

# 2010 Northwest Territories Environmental Audit

## Main Audit Report



Submitted for  
2010/2011 Fiscal Year

Submission date to  
Minister of Indian Affairs and Northern Development  
March 2011

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## EXECUTIVE SUMMARY

This Report summarizes the second Northwest Territories Environmental Audit (2010 NWT Audit) conducted pursuant to Part 6 of the *Mackenzie Valley Resource Management Act (MVRMA)*. NWT Audits are completed every five years to evaluate the:

- effectiveness of the regulation of uses of land and water and deposits of waste on the protection of key components of the environment from significant adverse impact;
- effectiveness of methods to monitor cumulative impacts; and,
- status of the environment.

### **OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS OF THE AUDIT OF REGULATORY REGIMES**

The first NWT Audit was completed in 2005. That Audit found that the integrated system of land and water management established in the Mackenzie Valley was generally effective in protecting the environment. Foundational elements of the system of land and water management were, however, found to be incomplete, with this impacting on process efficiency and timelines. Land claim agreements and land use plans had not been finalized. Traditional knowledge had not been fully integrated into monitoring and decision making. Aboriginal communities lacked the resources and capacity to fully participate in land and water management. Aboriginal consultation requirements were unclear. The scope of environmental regulation did not fully address the socio-economic and cultural environment and some components of the bio-physical environment.

The 2010 NWT Audit found that while improvements had been made to the system of land and water management, the overall situation

was largely unchanged. The 2010 NWT Audit found that foundational elements of the system of land and water management are still missing, resulting in uncertainty in, and criticism of, the clarity, consistency and timeliness of *MVRMA* processes.

Unsettled land claims lead to uncertainty about land tenure and the amount of time it takes to navigate what has become perceived as a politicized regulatory process. The absence of approved land use plans results in uncertainty about the acceptability of development across large areas of land. Gaps in regulation lead to uncertainty in how environmental impacts associated with development, including social and cultural impacts are, or even can be, regulated.

In light of these uncertainties, we heard from applicants and developers and some government departments that *MVRMA* processes are used as an open forum for all issues in the region and reviewers use the *MVRMA* processes to forward organizational or individual agendas that may not be related to the specific application. These uncertainties can lead to “public concern” which in turn can lead to additional uncertainty of process, and referral to environmental assessment for some projects that would not typically require such scrutiny.

With respect to operation of Boards established under the *MVRMA* and Land Claim and Self-Government Agreements, we identified no major concerns regarding the operation of the Renewable Resource Boards and Councils. Land Use Planning Boards and land use planning initiatives under the Tłı̨chǫ Lands Protection Department and the Dehcho Land Use Planning Committee were operational. Land and Water Boards and the Mackenzie Valley Environmental Impact Review Board were generally found to be effective in protecting the environment.

Key criticisms directed at the Land and Water Boards and the Mackenzie Valley Environmental Impact Review Board were process related, including: uncertainty in preliminary screenings; the scope and timeliness of environmental assessment; and the development and review of management plans.

While the pace has been slow, we saw evidence of positive change. The Tłı̨chǫ amendments provided clarity to some sections of the MVRMA. Regulatory reform initiatives by the federal government and the Government of the Northwest Territories are underway. Land and Water Boards have established Working Groups to address many of the process concerns within their control. The Mackenzie Valley Environmental Impact Review Board is working towards more focused, timely environmental assessment. Land Use Planning Boards currently are adequately funded and functioning. Aboriginal governments and organizations are developing guidelines to assist applicants and developers in understanding their requirements. MVRMA Boards have, and continue to, develop guidelines to assist in navigating the environmental assessment and regulatory processes.

During the 2010 NWT Audit, it became clear that while an *integrated* system of land and water management was the objective of the MVRMA, the meaning of this was not well understood. *Integration* was referred to “as assessing the environment as a system” and “as Aboriginal and non-Aboriginal participants acting as partners in decision making.” Both of these interpretations have merit. We also found integration misinterpreted as “Land and Water Boards serving as ‘one stop shops’ for all environmental approvals.”

We found that the differences in focus between the broader environmental mandate of the preliminary screening/environmental assessment

phases and the focused mandate on land and water during the regulatory phase cause misunderstanding. We found a lack of understanding of the need to *integrate* the Land and Water Board authorization process within the broader context of federal, territorial and Aboriginal government environmental laws, regulations and approvals. We heard that regulatory agencies and other parties bring forth issues that are not within the mandate of the Land and Water Boards during the regulatory phase and that Land and Water Boards struggle to keep these processes focused.

In reaching the above conclusions, we identified many comments and concerns as well as positive feedback. We carefully and objectively considered documentary evidence as well as the input of all participants to the Audit covering the 2006 to 2010 period. We considered input from representatives of over 60 MVRMA Boards, Land Claim Boards and Councils, federal and territorial governments departments, NGOs and industry and industry associations through written submissions and interviews. We also held 11 open houses throughout the Mackenzie Valley to solicit community input.

The overarching recommendation of the 2010 NWT Audit is that a number of foundational issues need to be resolved in an expeditious manner before a truly *efficient, timely* and *integrated* system of land and water management, as envisioned under Land Claims and Self Government Agreements and the MVRMA, can be implemented and judged as to its ultimate effectiveness and timeliness.

The 2010 NWT Audit Report focuses on the changes required to solidify the foundations of a fully integrated system of land and water management. Our objective in doing so was to focus efforts between now and the next NWT Audit on addressing those foundational issues that are most important to implementing a clear, consistent, timely and integrated system. The

foundational challenges reported in the 2010 NWT Audit are not new. They have been previously identified to various degrees in one or more of the following reports: 2005 NWT Audit, the Auditor General of Canada Audits of 2005 and 2010 and the 2008 Road to Improvement Report (the McCrank Report). They are:

- Completion of Land Claim/Self-Government negotiations;
- Completion and implementation of Land Use Plans;
- Clarification of community engagement and consultation requirements, including the Crown's consultation responsibility as required under s. 35 of the *Constitution Act, 1982*;
- Development of clear processes and effective systems to manage and monitor socio-economic, cultural and air quality impacts associated with development;
- Full integration of traditional knowledge in monitoring and decision making;
- Adequate and stable funding of MVRMA Boards, including funding for improvement initiatives and variable workloads; and,
- Adequate and stable funding to facilitate the full participation of Aboriginal organizations and communities.

