspects of this relationship are unclear. A Sahtú Secretariat Inc. staff person stated that the role of Land Corporations is to oversee governance of RRCs, even though it is difficult for Land Corporations to stay on top of this. In

practice, the Land Corporations appoint and/or approve members who are elected to serve on the Renewable Resource Councils. A Sahtú Secretariat staff person observed that he has never heard of a Land Corporation refusing to appoint a nominee. Many have observed, however, that RRC members feel they will be dismissed if they take a different position or do not follow the agendas of the Land Corporations, so the Land Corporations are able to exert a considerable degree of control over the RRCs. There is even a perception that the role of RRC members is to *represent* the interests of Land Corporations. One Land Corporation staff member stated that the Land Corporation Board does in fact appoint several of its own Board members to serve as representatives on the RRC.

During meetings held in September 2012, RRC members emphasized that community leadership needs to understand that RRCs are separate organizations from Land Corporations and have different mandates.

At the same time, coordination is required between the two kinds of organizations. Land Corporations hold resources and use the RRCs to help distribute those resources to beneficiaries (e.g., distributing gas for snowmobiles and boats). Land Corporations also pass on information to RRCs about commitments in the ABAs related to hiring community monitors and contracting traditional environmental knowledge (TEK) studies. Contracts are often signed directly between companies and RRCs to implement these parts of the agreement.

There is an obvious link between RRCs and ABAs in terms of the agreement implementation (e.g., monitors, TEK studies); there is also a link to the RRC mandate in terms of how the agreed-upon industrial activity will impact wildlife and habitat. In theory, environmental issues can be addressed later during project screening and environmental assessment; however, the ABA is the main lever of power communities have to say 'yes' or 'no' to a project. Once the community signs this agreement, the project effectively has the go-ahead, and the screening and environmental assessment stages will focus on 'how' the project can best proceed. Moreover, there is a widespread perception that community members no longer have the right to express concerns about any aspect of a project (including environmental concerns) once the ABA is signed. It is difficult to know for sure since ABAs are confidential, but some agreements may have clauses that limit community participation in environmental reviews if it could hinder or slow the project.⁴ This has a major impact on the RRC mandate of protecting wildlife. Also, there may be information contained in the ABAs related to future activities being planned, that could be vital to RRCs and the SRRB in their wildlife management research and planning.

Respondents gave a variety of answers to the question of whether RRCs should be sitting at the ABA negotiating table. One person stated that RRC participation in ABAs is not possible because ABAs are negotiated with district Land Corporations, and RRCs do not operate at the district level. Another stated that RRCs and the SRRB should not wade into ABA negotiations

⁴ It is not clear whether such clauses are legally enforceable, since none has been challenged in court. Ciaran O'Faircheallaigh, "Corporate-Aboriginal Agreements on Mineral Development: The Wider Implications of Contractual Arrangements," 6. Paper delivered to the Rethinking Extractive Industries Conference, York University, Toronto, 5 – 7 March 2009. Accessed October 22, 2012 at: <http://www.yorku.ca/cerlac/El/papers/Ofaircheallaigh.pdf>.

because it is a political “can of worms.” On the other hand, some SRRB Board members have stated that the Board needs to get more political in its approach, engaging more with Land Corporations to develop a much better mutual understanding about each organization’s mandate and role. Many respondents stated that RRCs should definitely be involved in ABA negotiations, particularly when discussing community monitoring, TEK studies, and harvester compensation. A staff person from Sahtú Secretariat Inc. stated that it would seem “critical” for an RRC representative to participate in ABA negotiations; however they may be too busy. At the RRC workshop in Norman Wells in September 2012, a representative from the Yamoga Land Corporation stated he would like to see more input from RRCs and the SRRB during ABA negotiations.

It is unclear whether or not environmental protection measures can be included in an ABA. Even if all parties agreed to widen the scope of agreements in this way, it would be difficult to ensure enforcement when agreement terms are kept confidential from government inspectors and regulators. One respondent pointed out, however, that community members need to start putting the whole picture together and considering all aspects of projects from the beginning. Otherwise, projects may be given the go-ahead for economic reasons without understanding the consequences on wildlife. Then later, when wildlife are being affected, people may say they were never consulted about this and may blame government or industry, forgetting about the role of their own community leadership in giving the go-ahead, and the role of community contractors who may be out doing part of the work that is causing the damage.

The current relationships between RRCs and local and district Land Corporations seem to vary considerably in each community, from minimal cooperation to significant overlap in Board members. In general, however, several respondents observed that Sahtú organizations seem to be veering off in many different directions, and urged the SRRB and RRCs to play a role in bridging some of those divergences. People recommended that the SRRB invite Land Corporations to more meetings going forward, and attempt to find common ground. For example, Land Corporation representatives have stated that they “want to ensure that good consultation is happening”, and they want good monitoring programs and TEK studies involving people who are knowledgeable about the land. It would also be important to integrate self-government negotiation teams into these discussions, before they go off in another separate direction.

Case study: Hunter Bay Resources application, 2007-2008⁵

One example where an RRC became actively involved in an industry application was the case of Hunter Bay Resources’ Great Bear Lake Exploration Project (a proposed drilling exploration project for uranium, including drilling targets within Edaiila / Caribou Point). During the preliminary screening, the SRRB recommended specific conditions to protect wildlife while allowing operations to continue as planned (from May to October,

⁵ Description based on the following documents: Email from DRRC Manager Ed Reeves to Vern Christensen (MVEIRB) dated July 13, 2007; Letter from DRRC Counsel (T. Nesbitt) to M. Haefele, MVEIRB dated August 8, 2007; SRRB’s responses to MVEIRB Information Requests 1.1 and 1.2; MVEIRB’s Reasons for Decision to conduct an Environmental Assessment, Sept 4, 2007.

including during rutting).⁶ The Sahtú Land & Water Board approved the permits with wildlife mitigation measures that were very general. The Deline RRC (DRRC) sent several brief emails alerting the Review Board to the community's concerns, noting that the community was not told during consultation sessions that there would be drilling targets within Edaiila (a proposed protected area and conservation zone). This prompted the Review Board to investigate by posing formal Information Requests to SRRB and DRRC regarding the adequacy of consultation, mitigation measures, and public concern. Divergent responses by the SRRB and DRRC show an apparent disconnect between the organizations. The SRRB reiterated its recommended precautions, with no specific measures recommended for Edaiila,⁷ and avoided commenting on adequacy of consultation. The DRRC asserted strongly (with a letter from legal counsel) that any drilling within Edaiila would cause significant concern and would require an environmental assessment. The Review Board decided to call the project up to environmental assessment on its own motion.

This is also a rare case where an RRC participated in ABA negotiations; as part of the agreement with Hunter Bay Resources the DRRC managed to secure some funding to support its own participation in the process. Reportedly, there was also some internal conflict within the DRRC, which made it difficult for the SRRB and the other Boards to know how to support community wishes.

Regardless, this example shows an RRC taking the initiative and asserting itself during both ABA negotiations and the Sahtú Land and Water Board screening. This introduced a new power dynamic, and made it much more difficult for the SRRB or the Boards to make everyone happy. This kind of tension is something the SRRB should be prepared for if it seeks to empower RRCs and reach out to Land Corporations. The example also shows that science alone cannot provide clear answers to decision makers as to what is required for adequate wildlife protection; scientific knowledge about impacts must be combined with cultural and community values to determine what risks are acceptable. While the SRRB did not address those community values in the case of Hunter Bay Resources, this is certainly a key role for the Board in the future.

Making Traditional Environmental Knowledge count

When asked about key information gaps in the environmental assessment process, almost all respondents identified *applicable* traditional environmental knowledge (TEK) as a much-sought-after piece of the puzzle that remains elusive. Much has been written on this subject, and certainly it is beyond the scope of this report to review best practices on the documentation and use of TEK. This section will present comments and suggestions from respondents.

The Sahtú Land and Water Board (SLWB) generally requires TEK studies as part of its permitting and licensing process, and ABAs often require companies to hire community

⁶ Recommended conditions were: temporary suspension of operations when caribou/grizzly bear are observed within 500 m of any work/camp site, minimum altitude of 650 m for aircraft, and immediate notification of any wildlife mortalities to wildlife management agencies.

⁷ The SRRB offered the following comment on Edaiila: "It is the SRRB's understanding that limited activity is proposed on the islands southeast of Caribou Point. The SRRB recommends these areas should be avoided during key seasonal migration activity of the Bluenose East caribou herd." There is no mention of when specifically the area should be avoided, and how that would be accomplished given that the drilling program was planned to take place from May to October.

organizations to conduct the TEK studies. These studies are therefore done routinely, but many communities do not insist upon clear standards and protocols, so the quality is highly variable. According to a member of the Sahtú Land and Water Board, the TEK studies often do not include information from key families and people with the most history in the area of the proposed project. Another respondent observed that while concern about the land is genuine, there are often lots of “motherhood” statements and few specifics that could be useful.

Perhaps the most difficult issue is how TEK can best be used and how it can influence decision-making by the SRRB, companies, regulators, and government. Even through TEK studies usually stand apart from the rest of a company’s application, with few meaningful references to the study elsewhere in the application. There is a sense that TEK is only considered useful when it can provide answers to engineering problems (e.g., where is the best place to drill a well or build a road?) or when it can be made to fit non-Aboriginal scientific methods. Several people brought up the issue of peer review: What do you do with anecdotal information from individuals? How can it be checked or peer reviewed? What do you do when people say contradictory things or offer a range of answers that are all over the map?

It was noted by one person that knowledge is not the domain of any one person or group of people; it is best produced through a collaboration of resources and expertise. This idea seems to align with the SRRB’s plan to organize a research camp out on the land with both TEK experts and western science experts. It is likely that the methods used to gather TEK and the quality of the relationships between researchers and TEK holders will have a strong effect on the quality of TEK information that is gathered. More collaborative, hands-on research will probably produce more robust, practical TEK data. A generic survey or one-off Q & A session will probably produce disjointed, anecdotal data that lacks context.

Several respondents noted that they have confidence in the current Executive Director of the SRRB, with her significant expertise in TEK research and the good relationships she has established with people in the Sahtú communities.

A few respondents pointed to numerous successful initiatives by the Deline RRC where it took the lead on research projects. For example, the Deline RRC played a leading role in the research and monitoring plan set up under the Great Bear Lake Management Plan.

The director of the Nunavut Wildlife Management Board (NWMB) felt that the key to integrating traditional knowledge (called IQ in Nunavut) is establishing a database or library. The NWMB is currently spending a significant amount of money setting up an IQ library, which will contain transcripts of interviews with elders, recordings, photos, and other documentation. Interestingly, the NWMB director feels that an on-the-land research camp bringing together IQ experts and scientists would be prohibitively expensive and would require many more staff than the Board has (even though the NWMB budget is more than that of the SRRB).