We also include observations and recommendations on secondary areas where incremental, substantive improvements could be made in parallel with the required foundational changes. Finally, we include a list of observations and considerations that, while not fully investigated, could be considered when implementing change to enhance the system of integrated land and water management.

#### **OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS OF THE REVIEW OF THE CUMULATIVE IMPACT MONITORING PROGRAM**

INAC has not fulfilled its mandate under the MVRMA to implement an effective Cumulative Impact Monitoring Program (CIMP). CIMP has been chronically underfunded and under-resourced. Community capacity building and

environmental monitoring programs are largely occurring on a one-off basis.

The lack of progress in implementing CIMP has hindered land use planning and the ability of MVRMA Boards, regulators and the public to properly assess the cumulative impact context within which project-specific decisions need to be made. CIMP data are rarely relied upon by participants in the regulatory system.

An additional \$8 million over 2 years for the *CIMP and Nunavut General Monitoring Plan* was announced during the 2010 Throne Speech. INAC is developing a management system to support the data that CIMP collects from various sources and is working with the NWT and Nunavut on this initiative. While encouraging, much of the funding over the next 2 years will go towards developing a program framework, a data management system and administering the program.

INAC should develop, properly fund and carry out a program to monitor cumulative impact in the NWT.

#### **OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS OF THE USE OF TRADITIONAL KNOWLEDGE**

We observed increasing acknowledgement of the role of traditional knowledge within the MVRMA environmental assessment and regulatory processes. The use of traditional knowledge still lags behind that of western science, mostly because MVRMA processes are based on western-style governance and evidentiary models and have tighter timelines than typically required for completion of project-specific traditional knowledge studies. Increased funding to Aboriginal peoples for traditional knowledge research, and continued open and honest communication between all parties continue to be

key focal points for further progress in the use of traditional knowledge.

***OBSERVATIONS, CONCLUSIONS AND  
RECOMMENDATIONS OF THE REVIEW OF THE  
STATUS OF THE ENVIRONMENT***

Overall, environmental quality in the NWT was found to be favourable for most components. In some cases lack of adequate baseline data made evaluation difficult. Where data were sufficient, several instances of unfavourable conditions and deteriorating trends were identified, in particular: caribou populations; impacts of climate change; and, the need for action in some aspects of community wellness and social and economic issues.

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## Glossary of Common Acronyms

APWG	- LWB Application Processes Working Group
ASC	- Audit Subcommittee
CEAA	- Canadian Environmental Assessment Act
CIMP	- Cumulative Impact Monitoring Program
CSU	- Consultation Support Unit
DAR	- Developer's Assessment Report
DFO	- Department of Fisheries and Oceans
DRASWG	- LWB Data-Resource Sharing Working Group
EA	- Environmental Assessment
EC	- Environment Canada
EIA	- Environmental Impact Assessment
EIR	- Environmental Impact Review
ENR	- Environment and Natural Resources (GNWT)
GLUPB	- Gwich'in Land Use Planning Board
GLWB	- Gwich'in Land and Water Board
GNWT	- Government of the Northwest Territories
IBA	- Impact Benefit Agreement
INAC	- Indian and Northern Affairs Canada
ISR	- Inuvialuit Settlement Region
LUP	- Land Use Permit
LWB	- Land and Water Boards (generic)
MACA	- Municipal and Community Affairs (GNWT)
MGP	- Mackenzie Gas Pipeline
MVEIRB	- Mackenzie Valley Environmental Impact Review Board
MVLUR	- Mackenzie Valley Land Use Regulations
MVLWB	- Mackenzie Valley Land and Water Board
MVRMA	- <i>Mackenzie Valley Resource Management Act</i>
NEB	- National Energy Board
NGO	- Non-Governmental Organization
NRCan	- Natural Resources Canada
NWT	- Northwest Territories
OAG	- Office of the Auditor General
PE&CWG	- LWB Public Engagement and Consultation Working Group
PWNHC	- Prince of Wales Northern Heritage Centre
PRPGWG	- LWB Plan Review Process and Guideline Working Group
RRB	- Renewable Resource Board
REA	- Report on Environmental Assessment
SEMA	- Socio-Economic Monitoring Agreements
SOE	- Status of the Environment
SLUP	- Sahtu Land Use Plan
SLUPB	- Sahtu Land Use Planning Board
SLWB	- Sahtu Land and Water Board
T&CWG	- LWB Terms and Conditions Working Group
VC	- Valued Components
W/EQWWG	- Water/Effluent Quality Guidelines Working Group
WLWB	- Wek'èezhìi Land and Water Board

## 1.0 INTRODUCTION

### 1.1 LEGAL BASIS FOR NWT ENVIRONMENTAL AUDITS

The Gwich'in, Sahtu and Tłı̨chǫ Agreements<sup>1</sup> set out provisions that together create an integrated system of land and water co-management in the Mackenzie Valley. These Agreements also provide for independent, periodic environmental audits to be conducted in the Mackenzie Valley. These provisions are legislated through the *Mackenzie Valley Resource Management Act (MVRMA)* which applies to all areas within the NWT except the Inuvialuit Settlement Region (ISR) and Wood Buffalo National Park.