Similarly, the Gwich’in Renewable Resources Board (GRRB) has developed a database called the Gwich’in Environmental Knowledge Project. The database organizes and summarizes documented TEK from Gwich’in elders, and it has been provided to each of the RRCs in CD-ROM form. The GRRB and local RRCs refer to the database when they are

preparing management plans, conservation strategies, and responses to license and permit applications. The project also involves publishing books; two have been published so far.⁸

The director of the GRRB explained that there is good quality control with traditional knowledge studies in the Gwich'in region, since all TEK studies must be vetted through the Gwich'in Social and Cultural Institute, which has clear policies and procedures.

Lessons learned

Many respondents offered some lessons learned in terms of how to make working with the RRCs most effective.

One community member felt that good communication requires face-to-face meetings. It seems inevitable, however, that email and phone must be used to coordinate things in between meetings. A former SRRB staff member described how she made remote communications work by getting to know community schedules and “rhythms”—which times of the week or times of the year would provide the best chance to reach people.

The community member also observed that people are often confused about the industrial activities taking place, even after they have attended information meetings. She thought that the reason may be a translation problem, but also pointed out that people tend to forget when there is a long lag time between the consultation meeting and the start of activities on the ground. This points to the need for meetings to be iterative—there should be many meetings discussing the same issue as it progresses over time, for it to sink in. Also, more attention should be paid to making sure people understand not only the words being spoken but the concepts and the context—what else the issue is linked to, what came before it and what will come after. The same community member gave the example of many people being surprised and upset now when a company announced it wants to start ‘fracking’; people did not necessarily understand that fracking would follow from the first exploration activities that took place. She suggested that meetings should be in smaller groups, with lots of maps and visuals. Concepts should be explained in different ways until people understand; the more they understand, the more questions and feedback they will have, which will again support more understanding in a kind of virtuous cycle.

The above comment also points to the need for establishing meaningful long-term relationships between presenters and meeting participants. Some respondents identified the challenge of high turnover amongst RRC representatives sent to meetings. Often RRCs will rotate their delegates to allow everyone the chance to attend meetings and receive compensation. This can be frustrating if the purpose of meeting is to gather in-depth traditional knowledge, to plan long-term processes or to make iterative decisions over time. On the other hand, this practice can be helpful if the goal of meetings is to spread information as widely as possible or to build a broad base of support and understanding. It may help to clearly explain to RRCs the purpose of each particular meeting and suggest which kinds of participants should ideally attend if the meeting is to be as productive as possible.

⁸ See the Gwich'in Renewable Resources Board website for more information: <http://www.grrb.nt.ca/traditionalknowledge.htm>

The Gwich'in Renewable Resources Board (GRRB) director described how they have learned to get maximum input from RRCs. Instead of insisting that RRCs provide formal written input on applications, the GRRB records meetings and extracts statements made during meetings. Then the GRRB sends the statements back to the RRCs to check for accuracy and whether it reflects the meeting as a whole. The GRRB has gotten positive feedback from RRCs on this process; they appreciate the check-in to see if the GRRB got it right. The director noted that one step they are missing is to clarify whether people were speaking as individuals or whether their statements represent the views of their organization.

Use of community radio also seems like a promising way to engage people in the communities and encourage greater participation. Broadcasting the joint RRC-SRRB meeting in Fort Good Hope seemed to be effective in drawing an ever-increasing crowd who actively participated in the discussion. It could also be a good medium for RRC members to regularly keep their communities up-to-date, and to promote greater awareness and engagement in wildlife protection and management. In Deline there is a natural fit since the radio announcer is an SRRB Board member. In Tulita, there is apparently radio infrastructure but no one is currently announcing. The SRRB could take a closer look at the Digital Indigenous Democracy initiative in Nunavut, which aims to facilitate broader grassroots participation in environmental assessment decision-making through internet, community radio, local TV and social media, in both Inuktitut and English. This initiative, which was launched in May 2012, provided 22 radio call-in shows and 59 video testimonies from elders and youth as testimony to the Nunavut Impact Review Board during hearings for the Baffinland Iron Mines project.⁹

A few respondents pointed to the Inuvialuit Game Council (IGC) as a good example of a wildlife management organization (with parallels to the SRRB) that has been effective in engaging community members in ways they understand, and also developing a good understanding with industry. It was also noted that the IGC serves as a good counterbalance to the Inuvialuit Regional Corporation, which focuses more on economic development. Unsuccessful attempts were made to arrange an interview with the Wildlife Management Advisory Council of the IGC; however, it may be a good idea for the SRRB director to contact them in the future for advice.

Profiles of other Wildlife Management Boards

It may be useful for the SRRB to get a sense of perspective by comparing its own operating framework and staffing with those of other wildlife management boards in the North.

Nunavut Wildlife Management Board (NWMB)

Collaboration with community organizations:

- NWMB serves 26 communities (a population of 32,000).
- Each of the communities has a Hunters' and Trappers' Organization (HTO) – the NWMB deals with 26 HTOs as well as three regional wildlife organizations (RWOs).

⁹ See <http://www.isuma.tv/DID/DIDoverview5May2012> for more details.

- The Board takes care of finances for all of these organizations (centralized accounting).
- According to the NWMB director, the HTOs are unlikely to read applications or write letters, so the best way to get input from harvesters is to hold hearings / meetings.
- The NWMB is allocated a set amount of \$350,000 each year to hold hearings. This is different from other Nunavut Boards, which have to apply for intervenor funding each time they want to hold a hearing.
- Hearings use formal procedures; at the beginning of each hearing the Board has to spend about 30-60 minutes going over hearing rules and procedures. The key to the success of a hearing is the facilitation skills of the NWMB Chair, who tries to break down shyness and encourage people to talk, while maintaining a certain level of professionalism.
- Sometimes the hearings / meetings are seven days long, lasting eight hours each day.
- In addition to hearings, the NWMB holds four regular meetings per year, which are more informal, and one conference call per month, which cover everything from administrative matters to emergency situations (e.g., what to do about a whale trapped in ice). The NWMB also hosts special training meetings and governance meetings. The HTOs hold their own meetings once a month as well.

Staffing: – nine staff (looking for one more, for a total of 10)

- Executive director, four wildlife biologists (split between marine mammal and terrestrial animal specialists; looking for another specialist in habitat management and global warming), two finance officers, administrative assistant, and translator

Contractors:

- Retain a legal advisor, works almost full-time
- NWMB only hires other contractors for special projects. The NWMB always finds, without much difficulty, contractors who have worked in the north before.

Permit & license applications / environmental assessment:

- At one time the NWMB felt it was drowning in land use permit applications (approximately 125 per year), everything from small to huge projects. The Board felt this was beyond the capacity of its nine staff, so it made the decision to back out of dealing with any applications and let other Boards take care of this (i.e., Planning Commission, Impact Review Board, and Water Board).
- Now, faced with the Baffinland Iron Mines project, which received a positive recommendation from the Nunavut Impact Review Board in September 2012, the NWMB is reversing its approach again since it is “terrified of what this project will do to wildlife.” This is one major reason why the Board is hiring another staff person specializing in habitat management. The Board is considering becoming an intervenor in future applications.
- In general, the NWMB does not work directly with communities in building a better understanding of what project applications are all about. The Board relies on government agencies to hold public meetings and explain projects in plain language.

- All HTOs have administrative staff/ managers. Some are able to send responses to applications on behalf of the HTOs; others really struggle with this. The NWMB will take responses in either language, and will translate responses submitted in Inuktitut.

Successes so far:

- The NWMB director felt that the Board's greatest success so far has been with regard to management decisions on fisheries and marine mammals. The director felt that the decisions really reflected community feedback and consultations were very productive.

Gwich'in Renewable Resources Board (GRRB)

Collaboration with community organizations:

- There are four Renewable Resource Councils in the Gwich'in region, one for each community. Each RRC employs a full-time coordinator. The four coordinators meet regularly to discuss common / overlapping resource management issues.
- The GRRB Renewable Resource Manager acts as liaison between the GRRB and the four RRCs, consulting with them regularly via phone and email, and providing plain language explanations as necessary.
- Similar to the experience of the NWMB, the GRRB rarely gets formal written input from the RRCs, but good input is provided through meetings, which are all recorded. The younger members on the local Councils are starting to provide more structured written responses.
- The GRRB sometimes acts as a mediator between researchers and communities, helping communities to get engaged the way they want.
- From 2008-10, the Board developed a set of Consultation Rules and Procedures to guide how the GRRB consults with communities and with government agencies. This document lays out different procedures regarding consultation on research, wildlife management, limiting the harvest, traditional sharing, and advice to government.¹⁰
- According to the GRRB director, one Board priority that keeps falling through the cracks is making presentations in schools to encourage Gwich'in youth to become researchers.

Staffing: – Five staff

- Executive director, wildlife biologist, fisheries biologist, renewable resource manager and office manager
- Also usually seek additional funding to hire summer students
- Sometimes hire casual staff

Contractors:

- Contractors are usually former GRRB staff; they are contracted to help with tasks such as accounting and workplan development.

¹⁰GRRB Consultation Rules & Procedures, approved February 18, 2010:
<http://www.grrb.nt.ca/pdf/Public%20registry/GRRB%20Consultation%20Rules%20Procedures%20%282010%29.pdf>

Permit & license applications / environmental assessment:

- In the Gwich'in region, there is currently much less industrial activity (e.g., mining, oil and gas) than in the Sahtú, especially since the Mackenzie Gas Project is stalled indefinitely.
- The Gwich'in region does not have the same system of Access and Benefits Agreements as in the Sahtú. The Gwich'in Tribal Council's department of Lands and Resources department deals with all access issues.
- If GRRB staff are asked by industry or government to attend conferences or coordinate involvement from RRCs, the Board charges an administrative fee.

Research and management planning:

- Currently the focus is mainly on management plan development, with a little bit of research work (e.g., collecting harvest data from communities).
- Previous to 2006, staff were focused heavily on research; however, management planning was falling behind, with many plans being drafted but none were getting approved. In 2008, the Board completed a new strategic plan, in which the Board decided it would hold off on further research unless it had a clear link with management planning.

Successes so far:

- According to the GRRB director, the Board's greatest success has been in supporting community-based monitoring programs such as the Rat River char monitoring program, which has been going on for over ten years. The GRRB has successfully trained community members to do sampling and field research.

Wek'eezhii Renewable Resources Board (WRRB)

Collaboration with community organizations:

- There are no Renewable Resource Councils in the Tłı̄ch̄ô region.
- The WRRB deals directly with the Lands Protection Department of the Tłı̄ch̄ô government, which in turn consults with each community's Chief and Council.

Staffing: – Three staff (recently expanded)

- Executive director, wildlife management biologist, research and monitoring coordinator
- The wildlife management biologist deals with license applications (mostly land use permits related to the minerals industry).

Permit & license applications / environmental assessment:

- In the Tłı̄ch̄ô region, there has been no oil and gas activity but a significant amount of mining activity. The mining industry requires fewer applications for permits and licenses but they are often complex. The WRRB deals with approximately four to five applications per year, and it is very difficult to plan ahead as to when work on these applications will be required.

Research and management planning:

- Currently the focus is mainly on management planning, particularly with regard to the Bathurst caribou herd.



Dealing with industry applications

SRRB staff and Board members, as well as other interviewees, have all emphasized the importance of the Board focusing its attention on the impending shale oil boom and its potential large-scale effects on wildlife and habitat. The SRRB has limited resources, and this issue is certainly overwhelming. The Board needs to figure out how it can most strategically direct its staff time and research funding to ensure it has maximum influence over how oil and gas projects proceed. SRRB staff are also caught between the need to respond very quickly to immediate concerns arising from the current wave of applications, and the need to develop a longer-term strategy to ensure the SRRB is building key relationships, securing buy-in from communities, and operating in a sustainable way that avoids staff burnout. This section focuses on how to deal with the more immediate issue of industry applications, and the next section takes a step back to consider a broader strategy.

Analysis of points of influence

In order for the SRRB to determine where to focus its efforts, it is necessary to identify specific points where the SRRB may be able to influence whether or how oil and gas projects proceed. Six aspects of the process are analyzed below, in terms of: **who** is involved, **when** it takes place, **level** of importance of the decision to be made at this stage, **level** of potential SRRB/ RRC influence over the decision, and **nature** of potential SRRB influence.

1. Consultation by federal government before call for bids / issuance of leases

WHO – AANDC and Land Corporations; potentially RRCs as well (SRRB could support RRCs and help them prepare for involvement)

WHEN – The consultation stage has passed for 13 leases already issued. (In the Tulita District, 11 leases were issued in 2010/11, and in the K’asho Got’ine District, 2 leases were issued in 2011/12.) More calls for bids are likely being planned for the near future in these two districts and possibly other districts in the Sahtú.

LEVEL OF IMPORTANCE – high

LEVEL OF SRRB / RRC INFLUENCE – medium to high

NATURE OF INFLUENCE – At this stage, RRCs and the SRRB could exert significant influence over the *scale* and *pace* of industrial projects, and *where* projects may or may not occur. While no community organization has a veto over the federal government’s decision to issue a call for bids, an RRC could convince AANDC to at least hold off issuing leases in a district, or a particular part of the district, if there is a lot of public concern or if community capacity is currently overwhelmed.

2. Negotiation of ABAs

WHO – Companies (proponents) and district Land Corporations; potentially RRCs as well (SRRB could support RRCs and help them prepare for involvement)

WHEN – ABAs have already been signed with those companies that have received permits and licenses to do exploration work so far (Husky, ConocoPhillips, MGM Energy, Explor). Since ABAs are confidential, it is not known which activities the ABAs cover, and how far they extend into the future (e.g., whether they cover production as well as exploration activities). It is not known whether the companies that have teamed up to form a Central Mackenzie explorers' group (ConocoPhillips, Husky, Imperial Oil, and Shell) have negotiated or will negotiate ABAs as a group, rather than as individual companies.

LEVEL OF IMPORTANCE – high

LEVEL OF SRRB / RRC INFLUENCE – medium to high

NATURE OF INFLUENCE – At this stage, RRCs and the SRRB could exert significant influence over the scale and pace of industrial projects, since beneficiaries essentially have a veto over whether projects occur on Sahtú lands, and an agreement would likely be required in the rest of the Sahtú Settlement Area as well before the Sahtú Land and Water Board would issue any permits or licenses.

It is important to note that RRCs themselves would not have a veto; RRCs would first have to reach an understanding with the Land Corporations in order to sit at the ABA table and/or have their concerns incorporated into negotiating positions. Realistically, it is unlikely that RRCs would ever stop agreements from being signed. However, a strong community negotiating position depends on the community's willingness and ability to refuse to sign an agreement unless certain requirements are met by the company. The RRC could be influential in shaping those minimum requirements. It could also mobilize harvesters and other community members to oppose a bad project if necessary, perhaps more credibly than a Land Corporation (which may be more directly dependent on industry investment).

Communities would maximize their leverage by negotiating ABAs later on during an environmental assessment, when they have much more information about the potential environmental and socio-economic impacts.¹¹ If it is not possible to move the timing of ABA negotiation to that later stage, then the only way to effectively include mitigation measures in an ABA would be through binding commitments to collaboratively design strong measures in the future, once more information is known about the project. This could be accomplished by establishing within the ABA a strong adaptive management structure and process (see below for more details).

¹¹ See Ginger Gibson and Ciaran O'Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements*, March 2010, 44.

3. Industry applications to SLWB for exploration-stage work

WHO – Responses issued by RRCs and SRRB; comments could potentially also be submitted by Land Corporations and Bands/Councils; could also involve parallel discussions between RRCs/SRRB and proponents

WHEN – From when an application is submitted and deemed complete, the SLWB has 42 days to make a decision (on whether to issue the permit/license, or whether to request more information). As of September 2012, a few permits and licenses for exploration work had already been issued to several companies for seismic work, drilling of vertical wells, and baseline research. Further similar applications are expected during the fall of 2012 and during the next few years.

LEVEL OF IMPORTANCE – low to medium; scope of SLWB decision-making is limited

Note: Since the SLWB system is designed to examine individual projects in isolation, and the SLWB has no mandate to consider either cumulative impacts or socio-economic aspects (including community-based monitoring), it is poorly equipped to deal with large industrial projects with landscape-level cumulative impacts (such as shale oil projects). Moreover, these factors plus the 42-day time limit leave the SLWB poorly equipped to effectively integrate TEK into decision-making (especially TEK that addresses holistic issues). The SLWB has a specific list of the kinds of terms and conditions it is allowed to impose, and often uses standard wording that is quite general and sometimes difficult to enforce. For these reasons, it seems that the SLWB would have little maneuverability to integrate project-specific recommendations from the SRRB or RRCs that deviate much from the standard.¹²

LEVEL OF SRRB/RRC INFLUENCE – medium to high (influence over decision to refer to EA)

NATURE OF INFLUENCE – The most important lever held by the RRCs and SRRB at this stage is its ability to recommend that the SLWB refer an application to the Review Board for environmental assessment (EA). While the SRRB does not have the same referral powers as the Sahtú Secretariat Inc., letters by the RRCs and SRRB go a long way towards showing “public concern,” which is the area where the SLWB has the most discretion to justify sending a project up to EA.

It is important, however, for the RRCs and the SRRB to be strategic in when and how often they pull this lever. Referring the vast majority of projects to EA could invite a formal review of this power which could in turn result in limits on the power of RRCs to refer projects. Factors that the SRRB might consider in deciding whether to call for an environmental assessment include:

- whether the proposed methods raise new concerns;
- whether conditions imposed could set an important precedent for future projects;
- whether the proposed project could push impacts over a critical threshold (e.g., disturbance of wildlife habitat); and

¹² The SRRB has heard feedback from the SLWB that its comments have been too “cookie cutter.” One reason why “cookie cutter” comments may have been provided is the impression that the SLWB cannot issue terms and conditions that vary too much from the standard.

- whether the company has shown a willingness to address community concerns and participate in a formal, ongoing adaptive management system (discussed in more detail below).

If the SRRB/RRCs decide not to recommend a full environmental assessment, then their comments to the SLWB will have the most influence if they involve specific, enforceable recommendations on terms and conditions (e.g., alternate routes/methods, best practices).

It is also important to consider how this stage will be affected by the elimination of the Sahtú Land and Water Board, as currently proposed by AANDC as part of planned amendments to the *Mackenzie Valley Resource Management Act*. Screenings would then be conducted by an enlarged Mackenzie Valley Land and Water Board with one Board member from each of the regions. For each application, a panel of three would be formed to make the decision, based not only on who would be most appropriate but who happened to be available. The one Sahtú representative on the new enlarged Board may or may not be chosen to make decisions on Sahtú applications. In contrast, current Sahtú Land and Water Board members are all very familiar with the region, they know who the land users are in a particular area, and they may have a good sense when concerns are widespread within communities. On the new amalgamated Board, the Sahtú representative would be outnumbered by those who may have little to no understanding of the region or of the important role of the SRRB and RRCs. This may mean SRRB/ RRC concerns will be taken less seriously and it will be more difficult to convince the Land and Water Board to refer projects to environmental assessment.

An additional note about the exploration stage of unconventional oil and gas extraction: while 'exploration' may sound relatively benign, it is important for the SRRB and RRCs to be aware that significant impacts could occur at the exploration stage:

- Seismic lines and access roads could create extensive linear disturbances and open up opportunities for intensive harvesting;
- Minimal knowledge about underground pressure can lead to serious well blow-outs, which can be even more dangerous if proper on-site spill response equipment has not yet been set up (to respond to worst-case scenarios);
- The use of hydrocarbons instead of water as a base for fracking fluid could be more dangerous if there was a leak in the casing or a surface spill; and
- Flaring of gases during well testing causes air pollution that could impact the health of people and animals.

During the exploration stage, companies may be reluctant to spend a lot of money on baseline studies and environmental impact mitigation, before they have determined whether the resource will even be economic to produce. Nevertheless, it is the job of the SRRB and RRCs to ensure that the environment is protected, so this may require leveraging resources from both industry and government agencies at the exploration stage.

4. Environmental assessment (EA) by MVEIRB

WHO – Participation/intervention by RRCs, SRRB and likely other community organizations (as well as government agencies and NGOs); could also involve parallel discussions between RRCs/SRRB and proponents

WHEN – In October 2012, the SLWB referred the first shale oil exploration application to environmental assessment (application by MGM Resources which included horizontal fracturing). The Review Board (MVEIRB) currently aims to complete all environmental assessments within 18 months; however, federal changes to legislation may shorten this window to 12 months.¹³ The current EA on the MGM application will likely be completed by the spring of 2014.

LEVEL OF IMPORTANCE – medium to high (depending on scope)

LEVEL OF SRRB / RRC INFLUENCE – medium

NATURE OF INFLUENCE – An environmental assessment is an important opportunity for all aspects of a project, including cumulative impacts and socio-economic impacts, to be examined over a longer period of time (than SLWB screenings). The Review Board is more likely than the SLWB to take into account the Land Use Plan in draft form.¹⁴ Hearings are held in all affected communities, which give community members a chance to speak to their concerns rather than having to write letters. While the Review Board is unlikely to recommend that a project should not proceed at all, the SRRB and RRCs have an opportunity to influence how it is done. It is possible that there will be a large number of interveners, so the SRRB and RRCs will have to make their recommendations clear, practical, and well-founded, so that their contributions do not get lost in the shuffle.