Part 6 of the *MVRMA* sets out the legal requirements and framework for the environmental audits. Environmental audits are to be: initiated by the Minister of Indian Affairs and Northern Development (INAC) at least every five years; completed by an independent body;<sup>2</sup> based on terms of reference developed in consultation with the Gwich'in and Sahtu First Nations, the Tłı̨chǫ Government and the Government of the Northwest Territories (GNWT); and made publically available. The terms of reference are based on s. 148(3) of the *MVRMA* which requires environmental audits to include:

- (a) *An evaluation of information, including information from cumulative impact monitoring pursuant to section 146 of the MVRMA, in order to determine trends in environmental quality, potential contributing factors to changes in the environment, and the significance of those trends;*
- (b) *A review of the effectiveness of methods used for carrying out cumulative impact monitoring pursuant to section 146 of the MVRMA;*
- (c) *A review of the effectiveness of the regulation of uses of land and water and deposits of waste on the protection of key components of the environment from significant adverse impact<sup>3</sup>; and*
- (d) *A review of the response to any recommendations of previous environmental audits.*

For the purposes of the 2010 NWT Environmental Audit (2010 NWT Audit), the environment included the land, water, air, people and communities, heritage resources, and any other component of the social, cultural, economic and natural environments. This closely follows the definitions of “environment” further refined in the definition of “impact on the environment” in s. 111 of the *MVRMA*.

### 1.2 CONTEXT FOR THE 2010 NWT ENVIRONMENTAL AUDIT

The 2010 NWT Audit is the second environmental audit carried out under the *MVRMA*. The 2010 NWT Audit focused on the January 2006 to August 2010 period<sup>4</sup>. The first NWT Audit, completed by SENES Consultants Limited in 2005 (the 2005 NWT Audit), covered the first five years after the *MVRMA* came into full effect.

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<sup>1</sup> Unless indicated otherwise, the term “Agreements” refers collectively to the settled Land Claims within the NWT outside of the Inuvialuit Settlement Region including the Gwich'in Comprehensive Land Claim, the Sahtu Dene and Métis Comprehensive Land Claim Agreement and the Tłı̨chǫ Land Claims and Self-Government Agreement.

<sup>2</sup> Auditors must be independent from federal and territorial governments; resource management boards created by the *MVRMA* or through agreements; Aboriginal governments and organizations in the NWT; industry in the NWT; and any other organizations that participate in environmental and resource management processes in the NWT. Further detail is provided in the *Terms of Reference for the 2010 NWT Audit* <http://www.nwtcimp.ca/audit.html>.

<sup>3</sup> The Inuvialuit Regional Corporation made a written request to exclude the Inuvialuit Settlement Region (ISR) from this part of the 2010 NWT Audit

<sup>4</sup> The Final Audit Report has not been updated to reflect revisions in statistic, completion of EAs and court decisions which occurred between the end of the Audit period and release of the Final Audit Report.

It is noted that development activity decreased during the period covered by the 2010 NWT Audit compared to the 2005 NWT Audit. We heard a number of reasons for this decrease, some of which pointed at shortfalls or complexities in the regulatory regime of the NWT. In our review, we considered these points of view, taking into account the substantively different economic conditions between the periods covered in two NWT Audits. Over the period covered by the 2005 NWT Audit and partway through the period covered by the 2010 NWT Audit the NWT economy was expanding, Gross Domestic Product was increasing and there were resource development pressures which impacted on and stressed all parties (government, First Nations, MVRMA Boards). In late 2008, the world and NWT economy retreated, with a resultant decrease in development pressures and demands on the NWT regulatory system. Some of the key events and conditions since the 2005 NWT Audit that have had bearing on environmental management, economic development and demands on MVRMA Boards within the NWT include:

*Environment:*

- Continued decline in the Bathurst caribou herd population and ongoing debate on appropriate management
- Increasing focus on climate change and air quality management
- Increasing focus on potential impacts to water quality and quantity in the Mackenzie River basin primarily resulting from activities outside of the NWT
- Environmental impact review of the Mackenzie Gas Project submitted to the Minister of Indian Affairs and Northern Development and the other Responsible Ministers for consideration

*Economy:*

- 2008-10 global economic recession and associated decline in commodity prices and economic growth in NWT.
- Continuing dominance of the non-renewable resource sector in the NWT. From 2005-2009, the gross domestic product of the NWT averaged approximately 3.5 billion dollars of which mining and oil and gas extraction contributed between 32 to 40%
- Infrastructure in the NWT remains underdeveloped, limiting access to resources and markets
- Declining mineral exploration and deposit appraisal expenditures (See Table 1.1, next page)<sup>5</sup>
- Since May 2004 (Snap Lake), only one new mine (Tamerlane Pine Point test mine) was permitted (but not yet financed or built) in the NWT
- Five separate full-scale mines currently under impact assessment
- 50% of Land and Water Board preliminary screenings were for mining, mineral exploration and oil & gas proposals (see Table 1.2, next page)<sup>6</sup>. In 2009/10 there was a dramatic decline in the number of mining, mineral exploration proposals.

Contextual changes within the integrated system of land and water management including Land Claim and Self Government negotiations, land use planning, regulatory reform and Aboriginal government and MVRMA Board initiatives are discussed in Sections 2.0 through 5.0.

<sup>5</sup> Readily retrievable statistics were not available for oil and gas exploration. NEB reports Frontier Exploration Statistics (<http://www.neb-one.gc.ca/clf-nsi/rnrgynfmrn/sttstc/wklysttstlgsfrntr/frntrxpplrntsttstc-eng.html>), but these are reported on a weekly basis. Statistics Canada data on drilling completions is only current to 2007 (<http://www.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=26-213-XWE&lang=eng>).

<sup>6</sup> INAC Mineral & Petroleum Resources Directorate preliminary analysis of MVLWB data for the 2000 to 2009 (partial) period suggests that both sectors are characterized as having a large number of developers, most of which make relatively few (e.g., less than 3 to 5) applications (i.e., most developers have limited experience in the Mackenzie Valley).