One of the most important opportunities for the SRRB/RRCs to influence the EA process is the initial scoping session(s) held in the affected communities, when the Review Board gets input on what are key priorities to be examined, what cumulative aspects should be considered, and how the EA is framed overall. While the Review Board provides a translator, the meeting is run more informally than hearings, which could make community members more comfortable speaking up.

Community monitoring and adaptive management are important aspects that should be addressed at this stage, both through input given to the Review Board on recommended binding conditions, and parallel discussions with the proponent on voluntary initiatives (see below for more details).

Case study: Wek'eezhii Renewable Resources Board contributions to an EA

The respondent from the Review Board pointed to a case where the WRRB was making effective contributions to an environmental assessment process. While the WRRB decided not to become an official party to the EA (official parties are allowed to submit Information Requests and make presentations at hearings), the WRRB

¹³ The new *Canadian Environmental Assessment Act 2012* (CEAA), passed as part of Omnibus Budget Bill C-38 in June 2012, created new time limits of 12 months for environmental assessment across most of Canada. Changes to the *Mackenzie Valley Resource Management Act* that have been discussed as part of the Pollard review include introducing new time limits for EAs in the Mackenzie Valley; it is likely that these will be made to align with CEAA.

¹⁴ See MVEIRB's Reasons for Decision to conduct an Environmental Assessment in the case of Hunter Bay Resources, Sept 4, 2007.

has attended the hearings and subscribed to the public registry in order to stay on top of wildlife issues being discussed. According to the Review Board representative, WRRB submitted a “really top-notch” report with analysis that combined both TEK and western scientific data regarding boreal caribou. The Review Board found this extremely helpful. The WRRB then attended hearings in order to answer any questions that could arise regarding the report.

5. Pipeline assessment (may be EA or Environmental Impact Review)

WHO – Participation/intervention by RRCs, SRRB and likely other community organizations (as well as government agencies and NGOs); could also involve parallel discussions between RRCs/SRRB and proponents

Companies would likely apply as a joint consortium (e.g., the Central Mackenzie Valley Producers’ Group), or else it could be a separate proponent such as Enbridge.

WHEN – Application perhaps in 2015-16 at the earliest; more likely later

If MGM Energy obtains an approval in spring 2014 to do horizontal fracturing, several companies might be able to do enough exploration work in the winter of 2014-15 to obtain Significant Discovery Licenses in 2015. At that point, a pipeline application could proceed if it was proven to be necessary. The current pipeline south from Norman Wells has some capacity to transport the initial oil produced. The capacity of the existing pipeline could be increased by adding pumping stations and doubling up segments of the pipe. However, the current pipeline is aging and it is increasingly being affected by slumping and other effects of climate change. Depending on the scale and pace of development, another pipeline may be required and different routes may be considered (eg. ones that would make the pipeline less vulnerable to climate change).

An Environmental Impact Review (EIR) would likely take about 18 months; an EA could take between 12 and 18 months. Thus, the pipeline review could be complete sometime in 2017.

LEVEL OF IMPORTANCE – high

LEVEL OF SRRB / RRC INFLUENCE – medium

NATURE OF INFLUENCE – This is another opportunity to influence the scale and pace of shale oil development, since companies will only produce as much oil as they can transport out. Under the current system, a pipeline project would likely go to an EIR. The process would be somewhat similar to an EA, as described above in #4; with the additional bonus that intervenors (such as the RRCs and SRRB) are provided with funding to participate. With anticipated changes to the *Mackenzie Valley Resource Management Act*, however, a pipeline project may be blocked from being bumped up to EIR (and instead undergo an EA).¹⁵

¹⁵ The new *Canadian Environmental Assessment Act 2012 (CEAA)*, passed as part of Omnibus Budget Bill C-38 in June 2012, prevents projects under the jurisdiction of the National Energy Board (such as pipelines) from being referred up to Environmental Impact Review. This change

6. Monitoring and Adaptive Management

WHO – RRCs, SRRB and industry proponents (with support from SLWB, MVEIRB, GNWT-ENR, and support/enforcement from AANDC)

WHEN – throughout exploration, production, and remediation/clean-up

LEVEL OF IMPORTANCE – high

LEVEL OF SRRB / RRC INFLUENCE – low to high (depending on quality of adaptive management system set up)

NATURE OF INFLUENCE – While community monitors are currently tasked only with ensuring basic terms and conditions are followed, an improved and more robust monitoring and adaptive management system could have a much greater influence over the entire process. It could help to track actual vs. predicted impacts, improve practices at operations that have already been permitted, and greatly improve the standards set for each new project going forward.

Even if the greatest mitigation measures in the world are set as terms and conditions, they are useless unless those mitigation measures are actually implemented properly, and unless there is someone checking whether or not they are working as expected. Unconventional oil and gas extraction has never been done in a region like the Sahtú. No one knows precisely what the impacts will be; this is an experiment. Moreover, the consultants who design environmental mitigation measures for the companies are not the same people who will actually be implementing them (or not), and often the work on the ground is being done by contractors and sub-contractors. Whether or not mitigation measures actually protect the environment hinges first on whether there is effective independent monitoring of implementation and impacts, and secondly on whether this information gets incorporated into decision-making on an ongoing basis to support continuous improvement.

Monitoring and enforcement currently appear to be the weakest link in the regulatory chain. The SLWB and MVEIRB rely on AANDC to enforce their terms and conditions, and there is only one AANDC inspector for the entire Sahtú region. According to that AANDC inspector, National Energy Board inspectors (based in Alberta) are rarely seen in the region.¹⁶

RRC monitors are employed by companies (as per requirements in ABAs) to accompany their operations, so RRCs are already well-positioned to have more influence over this process. According to RRC members, however, there are a lot of problems with the current set-up. Company representatives often tell monitors where to go and what they can look at. Reports are often a simple checklist. Usually, monitors submit their reports to the company only, so the Boards setting the conditions are left in the dark as to whether their conditions are being followed. This also means there is limited accountability to community members, RRCs, and the SRRB. According to RRC members, monitors are fired if they are perceived as being lazy,

likely could not be applied to the Mackenzie Valley without parallel changes made to the MVRMA. Amendments to the MVRMA are expected to be introduced soon.

¹⁶ Comment by Steve Deschene, RRC Referrals Workshop in Norman Wells, Sept 6, 2012.

but also if they investigate any problems too deeply. In addition, monitors usually live in remote camps with the rest of the company crew for several weeks at a time, so it may be difficult for them to ‘police’ others around them while living in such close quarters.

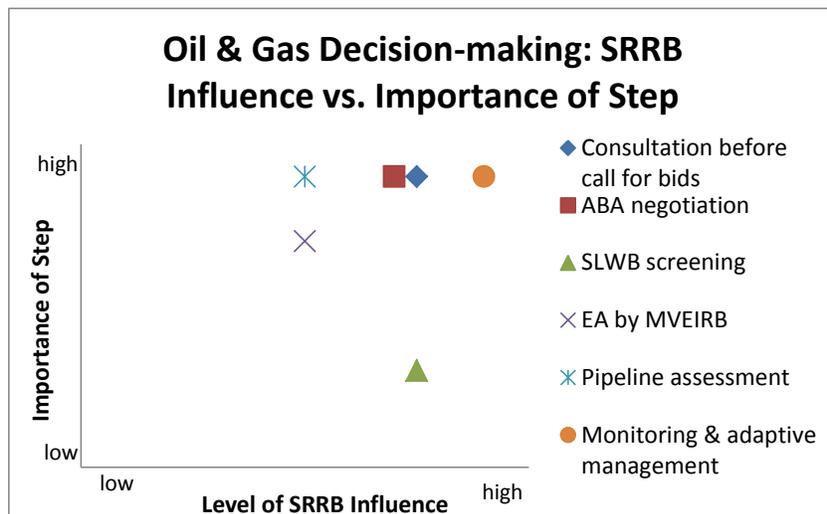
The system would be improved by establishing a formal system of adaptive management with each proponent. The SRRB could work with both RRCs and companies to establish such a system, either during ABA negotiations or during the EA process. The system would include:

- a commitment from the company to allow community monitors free access to monitor certain criteria;
- setting clear standards for the content of reports prepared by monitors, and ensuring multiple copies are always provided to RRCs, SLWB, and the AANDC inspector;
- giving clear instructions to the company as to what monitoring data it is required to gather and provide to communities and agencies/Boards on a regular basis;
- a schedule of regular and open communication between the company, monitors, communities and agencies/Boards (this may include company support for an environmental monitoring coordinator position in the community); and
- clear roles established for monitors and RRCs (with support from other agencies / Boards) in ongoing company decisions about how monitoring and mitigation measures may need to be adjusted.

This kind of system needs to be set up right away, so initial mitigation measures can be tested early in the exploration process and adjusted before company plans become too firmly set and before any unnecessary damage is caused.

The role of community monitors would shift from ‘policing’ to observing and documenting the process to see how well it works and what needs to be changed. The company would be held accountable not by one vulnerable, individual monitor, but through a committee with clear rules around sharing of information and communication, and clear methods of addressing problems collaboratively.

Diagram 1: Importance of and SRRB / RRC Influence over six aspects of the oil/gas development process



Strategy for reviewing shale oil applications

Outlined below is a strategy that the SRRB could use to review individual industry applications. The overall goal is to gradually shift from operating in a stressful, reactive mode to a confident, proactive mode. The strategy will require an up-front time investment to establish the system and to allow SRRB staff to become proficient. Thus, it will be difficult to employ the strategy right away within the 42-day time limits of SLWB screenings. Once the groundwork is laid, however, the goal will be to quickly review applications and clearly communicate to companies whether or not SRRB expectations have been met. Progressive oil and gas companies will welcome an opportunity to go beyond the minimum rules and requirements and meet special local requirements if it leads to a relatively speedy approval process, and helps them avoid the delay, cost and uncertainty associated with an environmental assessment.

It would not be possible for an SRRB analyst with a generalist level of knowledge about the oil and gas industry and environmental and social impact assessment to complete a comprehensive review of an oil and gas application and develop recommendations that address the regional and community-specific issues. Neither is it possible for a resource-limited Board to employ a comprehensive review team comprised of oil and gas experts and issue area experts for each application. Other intervenors such as GNWT-ENR, Environment Canada or AANDC may submit technical recommendations based on their own areas of expertise; however, there is no guarantee any of these agencies will devote adequate resources to reviewing every application. Moreover, high turnover within those agencies could mean that they do not pay enough attention to previous applications and fail to ensure that conditions improve over time and to build upon lessons learned. Using the strategy below, the SRRB could serve as a 'corporate memory,' ensure best available practices are always followed, and ensure that any additional concerns arising from communities are investigated using TEK, local knowledge and independent technical expertise.