**Table 1.1 –Mineral Extraction Sector Statistics**

Year	Exploration & Deposit Appraisal Expenditures <sup>(1)</sup>		Mineral Production <sup>(2)</sup>
	\$ millions	% of Cdn Total	\$ millions
2005	96.3	7.4	\$1,790
2006	176.2	9.2	\$1,638
2007	193.7	6.8	\$1,831
2008	147.7	4.5 <sup>(3)</sup>	\$2,123
2009	29.5	1.7 <sup>(3)</sup>	\$1,510
2010	66.3	3.1 <sup>(4)</sup>	

(1) Source: <http://mmsd.mms.nrcan.gc.ca/stat-stat/expl-expl/1-eng.aspx>

(2) Source: <http://mmsd.mms.nrcan.gc.ca/stat-stat/prod-prod/2009p-eng.aspx>

(3) Preliminary estimate at February 2010

(4) Spending intentions at February 2010

**Table 1.2 –Preliminary Screenings by Development Type**

Development Type	2005/06		2006/07		2007/2008		2008/09		2009/10		2005-2010	
	#	%	#	%	#	%	#	%	#	%	#	%
Transportation	11	14%	12	14%	6	7%	15	19%	16	22%	44	13%
Quarrying	6	8%	5	6%	13	15%	15	19%	12	16%	39	12%
Mineral Exploration & Mining	31	39%	18	21%	20	24%	22	28%	10	14%	91	28%
Oil & Gas	12	15%	25	29%	30	36%	5	6%	8	11%	72	22%
Logging/Harvesting	7	9%	9	10%	1	1%	3	4%	0	0%	20	6%
Research Projects	0	0%	5	6%	1	1%	5	6%	5	7%	11	3%
Remediation	0	0%	4	5%	5	6%	4	5%	3	4%	13	4%
Other	12	15%	9	10%	8	10%	11	14%	19	26%	40	12%
Annual Total	79	100%	87	100%	84	100%	80	100%	73	100%	330	100%

(Source: MVEIRB Annual Reports, various years)

### 1.3 INTENT OF THE 2010 NWT ENVIRONMENTAL AUDIT

In keeping with the spirit of the *MVRMA*, the primary intent of the 2010 NWT Audit is to act as a catalyst for improvements to environmental and natural resource management in the Mackenzie Valley to ensure sustainability and to protect the environment from significant impact for present and future generations.

### 1.4 AUDIT OBJECTIVE

The overall objective of the 2010 NWT Audit was to determine whether an integrated and coordinated system of land and water management had been adequately implemented in the Mackenzie Valley to protect the key components of the environment from significant adverse impact and to report on the status of the environment (SOE). In this context, we assessed what progress has been made on issues identified in the 2005 NWT Audit, what is the current status of the regulatory regime with respect to protection of the environment, and what is the state of the environment at this time.

## 1.5 AUDIT PROCESS AND METHODOLOGIES

Similar to the 2005 NWT Audit, the 2010 NWT Audit has two distinct but related parts:

- i. An audit of the cumulative impact monitoring program and the regulatory regimes and review of the recommendations from the 2005 NWT Audit (*MVRMA* paragraphs 148(3)(b), (c) and (d))
- ii. A status of environment (SOE) review (*MVRMA* paragraph 148(3)(a)).

The steps associated with the 2010 NWT Audit consisted of audit planning, audit examination and audit reporting, each of which is briefly described below. Further details can be found in the 2010 Audit Plan (SENES, 2010).

**Audit Planning:** Proposed audit criteria, lines of inquiry and audit methodology were developed and summarized in a draft Audit Plan. The Audit Plan was based on the 2010 Audit Terms of Reference established by an Audit Subcommittee (ASC) composed of membership from: the Gwich'in Tribal Council; the Sahtu Secretariat Inc.; the Tłı̨chǫ First Nation; the Dehcho First Nations; the North Slave Métis Alliance; the NWT Métis Nation; the Inuvialuit Game Council; the GNWT (Department of Environment and Natural Resources); and the Government of Canada (INAC). The draft Audit Plan was presented to the ASC for review and comment. The revision served as the basis for the 2010 Audit.

During the planning phase, the Inuvialuit Regional Corporation made a written request to exclude the ISR from the audit of the regulation of the uses of land and water and deposits of waste as the *MVRMA* does not apply in the ISR. This request was respected. The ISR was incorporated only in the status of the environment component of the 2010 NWT Audit.

**Audit Examination:** The methodologies used to gather information for the SOE and regulatory regimes parts of the 2010 NWT Audit differed. Data were shared between these two parts.

**Methodology for auditing regulatory regimes, CIMP and reviewing recommendations from the 2005 NWT Audit:** We obtained information and views from a wide range of participants including: Aboriginal community leaders and members; representatives of *MVRMA* boards; non-governmental organizations (NGOs), public and private sector applicants and developers; and, federal and territorial government staff (see Table 1.3 at end of this Section for a list of all parties we contacted). Contacts were made based on a list of organizations and Aboriginal groups that participate directly in and/or are affected by the regulatory regimes. This list was not meant to be exhaustive but rather representative. All participants were invited on at least two occasions to participate in one or more of the following ways:

- (a) Respond to a questionnaire tailored to the specific types of organizations targeted;
- (b) Submit comments in a disposition table of recommendations from the 2005 NWT Audit;
- (c) Participate in an interview via teleconference or in person; and/or,
- (d) Attend one of the public open houses, held in Łutsël K'e; Fort Smith; Hay River; Fort Simpson; Behchokò; Whati; Norman Wells; Fort Good Hope; Fort McPherson; Inuvik; and, Yellowknife.

In an attempt to obtain audit evidence, we made approximately 900 separate contact attempts to approximately 160 individual organizations listed in Table 1.3. Over 150 individuals representing the

federal government (40), GNWT (31), Aboriginal Governments and Organizations (39), Boards established under the *MVRMA* and Land Claim and Self-Government Agreements (25), non-governmental organizations (8) and applicants and developers (14), as well as numerous individuals during 11 open houses participated in the Audit.

In addition to the information provided by 2010 NWT Audit participants, we reviewed a sampling of: land use plans; information posted on *MVRMA* Board Public Registries; court decisions; guidelines, guidance documents, procedures and training materials developed by Aboriginal organizations, *MVRMA* Boards and government; discussion papers, background material and reports on related topics; information on regulatory initiatives; internal *MVRMA* board and government reports and data; and, previous reports assessing land and water management in the NWT.

**Methodology for the status of environment review:** We reported on the SOE based on the same Valued Components (VCs) and indicators of change as used in 2005 NWT Audit. These VCs stemmed from the INAC report, *A Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit (Updated June 2007)*. As with the 2005 SOE, key indicators of change for the selected VCs were identified and carried forward through the study. For these key indicators of change, we assessed trends in environmental quality for the NWT as a whole.

We completed the SOE review using previously collected and compiled scientific data and traditional knowledge. We relied upon previously completed studies extensively, particularly where these studies had assessed trends in environmental quality. Where required, these studies were supplemented with original data analysis. Original research was, however, not within the scope of the SOE assessment. A range of information sources were used and various knowledgeable individuals and organizations were solicited for information and source material for each of the VCs being assessed.

For each of the VCs (see Section 6.0 and companion document entitled *NWT Environmental Audit 2010 – Supplementary Report on the Status of the Environment*) and associated key indicators of change, the available data were analyzed and assessed to identify:

- trends;
- potential contributing factors to any changes in the environment;
- the potential significance of any trends identified;
- the likely impact of the trend;
- potential mitigation activities required to counteract or minimize any observed adverse trends; and,
- data gaps.

**Audit Reporting:** The Draft 2010 NWT Audit Report was provided to the ASC and directly affected parties for fact checking. Comments received were considered and a final Audit Report was prepared and submitted to the Minister of Indian Affairs and Northern Development.

## 1.6 A WORD ON REPORT STYLE AND REPORTING OF AUDIT EVIDENCE

In writing our audit findings, we have chosen a style that uses the first person (i.e., we). Our findings are based on the review of hundreds of individual pieces of audit evidence including written submissions, authorization applications and supporting documents, Environment Assessment supporting documents, government studies and publications, and court cases. We also spoke to more than 150 individuals representing the federal government, GNWT, Aboriginal Governments and Organizations, MVRMA Boards, non-governmental organizations and applicants and developers, as well as numerous individuals during 11 open houses. For simplicity and consistency of writing style in this report, when we refer to audit evidence obtained from these sources, we most often used phrases such as “we were told” or “we heard.” The use of these phrases is not meant to imply that the only source of information was anecdotal (i.e., interviews) or that only one source provided the particular information. Audit findings reported using these phrases encompass the combined knowledge, information and insight that we gleaned from all of the information sources applicable to the item under discussion within this context.

Unless otherwise stated in the report, when we use of the phrase “we were told,” “we heard,” etc., these represent a body of audit evidence and not a singular opinion or point of evidence. In some cases, where it was felt that a particular point, fact or opinion brought forth by only one or by a very limited number of sources of information warranted inclusion the report clearly indicates that the source of information is limited (e.g., “one developer said”).

Wherever possible, opinions were corroborated with written or other forms of evidence (i.e. the Auditors did not take opinions at face value).

On some matters, we also reported on perceptions. When we did so, we clearly indicated that audit evidence was a perception (which may or may not have a basis in fact). We chose to report on perceptions where we believed that it was important for interested parties to be aware of these perceptions as both correct and incorrect perceptions influence the confidence in and the ways that interested parties interact with the regulatory regimes. These perceptions are reported not because the Auditor “got it wrong” but rather to show the need for work to be done to correct those perceptions.

For the reader’s benefit, it is important to understand that the overall intent of an audit report is to summary observations made and to provide auditor opinions on whether these observations indicate conformance or non-conformance to the audit criteria (see Section 1.7). This fact-based audit process is distinct from analytical reviews and assessments such as a position or policy analysis paper. Audit reports present a summary of findings against pre-determined criteria to verify processes are followed and desired outcomes are achieved. Audits may assist in, but are not intended to provide, detailed analysis of the underlying issues as to why processes are not followed or desired outcomes not achieved. This task of root cause analysis and detailed corrective action planning rests with the auditees.

## 1.7 AUDIT CRITERIA

Listed below are the audit criteria that were used to evaluate the effectiveness of the regulation of uses of land and water and deposits of waste on the protection of the key components of the environment



from significant adverse impact. Audit criteria represent a list of 'goal statements' that reflect requirements of the *MVRMA* and what are widely recognized as ideal conditions reflecting the proper conduct of the regulatory regime envisioned under the *MVRMA*. Audit evidence is used to assess the degree to which these goals have been met, hurdles remaining to their full achievement and measures that need to be in place to create these conditions of success.

For the regulatory regimes, we expected to find:

- Development decisions balanced with environmental protection considerations in an effective, transparent, timely and predictable process
- *MVRMA* Boards constituted and functioning in accordance with Land Claim/Self Government Agreements and the *MVRMA*
- Land Use Plans that are fully developed, maintained and periodically reviewed in accordance with requirements of Land Claim/Self Government Agreements and the *MVRMA*
- Land and Water Boards and the Environmental Impact Review Board making transparent decisions that are protective of the environment and consistent with established rules that are fully communicated in advance to all interested parties
- Environmental regulatory regimes with inter-jurisdictional roles that were clearly defined, understood and coordinated
- Regulators who have access to and consider relatively up-to-date environmental data in decision making process
- A monitoring, inspection and enforcement system adequate to protect all aspects of the environment subject to the *MVRMA*
- Advisory bodies, regulatory agencies, communities and NGOs which were fully engaged in and satisfied with the regulatory processes
- Adequate and respectful use of Traditional Knowledge within *MVRMA* processes (see Traditional Knowledge specific audit criteria in Section 5.0)
- Recommendations to the 2005 NWT Audit completed or well defined action plans developed and underway and for those recommendations rejected, a fully developed and communicated rationale