The strategy is an incremental approach. The generalist analyst develops a detailed list of issues and recommendations and engages experts on specific issues that are identified as priorities. The analyst continually modifies the master list of issues and recommendations with each application. With each review the Board's list evolves, and ideally, minimum standards will gradually be ratcheted up to a level where best practice standards are expected and followed.

Strategy Overview

1. **Assemble the team** – The Board assembles an initial team made up of the SRRB EA Specialist, one or more expert support people, and RRC members willing to serve in an advisory capacity.
2. **Develop an initial list** – The team reviews past well applications and compiles a spreadsheet listing best-practice environmental mitigation measures that have been employed or committed to so far by various companies. Depending on time and budgetary limitations, the scope of this review may be more or less broad, in terms of geographic scope of projects

and the range of types of mitigation measures. If necessary, the list could be compiled as part of a review of a specific application before the Board. In that case, the list would start with the specific mitigation measures in the application, and then the team would go back and look for other examples of how those same issues were mitigated in other cases.

3. Develop a list of priority issues – Based on the initial review, the EA Specialist compiles a shortlist of priority issues. Advisors from the RRCs would give their feedback at this stage; this may involve holding meetings to get input from harvesters / TEK experts. Priorities may be determined based on criteria such as key community concerns, most significant predicted impacts, or impacts related to key species or habitat areas.

4. Cross-reference new applications – The EA Specialist uses the priority list to review new applications by cross-referencing it with the mitigation measures that have been proposed in other cases. It is important to note both different methods used by other companies, and different methods that may be used by the same company in other places.

Within the application, the EA Specialist takes note of mitigation measures that have been deemed to be acceptable in the past. The EA Specialist also flags issues that do not seem to be adequately addressed within the application or where the adequacy of the mitigation measures is not known.

The EA Specialist compiles the list of un-addressed or uncertain issues.

5. Third party review – Appropriate third-party expert(s) are contracted to review the priority issue(s) and advise, with the goal of developing an adequate mitigation measure / best-practice recommendation and rationale for use that the Board can recommend.

6. Check-in with community – The EA Specialist prepares a short plain-language summary of the issues of concern in the application, as well as the mitigation measures recommended by the third-party expert(s). The EA Specialist meets with RRC advisors and/or a broader group of community members to ensure they understand and to get their feedback.

7. Discussion with proponent – Representatives from the SRRB and RRC meet with the proponent to discuss/negotiate the issues and proposed recommendations, with the goal of achieving a commitment to improved mitigation measures.

8. Presentation to SLWB / MVEIRB – If the discussion with the proponent is successful, the proponent will amend its application and/or present a voluntary commitment that can be included within the binding terms and conditions. If the discussion is not successful, the SRRB can still present its recommendation and rationale to the SLWB or MVEIRB.

9. Repeat and update – Upon reviewing the next application, the EA Specialist repeats the process and updates first the list of issues and mitigation measures, and then the list of priority issues. Again, the EA Specialist flags outstanding issues for third-party expert review.

It is important to keep in mind that each application is unique so mitigation measures for one application may not be appropriate for the next.

The goal is to build up a set of precedents and build SRRB staff knowledge with support from third-party experts on an issue-by-issue basis. This approach simplifies the analyst's job of reviewing complex applications so s/he knows what s/he is looking for — while avoiding the expense of hiring several third party experts to review each well application.

The approach also provides companies with clear information about what communities expect, and what will likely be expected by regulators. Clear expectations help the Board avoid spending excessive time re-discussing and negotiating the same issues with multiple proponents. Each company is asked to employ, at a minimum, the standards employed previously in the area, while seizing every opportunity for improvement. Companies have an incentive to voluntarily commit to comply with the expectations, if they can avoid the cost and delay associated with an EA.

Ideally, SRRB staff would regularly review monitoring data and note on the master spreadsheet how well mitigation measures are working, and how well they are measuring up to measures used elsewhere. This data could be discussed with the company. The strategy works best within an adaptive management system with active cooperation from the proponent. As described above, an adaptive management system could be negotiated with each proponent during either the ABA negotiation stage or during an environmental assessment.

Advocating for and participating in cumulative impact assessment

“Cumulative impacts” are not clearly defined in the *Mackenzie Valley Resource Management Act*. The Act requires every environmental assessment or environmental impact review to consider them (“any cumulative impact that is likely to result from the development in combination with other developments”—s. 117 (2)). Also, the Cumulative Impact Monitoring Program (CIMP) is set up to monitor “the cumulative impact on the environment of concurrent and sequential uses of land and water and deposits of waste” (s. 146). These phrases hint at what cumulative impacts are, but it is not clear how ‘likely’ an impact has to be for it to be taken into account, or how direct the link has to be to any particular developer, or how far into the future one can go to look at ‘sequential’ activities.

The SRRB emphasized in several submissions to the SLWB in the fall of 2012, as well as in a letter to the Review Board, that before shale oil development proceeds, thresholds for overall levels of impact on wildlife must be established (through research partnerships between western scientists and TEK experts) and cumulative impact assessment must be carried out to ensure that combined development does not and will not exceed these thresholds. The SRRB also pointed out that a coordinated/combined assessment would help to relieve some of the impossible burden being put on community organizations faced with reviewing many separate lengthy applications.

The strategy for reviewing applications that was outlined in the previous section does not deal well with issues that are not project-specific. The SRRB will need to leverage other forums such as environmental assessment (EA) and environmental impact review (EIR) processes to

raise cumulative impact concerns and gather useful information about cumulative impacts. These EA and EIR processes can also highlight the need for government and industry to collect baseline data, establish thresholds, and set up adaptive management structures before industrial activity is allowed to proceed. However, because the issues are broader than the individual project being assessed, companies will often object to terms and conditions that address cumulative impacts.

The review of the Mackenzie Gas Project (MGP) is a case in point. In its report, the Joint Review Panel noted that the “assessment and management of cumulative impacts...was a central issue of heated debate and widespread public concern.”¹⁷ The panel based its review of cumulative impacts on established guidance by federal and territorial agencies, which direct boards to consider “reasonably foreseeable” impacts.¹⁸ The panel’s recommendations on cumulative impacts were mostly directed towards government agencies. In particular, the panel recommended full funding and implementation of the NWT Cumulative Impacts Monitoring Program (CIMP), and recommended that CIMP establish cumulative impact thresholds and integrate its work with regional land use planning.¹⁹ The panel also recommended, for example, that there be no authorizations for a facility in the Sahtú that would enable the throughput of the pipeline to go above 1.2 Bcf/d until the Sahtú Land Use Plan had been completed and approved (recommendation 11-16).

The governments’ response rejected any recommendations that were deemed to “fetter the discretion of future decision makers.” The governments stated:

Regulators should be allowed to consider all relevant factors at the time such applications are made... Several recommendations constrain future development in the North and, therefore, cannot be accepted as written by the Joint Review Panel. For example, in a few instances, the Joint Review Panel recommends that no regulatory agency issue any authorization or approval for a facility that would enable the throughput of the pipeline to be increased above 1.2 billion cubic feet of gas per day until governments fulfill a specific commitment. Governments consider this to be an inappropriate constraint on development over which a proponent has no control.”²⁰

This response puts a chill over cumulative impact assessment. It is difficult to see how such assessment can be accomplished at all, as required under the MVRMA, if terms and conditions cannot affect any future decisions and cannot address anything outside the proponent’s direct control in relation to the project at hand. In any case, it may be wise for the SRRB to examine the MGP case in more detail and prepare an argument as to why the shale oil boom in the Sahtú should be handled differently.

¹⁷ Report of the Joint Review Panel for the Mackenzie Gas Project, *Foundation for a Sustainable Northern Future*, Executive Summary, December 2009, 5.

¹⁸ Guidance was established by the federal Canadian Environmental Assessment Agency in 1999 as well as by MVEIRB in 2004. Report of the Joint Review Panel for the Mackenzie Gas Project, *Foundation for a Sustainable Northern Future*, December 2009, section 5.4.5 (pp. 97-99).

¹⁹ Joint Review Panel, Executive Summary, 5.

²⁰ Governments of Canada & of the Northwest Territories Final Response to the Joint Review Panel Report for the Proposed Mackenzie Gas Project, November 2010, 5.

It is interesting to contrast the latest MGP review with the approach taken by the Berger Inquiry for the first proposed Mackenzie Pipeline. Unlike the more recent MGP hearings, which were very formal and somewhat limited in scope, Justice Berger ran informal meetings and allowed people to speak as long as they wanted, about whatever they felt was relevant. The scope of the inquiry grew over time to consider the bigger picture. Ultimately, Justice Berger recommended that the pipeline should wait until land claims were settled and structures were in place to help communities adequately plan for and manage impacts.

Many arguments are given as to why regulators cannot make decisions using the lens of cumulative impact assessment (e.g., 'there are too many wildcard factors, such as the economy, to be able to predict or plan for future industrial projects'; 'we will not know what resources are there until we explore it / begin to develop it'). However, when a major set of developments such as a shale oil play are examined one small piece at a time, each approval sets a precedent for the next. It is deemed unfair to refuse a permit/license to one company if another similar one has already been granted to another company. Thus, the velocity of development may increase over time rather than triggering more caution as impacts snowball. In some cases project-splitting also allows proponents to stay under the threshold requiring a lesser level of regulatory scrutiny (e.g., Type B water license vs. a Type A water license). In cases where industry and regulators have agreed to form associations tasked with doing cumulative impacts assessment (e.g., CEMA in Alberta, described below), the process can get so bogged down in delays that it loses meaning.

The Athabasca Chipewyan First Nation (ACFN) has recently taken an unprecedented step towards exerting more control over cumulative impacts of oilsands activities within their territory. On October 1st, 2012, ACFN filed a constitutional challenge to the Joint Review Panel reviewing Shell Canada's proposed expansion of its Jackpine Mine. The first of its kind in Alberta, the constitutional challenge is based in part on concerns that Shell's project will impact the ACFN's ability to exercise treaty rights such as hunting and fishing in a meaningful way into the future.²¹

Cumulative impacts in the Sahtú are not hypothetical or hazy issues that lie in the distant future. Oil and gas exploration in the region is already starting to produce cumulative impacts that could negatively affect wildlife such as boreal caribou (e.g., seismic lines and access roads). No one has a clear sense of the overall consequences or when it will be too much. Many large companies are investing significant resources in exploring the central Mackenzie Valley and developing relationships with Sahtú communities. They are investing because they have some degree of assurance there are oil resources there that will be economic to exploit. Not every detail is known, but Sahtú communities could still be provided with reasonable estimates for a few possible scenarios of unconventional oil and gas development that could take place in their region.

The SRRB should keep in mind that a pipeline is one of the future developments that will likely be linked to shale oil production. Companies could potentially apply as a consortium to build the pipeline, and even link the application to production field applications (similar to the MGP application). This kind of a set-up might facilitate the consideration of cumulative impacts (if a

²¹ See <http://www.pembina.org/blog/654> for more details.

way was found to overcome the barriers set by governments in the case of the MGP). Sahtú communities did a lot of work preparing for the proposed MGP (e.g., TEK studies, negotiations with Imperial Oil, establishing technical advisory committees), and it could be useful to collect lessons learned from that project and reflect on how to apply those lessons to upcoming shale oil applications as well as a future pipeline application.

Another mega-project that is related but may be even more difficult to tie into oil and gas assessments is the Mackenzie Highway. Companies will ultimately need the highway to make production economically feasible; however, the proponent is the GNWT and it is being proposed for many other reasons in addition to oil and gas development.

The companies that are part of the Central Mackenzie Valley Producers Group have agreed to be proactive in assisting with a “Strategic Regional Environmental and Social Assessment and Cumulative Effects Assessment” funded by the Environmental Studies Research Fund, which levies industry operating in frontier areas such as the NWT.²² Whether cumulative impact assessment is done through a voluntary research effort or through regulatory processes, it requires cooperation and commitment from all the major players. These include not only all the major companies operating in the region, but also government agencies who can contribute research data, community organizations (such as RRCs) who will need to participate in the research, and regulators who need to provide clear signals as to what kinds of information can be effectively incorporated into decision-making. To encourage this kind of joint commitment, it could be useful for the SRRB to help organize a collaborative multi-stakeholder forum that would bring together all the players to talk specifically about cumulative impact assessment.

It may also be helpful for the SRRB to gather and apply lessons learned from the West Kitikmeot Slave Study, which used joint funding from governments and the diamond industry to fund cumulative impact research for several years. For example, the SRRB could learn about the effectiveness of governance structures set up for the study, and feed that into the establishment of future governance structures under the banner of ESRF.

It could be counter-productive and even dangerous if cumulative impact assessment is done badly. For example, if only a little bit of statistical or quantitative data is gathered about complex phenomena (such as wildlife), these numbers can quickly take on an importance that they do not deserve (based on the fact that numbers exist where there were none before). If thresholds are set in haste using incomplete data, floors can easily become ceilings. For example, if research reveals a few key habitat areas, it may be decided that these are the only areas that require protection or special treatment.

²² Under the *Canada Petroleum Resources Act*, ESRF levies oil and gas companies engaging in frontier exploration and production activities, and supports environmental and socio-economic research with direct application to regulatory decision-making regarding these activities.

Cautionary tales from Alberta

Collaborative mechanisms for cumulative effects management

The Clean Air Strategic Alliance

The Clean Air Strategic Alliance (CASA) is an Alberta-based multi-stakeholder policy forum that brings together representatives from industry, government and nonprofit organizations to address air quality issues. It was established by a ministerial order in 1994 as a new way to manage air quality issues in Alberta. CASA recommends strategies to assess and improve provincial air quality, and uses a consensus model to reach its goals.

CASA has had its challenges. First, consensus requires that all stakeholders at the table are able to discuss the issue on equal footing. In many cases, this means that individuals from certain organizations need to be brought up to speed in terms of technical or regulatory knowledge. This process can be lengthy and costly, but is necessary to ensure participation from everyone at the table. The organization needs to have built-in funding for these educational processes.

Second, if consensus is not reached within the CASA process, the issue is sent to the provincial government to rule on a solution. However, since it is often the provincial government that requests CASA's services, when an issue is sent back to government, often there is no or little action on the policy.

The Cumulative Environmental Management Association

The Cumulative Environmental Management Association (CEMA) is a multi-stakeholder group initiated by the Government of Alberta to recommend environmental management systems in the Athabasca oilsands. Specifically, CEMA was designed to manage the cumulative environmental impacts arising from oilsands development.

Four years ago, three ENGO participants withdrew from CEMA as the groups saw that the pace and scale of oilsands development was far beyond the speed with which CEMA was moving to create the processes needed to manage the cumulative impacts on the boreal forest, air quality, fresh water resources and wildlife in the Athabasca Boreal region. Because of resource constraints, design flaws and weak government backing, this initiative has failed to deliver critical air, water and land thresholds.

The Alberta Land-Use Framework

More recently, the Alberta government has put in place the Land-Use Framework,²³ which puts in place a broad plan to manage growth in the province. The framework will develop

²³ Alberta Land-Use Framework <https://landuse.alberta.ca/Pages/default.aspx>

seven watershed-based regions to help manage the cumulative effects of all activities on the landscape. The enacting legislation is the *Alberta Land Stewardship Act* which aims to provide clear rules on the implementation of the regional plans of the Land-Use Framework.

Only the Lower Athabasca Regional Plan has been released to date, with work still ongoing on the other six regional plans. The Lower Athabasca plan itself is just the beginning of the environmental improvements required to ensure responsible oilsands development, as many elements of the regional plan remain incomplete or works-in-progress. To make further headway on responsible oilsands development, Alberta will need to accelerate progress on co-management with First Nations, protect woodland caribou habitat, set maximum limits on land impacts and identify limits to water pollution and industrial water use.

Applying lessons learned to the Sahtú

Establish baselines

The classic adage that “you can't manage what you don't measure” is highly accurate in the context of oilsands development. Without baseline environmental data, Alberta has been unable to quantify what the impacts of development have been on the environment, and has been unable to tell when environmental limits are being approached and/or passed.

Plan first

The magnitude of the risks and opportunities arising from Canada's oilsands rush is unprecedented in the history of Canadian energy production. However, this activity has basically proceeded as a free-for-all, without an established plan for environmental and socially responsible development. Meanwhile, governments, communities and First Nations are forced to try and find ways to address the rapidly mounting environmental and social problems. Planning, monitoring, conservation and protection are barely getting off the drawing board while rapid development continues ahead of everything else.

One of the lessons from CEMA was that steps need to be implemented in the proper sequence. The promise of cumulative impacts management helped to diffuse some of the concerns, allowing approvals to proceed before proper baseline assessment or cumulative impacts management actually got off the ground. Multi-stakeholder processes can take a long time, and they become less relevant the longer the delay before monitoring and management processes are implemented on the ground. These initiatives could be more effective if there were binding deadlines and conditions attached to them (with clear consequences if these are not followed) that would ensure steps are followed in the proper sequence.

Arms-length monitoring and transparency

Effective monitoring is crucial to informing responsible management of oilsands development. There has been substantial criticism of the current approach and level of monitoring. The lack of meaningful action on monitoring has eroded confidence in government monitoring to such an extent that the Alberta government and the federal government have had to create an

arm's-length monitoring agency. The agency is still being finalized; it will oversee environmental monitoring across the province, beginning in the oilsands region. The public is demanding greater transparency surrounding both the process of monitoring and the analysis of data collected.



Broader strategy

Beyond the urgent need to deal with applications steadily piling up on the SRRB's desk, the SRRB needs to reassess its overall strategy, particularly its role in building strong networks at the community level. Staffing implications are also discussed here, taking into account both urgent needs and long-term goals.

It should be recognized that both the goal of building up strong community networks and the goal of cumulative impact assessment are very ambitious. By no means can the SRRB achieve either of them single-handedly, and it will be a big challenge even to convince other organizations to get on-side. The SRRB will not be able to provide any guarantees to community organizations or others that jumping on the SRRB's train means ultimately reaching the intended destination. The barriers cannot be underestimated—institutional inertia, power imbalances, ingrained patterns in communities, and an inability or unwillingness to plan for the medium- to long-term future. If the SRRB and its partners are prepared for such barriers, then they can move forward and gather valuable lessons along the way, rather than getting stuck in frustration and disappointment.

Building strong networks at the community level

Focus on community power

It is very common in the north for people to focus on what community members cannot do, to chalk up most problems to communities' "lack of capacity" (while rarely explaining what they really mean by this). It would be a good idea instead for the SRRB to focus on building areas of current or potential strength at the community level.

A good start would be to work with RRCs and other community members to have a clearer understanding of their sources of power, and how these might be used to influence decision-making. People are more motivated to participate and take initiative when they have a clear idea of what difference it will make, and when they perceive they have some control over the situation. For example, it is unrealistic to expect RRCs to start reading through applications and writing formal letters expressing their concerns, if they believe based on their experience that those letters will not make any difference to the outcome. People's time and energy are important and limited resources that must be conserved (especially for elders).

Potential sources of power for RRCs include: rights/mandate under the land claim and the Constitution; requirement for companies to negotiate ABAs; formal opportunities to participate in screenings/environmental assessments; TEK expertise that cannot be obtained elsewhere; hands-on experience working in the oil and gas industry; and good relationships/understanding that could be the basis for convincing others (such as industry) to cooperate.

Bureaucratic procedures tend to put community members at a disadvantage (or any layperson, for that matter) and discourage them from participating in processes where they could exercise power. The SRRB could potentially work with the SLWB, Review Board, and

other agencies to find creative alternatives to such bureaucratic procedures and thereby maximize the chances that people's voices will be heard.

A way to build confidence and momentum could be for the SRRB to profile on its website success stories involving RRCs. As one of the SRRB Board members commented recently: "RRCs have come a very long way even in one year."

Build unity and self-governance

Another source of power for the community as a whole is the ability to make unified decisions and reach unified negotiating positions. The *IBA Community Toolkit* emphasizes that internal conflicts are likely to decrease a community's negotiating leverage.²⁴ As a widely respected organization in the region, the SRRB could play an important role in bringing together community organizations to help them find common ground.

If communities are to take more control over governing their own resources, a more frank discussion is needed within communities about the risks, challenges and opportunities associated with shale oil development. One theme that deserves more careful consideration by all is the popular mantra of achieving 'balance' between environmental protection and economic development. What would 'enough' environmental protection or 'enough' economic development actually look like, and who would make the decision to say 'enough'? Currently, it seems that there is a double standard, since RRCs feel the need to highlight economic considerations as well as advocating for wildlife protection, but there is little evidence to suggest that Land Corporations feel the need to 'balance' their decisions about economic benefits with wildlife considerations. There is even a general sense that somehow the very existence of a regulatory process for environmental impact assessment (even if communities do not participate in it) provides enough 'balance' to allow communities to focus on pursuing economic benefits. One respondent, a former government employee, pointed out that what matters is not so much 'balance' but rather getting the context right and pursuing things in the appropriate order. Getting the environmental stewardship context right would mean first implementing cumulative impact thresholds, and then ensuring that development follows best practices.²⁵

Moving towards unity and self-governance will involve overcoming patterns that are sometimes ingrained in community life as colonial legacies: dependency, fatalism, sense of powerlessness, and entanglement in bureaucratic processes that privilege western ways of thinking and communicating. While organizations and agencies are often looking for clever ideas about how to get more community engagement and participation, the above issues are

²⁴ Ginger Gibson and Ciaran O'Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements*, March 2010, 51.