For CIMP, we expected to find:

- A well developed and properly funded program with clear goals and objectives
- Active community-based monitoring and community capacity-building projects based on a clearly defined strategic plan

For Traditional Knowledge, we expected to find:

- Decision makers and users of traditional knowledge understand its meaning;
- Decision makers and users of traditional knowledge respect and accept the importance, usefulness and role of traditional knowledge;
- Traditional knowledge being readily available;
- Traditional knowledge collected, documented, reported and verified in culturally appropriate ways;
- Clear proprietary considerations and confidentiality requirements for its use;
- *MVRMA* processes conducted in a way that allows traditional knowledge holders to share traditional knowledge in a meaningful way; and,
- Decision makers and users of traditional knowledge understand how to appropriately use traditional knowledge in project planning and decision making.

Traditional Knowledge Audit Criteria were developed through discussions with some Aboriginal organizations and Renewable Resource Boards and a review of existing traditional knowledge protocols and guidelines (e.g., MVEIRB, GNWT). We identified these as the key elements necessary for the successful integration of traditional knowledge into an integrated system of land and water management. A need for these criteria was identified subsequent to the publication of the Audit Plan and, as such, these criteria do not appear in that document.

## 1.8 AUDIT TEAM

Project Director: *Bruce Halbert*  
Project Manager: *Gerd Wiatzka*

### Regulatory Regime & CIMP Review

Lead Auditor: *John Peters*  
Researchers: *Sarah Baines, Jim Edmondson*

### State of the Environment Review

Researchers: *Bruce Halbert, Dr. Colin Macdonald, Dr. Igor Holubec, Lois Little, Dr. Lesbia Smith, Robert Stephen, Bruce Stewart, Dr. James Young*

## 1.9 AUDIT LIMITATIONS

The following limitations apply to this audit:

1. On May 3, 2010 the federal government announced the appointment of John Pollard as Canada's Chief Federal Negotiator to lead consultations and negotiations with the GNWT and Aboriginal leadership in the NWT on structural changes to Land and Water Boards as part of the work on amendments to *MVRMA* and the *Territorial Lands Act*. This announcement cast uncertainty on the future structure of the regulatory regimes.

The 2010 NWT Audit was conducted within this socio-political context and many respondents shared their views about not only implementation of the *MVRMA* but also on potential changes to the regulatory system. Despite our efforts, members of the public sometimes confused our audit process as being associated with the work of the Chief Federal Negotiator. Immediately after the announcement, we noted some polarization of views and positions both for and against, consolidation of Land and Water Boards which may have influenced evidence collected.

2. While many organizations and Aboriginal groups involved in the environmental impact review of the Mackenzie Gas Project (MGP) were invited to, and did participate in the 2010 NWT Audit, most declined to discuss the specifics of the MGP process since it was not yet completed. We respected these wishes and the environmental impact review process for the MGP was excluded.

## 1.10 REPORT STRUCTURE

This report has been organized in five main parts, in addition to this Introduction:

- Section 2** reviews the status of key issues identified and responses to recommendations made in the 2005 NWT Audit.
- Section 3** summarizes the observations and recommendations associated with new major themes associated with regulatory regimes arising from the 2010 NWT Audit.
- Section 4** summarizes the observations and recommendations associated with developments within the Cumulative Impact Monitoring Program noted in the 2010 NWT Audit.
- Section 5** reviews the status of Traditional Knowledge use in the system of land and water management.
- Section 6** summarizes the results of the status of the environment review and provides comments on the effectiveness of the regulatory regimes in protecting key components of the environment.
- Section 7** provides recommendations for future NWT audits.
- Section 8** summarizes recommendations and opportunities for improvement identified in the 2010 NWT Audit.
- Section 9** provides references.

A separate companion document entitled *NWT Environmental Audit 2010 – Supplementary Report on the Status of the Environment* details the findings of the status of environment review.

Summary findings are presented at the beginning of each section. Recommendations, where provided, are presented at the end of relevant sections. Key findings, conclusions and recommendations have been brought forward in the Executive Summary. In presenting findings and recommendations a tiered approach was used. Foundational issues necessary for a fully integrated system of land and water management are discussed in Sections 2.2.2 and 5.0. Recommendations associated with these issues require full implementation. Findings related to issues of process are addressed in Sections 3.0 and 4.0. Implementation of associated recommendations is intended to enhance the efficiency and effectiveness of the integrated system of land and water management.

In addition to the primary areas where findings were provided, we also noted secondary opportunities for improvement within the Report. These often begin with the phrase “we encourage.” These opportunities for improvement represent areas of potential improvement which we felt warranted consideration but were of lesser importance than the primary recommendations, or, if issued as formal recommendations, would be difficult to verify as implemented (i.e., could not pass one or more of the SMART<sup>7</sup> test) in subsequent NWT Audits. We chose this approach to ensure that responses to the 2010 NWT Audit remained focused on those key issues identified as being critical to the effective implementation of the MVRMA.

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<sup>7</sup> Specific, Measurable, Achievable, Realistic, Time Limited/Targeted

For ease of reference, new recommendations arising from the 2010 NWT Audit are summarized in Section 8.0. We also summarized opportunities for improvement in that Section. Outstanding recommendations from the 2005 NWT Audit are summarized in Tables presented in Appendix A.

We also document in Appendix B additional areas for consideration focused on specific issues. We recommend that issues identified in Appendix B be considered within the context of other regulatory and process changes being made.

Table 1.3 – List of Parties Contacted in the 2010 NWT Audit

GROUPS ASKED TO PARTICIPATE BY COMPLETING A QUESTIONNAIRE AND PARTICIPATING IN AN INTERVIEW	GROUPS WHO COMPLETED A QUESTIONNAIRE	GROUPS WHO PARTICIPATED IN AN INTERVIEW
Aboriginal Pipeline Group		
Acho Dene Koe First Nation		
Akaiitcho Interim Measures Agreement Implementation Office - Akaiitcho Screening Board	✓	✓
Alternatives North	✓	✓
Avalon Rare Metals Inc.	✓	
Ayoni Keh Land Corporation		
Bathurst Inlet Lodge Ltd.	✓	✓
Behdzi Ahda' First Nations Band		
Behdzi Ahda' Renewable Resource Council		
BHP Billiton Canada Inc.	✓	✓
Canadian Arctic Resources Committee		
Canadian Association of Petroleum Producers		✓
Canadian Parks and Wilderness Society		
Canadian Zinc Corporation	✓	
Carter Industries Ltd.		✓
CIMP Working Group		✓
City of Yellowknife	✓	
Dehcho First Nations		✓
Dehcho Land Use Planning Committee		
Dehghah Gotie Dene Council		
Deline First Nations Band		
Deline Land Corporation		
Deline Renewable Resource Council		
Dene Cultural Institute		
Dene Nation		
Deninoo Community Council		
Deninu Ku'e First Nations		
Dezé Energy Corporation		✓
Diavik Diamond Mines Inc.	✓	✓
Ducks Unlimited	✓	
Eagle Plains Resources Ltd.		
Ecology North	✓	✓
Enterprise Settlement Corporation		
Environment Canada	✓	✓
Environmental Monitoring Advisory Board (Diavik Diamond Mine)		
Fisheries and Oceans Canada	✓	✓
Fort Providence Metis Council		
Fort Providence Resource Management Board		
Fort Resolution Métis Council		

Table 1.3 – List of Parties Contacted in the 2010 NWT Audit (cont'd)

GROUPS ASKED TO PARTICIPATE BY COMPLETING A QUESTIONNAIRE AND PARTICIPATING IN AN INTERVIEW	GROUPS WHO COMPLETED A QUESTIONNAIRE (*)	GROUPS WHO PARTICIPATED IN AN INTERVIEW
Fort Simpson Chamber of Commerce		
Fort Simpson Métis Nation		
Fort Smith Métis Council		
Ft Good Hope Metis Land Corporation		
Ft. Good Hope Renewable Resource Council		✓
GNWT - Inuvik Region - ENR	✓	✓
GNWT - Sahtu Region - ENR and Industry, Tourism and Investment	✓	✓
GNWT Education, Culture and Employment - NWT Cultural Places Program Prince of Wales Northern Heritage Centre)	✓	✓
GNWT Education, Culture and Employment - Advanced Education	✓	✓
GNWT ENR - Environment	✓	✓
GNWT ENR - Forest Management	✓	✓
GNWT ENR - Land and Water Division (including Protected Areas)	✓	✓
GNWT ENR - Policy and Planning	✓	✓
GNWT ENR - Wildlife	✓	✓
GNWT Executive - Bureau of Statistics	✓	
GNWT Health and Social Services	✓	✓
GNWT Industry, Tourism and Investment - Policy, Legislation and Communications (including Aboriginal Relations and Resource Development)	✓	✓
GNWT Municipal and Community Affairs - Lands Administration	✓	✓
GNWT Public Works & Services	✓	✓
GNWT Transportation	✓	✓
Gwich'in Designated Organization - Inuvik (Nihtat Gwich'in		
Gwich'in Designated Organizations - Ft. McPherson (Tetlit Gwich'in Council)		
Gwich'in Land and Water Board	✓	✓
Gwich'in Land Use Planning Board	✓	✓
Gwich'in Renewable Resources Board	✓	✓
Gwich'in Social and Cultural Institute	✓	
Gwich'in Tribal Council - Executive		✓
Gwich'in Tribal Council - Lands, Resources and Implementation	✓	✓
Gwich'in Tribal Council - Regional Wellness		
Gwich'in Tribal Council - Residential School Issues Assistance	✓	
Hamlet of Fort Liard		
Hamlet of Ft. McPherson		
Hamlet of Tulita		
Hay River Métis Government Council		
Imperial Oil (MGP)		
INAC - Aboriginal and Territorial Relations		
INAC - Board Relations Secretariat	✓	✓
INAC - Communications		✓
INAC - Consultation Support Unit	✓	✓

\* GNWT submitted 2 questionnaires covering all departments, one as a applicant and one as a regulator

Table 1.3 – List of Parties Contacted in the 2010 NWT Audit (cont'd)

GROUPS ASKED TO PARTICIPATE BY COMPLETING A QUESTIONNAIRE AND PARTICIPATING IN AN INTERVIEW	GROUPS WHO COMPLETED A QUESTIONNAIRE	GROUPS WHO PARTICIPATED IN AN INTERVIEW
INAC - Contaminants and Remediation	✓	✓
INAC - Corporate Services		✓
INAC - Cumulative Impact Monitoring Program		✓
INAC - Environment and Conservation		✓
INAC - Headquarters in Ottawa		✓
INAC - Indian and Inuit Services		✓
INAC - Lands Administration		
INAC - Mineral Development		✓
INAC - North Mackenzie District Operations		✓
INAC - Petroleum Development		✓
INAC - Policy and Planning	✓	
INAC - South Mackenzie District Operations	✓	✓
INAC - Water Resources	✓	✓
Independent Environmental Monitoring Agency (Ekati)	✓	
Ka'a'gee Tu First Nation (Kakisa)		
K'ahsho Got'ine Community Council		✓
Katlocheeche First Nation		
Liidli Kue First Nation - Lands Administration		✓
Lutsel k'e Dene First Nation - Wildlife, Lands and Environment		✓
Mackenzie Gas Project Joint Review Panel		
Mackenzie Valley Environmental Impact Review Board	✓	✓
Mackenzie Valley Land and Water Board	✓	✓
Nahanni Butte Dene Band		
National Energy Board	✓	
Nihtat Gwich'in Renewable Resources Council in Inuvik		
Norman Wells Chamber of Commerce		
Norman Wells Metis Land Corporation (Norman Wells Claimant)		✓
Norman Wells Renewable Resource Council		
North Arrow Mineral Inc		
North Slave Metis Alliance		
Northern Gas Project Secretariat		
Northwest Territory Metis Nation		✓
NWT and Nunavut Chamber of Mines		
NWT Association of Municipalities		
NWT Chamber of Commerce		
NWT Chamber of Mines		
Paramount Resources Ltd.	✓	✓
Parks Canada	✓	✓
Pehdzeh Ki First Nation		
Pembina Institute	✓	✓