²⁵ Elizabeth May paraphrased former senior World Bank economist Herman Daly, saying that the economy is not in conflict with or in competition with the environment; the economy is a wholly owned subsidiary of the environment. Speech by Elizabeth May: <http://elizabethmaymp.ca/parliament/speeches/2012/05/11/jobs-growth-and-long-term-prosperity-act-bill-c-38-20/>

huge challenges that run deep in preventing meaningful community self-governance over a sustained period of time.

One idea for how to address these issues head-on is the use of forum theatre techniques.²⁶ This would involve an expert-facilitated workshop over several days, with the option of collaborative work on a piece to perform for the community at the end. Forum theatre techniques give people (specifically, oppressed groups) tools to allow them to speak and ‘act’ (ie. take action), to break through some of the internal and external barriers and power imbalances that might be preventing them from doing so. Forum theatre workshops have been done successfully in many different cultural contexts around the world, from Latin America (where it was founded) to Afghanistan. There could also be a train-the-trainer component, where interested community members and/or community-based staff could learn how to continue teaching and using the techniques.

Build negotiating skills with RRCs and Land Corporations

The SRRB can also play a useful role in bringing together the RRCs and the Land Corporations to find ways for the two organizations to better collaborate prior to and during ABA negotiations. Such collaboration could be to everyone’s benefit through the sharing of resources and expertise. To this end, the SRRB could organize a workshop on ABAs, which could include a review of the *IBA Community Toolkit*. Ginger Gibson, author of the *Toolkit*, could be invited to facilitate, along with a representative from the Tłı̨ch̨o Government, which has negotiated many large IBAs in relation to the diamond mines. One topic to be investigated is what kinds of wildlife-related measures have been included within IBAs, and how effectively they have been implemented. Another topic might be the standards for TEK studies that might be specified within an ABA.

A broader topic for discussion between RRCs and Land Corporations is what money can and cannot do in terms of contributing to the protection of harvesters and wildlife. Negotiating a cash deal often signals a tangible accomplishment, something that can be hard to come by in the world of regulatory processes and wildlife management. It is therefore easy to see why community leaders would prioritize cash deals. However, community members need to reflect on whether money has lived up to all the promises associated with it.

In addition, the SRRB may be able to find strategic opportunities to support Land Corporations in work that overlaps between their mandates. One obvious example is the dispute over the boundaries established by the federal government for the new Nááts’ich’oh National Park Reserve. The Tulita Land Corporation may appreciate it if the SRRB can provide wildlife research and TEK studies that support the need for a boundary more favourable to the Land Corporation (and to wildlife).

²⁶ See, for example: <http://www.mandalaforchange.com/theatre-of-the-oppressed/>

Build skills and experience in research and monitoring

It will be critical for the SRRB to build RRC member skills and experience in organizing and participating in on-the-land research in collaboration with western scientists, and to find creative ways of combining traditional ways of knowing and monitoring with other scientific methods. Currently, some RRCs have more experience and confidence than others in this regard; for example, the Deline RRC has taken a leadership role in several research studies, including on-the-land work with the Deline Uranium Team. The SRRB could facilitate an exchange of lessons learned amongst the RRCs.

There is a need for the SRRB to facilitate cross-cultural learning not only between TEK experts and western scientists, but between older and younger generations within communities. This will help to nurture some younger leaders who communicate well with older harvesters and also have the literacy and management skills to navigate the world of regulatory processes.

Given that monitoring and adaptive management are currently some of the weakest links in the regulatory chain, the SRRB could make a big difference by working with RRC monitors to improve their skills and improve the system. Monitoring and training are likely things that all community organizations can get behind, since the focus is not only on land protection but also on jobs and economic benefits. This is therefore another opportunity to work collaboratively with the Land Corporations.

Strengthening of monitoring would likely involve a multi-pronged approach. The SRRB would need to support training with monitors directly, possibly in collaboration with Aurora College which runs the Environmental Monitoring certificate program. The SRRB could also help set up a peer mentoring program, or a monitor support network across the Sahtú communities. At the same time, the SRRB needs to bring together all stakeholder organizations, including RRCs, Land Corporations, industry and regulators, to look at what is wrong with the current system and how it can be redesigned. This may include revising job descriptions, and ensuring monitors go out in teams that include those with TEK, those with high literacy, and those with experience in the oil and gas industry. An extension of this work would be the development of an adaptive management system with clear standards and expectations for each party, open communication, and clear links to decision-making processes.

Facilitate links with other Aboriginal groups

It would be a good idea for the SRRB to invite representatives of other First Nations in northern Alberta and British Columbia to come and share their experiences and lessons learned with Sahtú communities. This could make the task of effectively dealing with a shale oil boom less overwhelming and more real. It may increase the profile and perceived importance of wildlife management and environmental protection issues. For example, the Fort Nelson First Nation has taken a proactive approach to shale gas activity by developing a

Strategic Land Use Plan and a Consultation Protocol, and they have found ways to quickly prioritize projects requiring consultation when there is a high influx of applications.²⁷

It may also be useful to invite representatives from the neighbouring Gwich'in region who can speak to their rationale for proposing in their draft updated Land Use Plan a moratorium on shale gas extraction.²⁸

Staffing implications

Currently, the SRRB has two staff people (executive director and office manager), although there is funding allocated for two positions that are currently vacant (environmental assessment specialist and communications officer). Each RRC employs one part-time or full-time staff person.

Clearly, this level of staffing is extremely minimal given pressures related to the rapidly increasing industrial activities in the region. As a point of comparison, the SRRB has less staff positions than the Gwich'in RRB (which has five Board staff and a full-time coordinator for each RRC), and yet the Sahtú has far more industrial activity than the Gwich'in region.

The SRRB has the option of applying to the federal government for increased funding, which would certainly be warranted. However, given the federal government's stated objective of 'streamlining' the NWT regulatory framework and eliminating regional Land and Water Boards, the SRRB must be prepared to cope with minimal funding and leverage staff resources to get as much help as possible from community members and other organizations.

Former SRRB staff and ENR staff who have worked closely with the SRRB over the years all emphasize that it is critical for the SRRB to maintain the position of environmental assessment specialist. The position was first created in 2006 to deal with Mackenzie Gas Project (MGP) applications. When MGP work slowed down, the EA specialist shifted focus towards responding to oil and gas and mining applications, as well as research applications. As described in the first section of this report, the first EA specialist on staff did a good job at gradually encouraging more participation and initiative from RRCs in responding to applications. Subsequently, staff people in this position have not done as well at getting meaningful feedback from RRCs or contributing helpful recommendations to the SLWB.

Going forward, there is a valuable role for an EA specialist on staff. The person in this position would be the primary one pulling together teams to analyze industry applications, using the strategy outlined above. Teams would include RRC members, key TEK experts, and technical experts / advisors. Throughout this process, the EA specialist must be preparing short, plain-

²⁷ Powerpoint presentation by Kathi Dickie, FNFN Councillor, "Fort Nelson First Nation: Shale Gas Development on our Land", presented at Sahtu Exploration Readiness Session in Norman Wells, September 2012.

²⁸ See section 4.4.7 of October 2011 draft of Revised Gwich'in Land Use Plan ("Working for the Land"), accessed October 22, 2012 at: <http://www.gwichinplanning.nt.ca/publications/lupd/final%20draft%202011/Final%20Draft%20Revised%20GLUP%20Oct%202011.pdf>

language written updates and oral presentations to involve community members at each stage. It is critical that the EA specialist plays a strong facilitation role, rather than just engaging in desk exercises. This will likely also involve working hands-on, out in the field, alongside RRC members doing baseline research and monitoring related to industrial activity.

The communications officer position will likely play a generalist role and support the work of the EA Specialist in liaising with RRCs and community members. In the past, the staff person in this position got sidetracked with peripheral research projects and education work in the schools, and communication with RRCs was mainly limited to occasional newsletters. It is critical going forward that this staff person has a clear job description. The SRRB should set out clear, measurable objectives for building relationships with RRCs, and indicators for success, to know whether efforts are working. One community member who was interviewed mentioned that, ideally, the communications officer should speak a Sahtú language.

One of the SRRB's primary goals is to build strong networks within and amongst communities of people with skills, experience, and interest in wildlife management. To that end, it would be ideal to provide as much funding as possible to build up RRC staff in the communities, and employ the minimum number of staff in the central SRRB office required to provide proper support and expert advice to the RRCs.

Due to limited funding, new RRC staff in communities may only be part-time. It will likely be difficult to find qualified staff in communities who only want to work part-time, so the SRRB could team up with other organizations (such as the SLWB, Sahtú Land Use Planning Board, Sahtú Secretariat, or even territorial initiatives such as the Water Stewardship Strategy) to jointly hire a coordinator who could manage multiple portfolios. Another possibility could be establishing joint positions with local Land Corporations, but there is the danger this may further blur mandates regarding wildlife management and economic development.

It will be important to nurture emerging leaders from the younger generation. One interviewee noted that during the era when the land claim was still being negotiated, there were lots of individual champions in communities, but the role of these individuals was replaced to a large extent by institutions and organizations established under the land claim. There is a need to build up a new generation of local champions. The SRRB could use existing contacts of Board members and staff to help identify younger people who have the motivation and interest to take on such a role, and offer them training opportunities and support. The SRRB could also hook into youth leadership initiatives organized by organizations such as the Pembina Institute and Ecology North, for example the Young Leaders' Summit on Northern Climate Change (held in 2011 with participation from many Northern communities). The renewal of the SRRB's Summer Student program could also be an entry point for some of these promising youth.

Another way to leverage limited resources would be to use community-based Board members as much as possible to build and maintain relationships with RRCs and to help nurture local champions. It was suggested by one SRRB member that each Board member should have a portfolio, an area of work that they focus on. Government agency representatives may focus more on technical input, while community representatives may focus on building community networks.

Summary of recommendations to the SRRB

Increasing SRRB influence over industrial activity

1. Together with RRCS, speak with AANDC about the potential for RRC engagement during the consultation before the call for bids.
2. Employ an incremental approach to the review of shale oil applications which allows for the best use of staff time and skills, minimizes resources spent on expert consultants, and also provides incentives for proponents to commit to best practices
While the steps are outlined in detail above, SRRB action items include:
 - a. Assemble a group of third-party experts who are prepared to be on call to assist with the review of specific issues flagged by SRRB staff.
 - b. Hire an expert consultant / resource person to assist SRRB staff in the initial development of a spreadsheet outlining key issues and best-practice mitigation measures.
 - c. Meet with proponents to try to get them to adequately address issues through voluntary commitments. Clearly communicate expectations to industry with regard to best-practice standards and community consultation.

Monitoring and adaptive management

3. Support improved training for RRC monitors, possibly in collaboration with Aurora College which runs the Environmental Monitoring certificate program.
4. Set up a peer mentoring program for monitors, or a monitor support network across the Sahtú communities.
5. Bring together all stakeholder organizations, including RRCs, Land Corporations, industry, and regulators, to look at what is wrong with the current monitoring system and how it should be redesigned.
6. Begin work immediately with RRCs, companies, and regulators to establish a cooperative system of adaptive management. The system would include:
 - a commitment from the company to allow community monitors free access to monitor certain criteria;
 - setting clear standards for the content of reports prepared by monitors, and ensuring multiple copies are always provided to RRCs, SLWB, and the AANDC inspector;
 - giving clear instructions to the company as to what monitoring data it is required to gather and provide to communities and agencies/Boards on a regular basis;
 - a schedule of regular and open communication between the company, monitors, communities and agencies/Boards (this may include company support for an environmental monitoring coordinator position in the community); and

- clear roles established for monitors and RRCs (with support from other agencies / Boards) in ongoing company decisions about how monitoring and mitigation measures may need to be adjusted.

Cumulative impacts

7. Help organize a collaborative multi-stakeholder forum focused on cumulative impact assessment and how to make most effective use of ESRF research funding. Participants could include those involved in cumulative effects management initiatives in Alberta, who could share lessons learned.
8. Gather and apply lessons learned from the West Kitikmeot Slave Study, eg. effectiveness of governance structures set up for the study, and how lessons could be applied to future governance structures under the banner of ESRF.
9. Examine the MGP case in more detail and prepare an argument as to why cumulative impacts arising from the shale oil boom in the Sahtú should be handled differently.
10. Work with RRCs and other community organizations in collecting lessons learned from their work on the MGP proposal.

Research

11. Work with RRCs to build their skills and expertise in organizing and participating in research camps out on the land with collaboration between traditional knowledge experts and western science experts.
12. Facilitate an exchange of lessons learned amongst the RRCs with regard to community involvement in research.
13. Partner with broader research and stewardship initiatives (such as the Water Stewardship Strategy) to leverage funds and ensure RRCs are engaged in those initiatives.

Management planning / land use planning

14. Play a key role in the development of the Bluenose East caribou management plan, in the Great Bear Lake Fisheries Management Committee, and in the five-year review of the Land Use Plan (once it is finalized).

Work with RRCs

15. Work with RRCs and other community members to have a clearer understanding of their sources of power, and how these might be used to influence decision-making.
16. Help organize or support an expert-facilitated workshop on forum theatre techniques, which could help community members break through some of the internal and

external barriers and power imbalances that may be preventing them from meaningful engagement in self-governance.

17. While organizing each meeting, explain to RRCs the purpose of the meeting and suggest which kinds of participants should ideally attend if the meeting is to be as productive as possible.

Bridging work within communities

18. Organize a workshop on ABAs, with both RRCs and Land Corporation representatives as participants. The workshop could include going through the *IBA Community Toolkit* with potential facilitation by Ginger Gibson, author of the *Toolkit*, along with a representative from the Tłı̨ch̨o Government.
19. Facilitate a broader discussion between RRCs and Land Corporations about what money can and cannot do in terms of contributing to the protection of harvesters and wildlife.
20. Facilitate open discussion within communities about the risks, challenges and opportunities associated with shale oil development, including what proper 'balance' between environmental protection and economic development would look like.
21. Find strategic opportunities to support Land Corporations; e.g., provide wildlife research to support revising the Nááts'ich'oh National Park Reserve boundary.
22. Invite Land Corporation representatives to more meetings in the future as appropriate, as well as representatives from self-government negotiation teams, and try to build better understanding amongst these organizations.
23. Facilitate cross-cultural learning and cooperation between older and younger generations within communities.

Bridging with other agencies

24. Work with the GNWT-ENR to rethink how the two organizations can best collaborate and support one another going forward, while maintaining their distinctive mandates.
25. Work with the SLWB, Review Board, and other agencies to find creative alternatives to bureaucratic procedures and thereby maximize the chances that people's voices will be heard.

Build strong networks within and amongst communities

26. Investigate the feasibility of using community radio to more widely engage community members in wildlife management, and find out more about the Digital Indigenous Democracy initiative in Nunavut.

27. Invite representatives from other First Nations in northern Alberta and British Columbia to come and share their experiences and lessons learned with Sahtú communities.
28. Invite representatives from the neighbouring Gwich'in region who can speak to their rationale for proposing in their draft updated Land Use Plan a moratorium on shale gas extraction.

Staffing

29. Maintain the position of EA specialist. Primary roles will be:
 - a. Facilitation of RRC participation in the review of industry applications and adaptive management;
 - b. Coordinating the team that reviews industry applications according to the strategy outlined above; and
 - c. Hands-on work alongside RRC members doing baseline research and monitoring related to industrial activity.
30. Maintain the position of communications officer, as long as there is a clear job description and measurable indicators and objectives for community engagement. This staff person will play a generalist role and support the work of the EA specialist in liaising with RRCs and community members.
31. Provide as much funding as possible to build up RRC staff in the communities, and employ the minimum number of staff in the central SRRB office required to provide proper support and expert advice to the RRCs.
32. Investigate the feasibility of teaming up with other organizations (such as the SLWB, Sahtú Land Use Planning Board, Sahtú Secretariat, or even territorial initiatives such as the Water Stewardship Strategy) to jointly hire a local staff person in each community who could manage multiple portfolios.
33. Nurture emerging leaders from the younger generation.
 - a. Use existing contacts of Board members and staff to help identify younger people who have the motivation and interest to take on leadership roles with RRCs, and offer them training opportunities and support.
 - b. Hook into youth leadership initiatives organized by organizations such as the Pembina Institute and Ecology North, for example the Young Leaders' Summit on Northern Climate Change.
 - c. Renew the SRRB's Summer Student program, which could be an entry point for some of these promising youth.
34. Use community-based Board members as much as possible to build and maintain relationships with RRCs and to help nurture local champions.



Appendix A. Interview questions

While interview questions varied depending on the position, perspective and experience of the interviewee, the following is a sample of questions asked.

Interview questions

Purpose: The Sahtú Renewable Resources Board is seeking advice on what is, or should be, its role. What specific value-added input could the SRRB be helping to provide to inform decision-making about resource development in the Sahtú Settlement Area, and how? How can the SRRB help community members and RRCs more meaningfully participate in the environmental assessment process?

Qs for Board staff

1. How does your organization cope with fluctuations in the volume of applications to review?
2. How often do you hire contractors to provide expertise, vs. relying on in-house expertise? What challenges come with relying on contractors? (e.g., administrative, how well they understand culture, context and expectations) How well does contracted work get integrated into the Board's work?
3. Describe your interactions with the SRRB, if any.
4. [if applicable] What do you feel the SRRB has the potential to contribute? In order to get there, what are some of the barriers that need to be tackled? What steps can it take?
5. What are the biggest information gaps—ie. about community needs and about the land/wildlife—that prevent decision makers from making fully informed decisions?
6. What is the role of your Board in facilitating community member participation in reviewing and monitoring projects? Any lessons learned?
7. How well do you think decision makers are doing at incorporating traditional knowledge into decision-making? Do you have any ideas as to how this could be improved? Any ideas as to how the SRRB could take a stronger role in facilitating community member participation in reviewing and monitoring projects?

Qs for Government Staff - GNWT-ENR

1. Describe your role within your organization.
2. Describe your interactions with the SRRB.
3. What do you feel the SRRB does well? What are the strengths of SRRB staff and Board members?
4. What are the ways in which the SRRB is not effective?
5. Given that the SRRB has a mandate to protect wildlife and harvesting rights, but no clear mandate or power to protect habitat, do you have any ideas of opportunities

where the SRRB could exert greater influence over decision-making? What are some of the main barriers preventing the SRRB from having greater influence?

6. Can you think of an example where the SRRB has been effective in influencing decision-making?
7. What are the most consistent kinds of input that decision makers receive from community members? What are the biggest information gaps—eg. about community needs and about the land/wildlife—that prevent decision makers from making fully informed decisions? What kinds of important information do they hear but fail to understand or fail to take seriously?
8. How well do you think decision makers are doing at incorporating traditional knowledge into decision-making? Do you have any ideas as to how this could be improved? Any ideas as to how the SRRB could take a stronger role in facilitating community member participation in reviewing and monitoring projects?
9. What kinds of projects/activities do you think pose the greatest threats to renewable resources in the Sahtú Settlement Area, and for what reasons? Which resources are you most concerned about? What are the most important best practices that should be promoted? Is there a role for SRRB in promoting this?
10. What are the major knowledge gaps around the potential impacts of shale oil and gas on renewable resources in the Sahtú region? Do you see a niche for the SRRB in providing input about impacts specific to the Sahtú region and communities?
11. [if applicable] Do you have any ideas on how the SRRB can more effectively engage with the GNWT? ie. in terms of communicating issues and concerns, and influencing decision-making
12. [if applicable] When devolution is finalized and resource management responsibilities are transferred from the federal government to the GNWT, how do you think this will affect the SRRB? Will there be any new or additional challenges in establishing a good working relationship with the GNWT?



Appendix B. Interviewees

Representatives from the following organizations were interviewed:

- NWT Department of Environment and Natural Resources (GNWT-ENR)
- NWT Department of Industry, Tourism & Investment — Sahtú Region (GNWT-ITI)
- Parks Canada
- Aboriginal Affairs and Northern Development Canada (AANDC)
- Environmental Studies Research Fund (ESRF)
- Wek'eezhii Renewable Resources Board
- Gwich'in Renewable Resources Board
- Nunavut Wildlife Management Board
- Sahtú Land & Water Board (SLWB)
- Sahtú Land Use Planning Board
- Sahtú Secretariat Incorporated
- Mackenzie Valley Environmental Impact Review Board (MVEIRB)
- Great Bear Lake Management Plan team
- former employees of the SRRB

Representatives from the following organizations were contacted but interviews could not be arranged:

- Environment Canada
- Mackenzie Valley Land & Water Board
- Beaufort Regional Environmental Assessment (BREA)
- Wildlife Management Advisory Council within the Inuvialuit Settlement Region.



Lead Contact

Shauna Morgan
The Pembina Institute
shaunam@pembina.org

PEMBINA
institute