Table 1.3 – List of Parties Contacted in the 2010 NWT Audit (cont'd)

GROUPS ASKED TO PARTICIPATE BY COMPLETING A QUESTIONNAIRE AND PARTICIPATING IN AN INTERVIEW	GROUPS WHO COMPLETED A QUESTIONNAIRE	GROUPS WHO PARTICIPATED IN AN INTERVIEW
Rowe's Construction	✓	✓
Robinson Enterprises Ltd.		
Sahtu Dene Council		
Sahtu Land and Water Board	✓	✓
Sahtu Land Use Planning Board	✓	✓
Sahtu Renewable Resources Board		✓
Sahtu Secretariat Inc.		
Salt River First Nations		
Sambaa K'e Dene Band (Trout Lake)	✓	
Smith's Landing First Nation - Lands and Resources		✓
Status of Women Council in the NWT		
Strongbow Exploration Inc.		
Tetlit Gwich'in Renewable Resource Council in Ft. McPherson		✓
Tlicho Community Government - Behchoko Planning and Lands	✓	
Tlicho Community Government - Gameti		
Tlicho Community Government - Wekweeti		
Tlicho Community Government - Whati		
Tlicho Community Services Agency		
Tlicho Government (Grand Chief)		
Tlicho Lands Protection Department		✓
Tlicho Language, Culture and Communications		
Town of Fort Smith		
Town of Hay River		
Town of Inuvik		
Town of Norman Wells		
TtshedzheK'edeli First Nation (Jean Marie River)		
Tulita Dene Band		
Tulita Land Corporation		
Tulita Metis Land Corporation		
Tulita Renewable Resource Council		
Village of Fort Simpson		
Wek'eezhii Land and Water Board	✓	✓
Wek'eezhii Renewable Resources Board	✓	✓
West Point First Nation		
World Wildlife Fund		
Xahweguweh/Yamoga Land Corporation		✓
Yellowknives Dene - Dettah		
Yellowknives Dene - N'dilo		
Yellowknives Dene First Nation - Community Services		
Yellowknives Dene First Nation - Lands and Environment Dept	✓	



## 2.0 FOLLOW-UP TO THE 2005 NWT AUDIT

*Many participants in the 2010 NWT Audit expressed concerns over the lack of significant and meaningful progress made in addressing recommendations made in the 2005 NWT Audit. We share these concerns. Progress on foundational issues is necessary to fully implement a functional and integrated system of land and water management. These changes are largely outside the control of the MVRMA Boards. At the same time, we acknowledge that changes have and are being made by MVRMA Boards, regulators, responsible government agencies and Aboriginal organizations to improve the system of land and water management.*

### 2.1 ADEQUACY OF RESPONSES TO THE RECOMMENDATIONS OF THE 2005 NWT AUDIT

The 2005 NWT Audit offered 50 recommendations for improvement. The 2010 NWT Audit provides an update on their implementation status in Appendix A. Evidence provided by 2010 NWT Audit respondents and analysis of available information was used to make a qualitative determination of the adequacy of responses to the 2005 NWT Audit recommendations. This analysis is summarized in Table 2.1. Recommendation status by Lead Agency is summarized in Table 2.2.

Of the 50 recommendations made, 15 were considered *Closed*, 19 *In-Progress* and 11 *Unresolved*. Responding parties disagreed with 5 recommendations. Recommendations other than those classified as *Closed* as considered still relevant and requiring action. In Appendix A, for *Closed* recommendations, we provide brief comments on the *Impact of Implementation Efforts* which include a brief assessment of our analysis of the impact of the recommendations on improving the regulatory regime.

**Table 2.1 – Implementation Status for 2005 NWT Audit Recommendations**

Status	Criteria Used to Classify Status	Recommendation Numbers(*)
Closed	Evidence indicates intent of the recommendation was substantively addressed. Little if any additional program development is required. Ongoing program requirements may exist. <u>OR</u> Original issue no longer exists and/or is no longer relevant.	4, 7, 8, 20, 21, 26, 27, 29, 32, 33, 36, 41, 42, 48
In Progress	Evidence suggests that current efforts, once fully implemented, will substantively address the intent of the recommendation.	1, 9-R, 10, 12, 13, 15, 18, 19, 22, 23, 28, 30, 35, 37, 38, 43, 44, 45, 46, 47-RA
Unresolved	Evidence suggests that little progress has been made to address the intent of the recommendation.	2, 3, 5, 14-RA, 17-RA, 31, 34, 39, 40, 49, 50
Disagreed	The responsible party disagreed with the recommendation and it remains unresolved. 2005 recommendation was revised or is still considered applicable as originally written.	6, 11-RA, 16-RA, 24, 25

\* “-RA” indicates that we revised the recommendation based on the results of the 2010 NWT Audit to reflect the current situation or for added clarity.

**Table 2.2 – Status of 2005 NWT Audit Recommendations by Lead Agency**

Lead Agency	Closed	In Progress	Unresolved	Disagreed	Total
Aboriginal Governments	0	1	0	0	1
GNWT	0	0	0	1	1
INAC	3	5	4	1	13
MVRMA Boards	2	4	2	0	8
Shared	10	9	5	3	27

The following sections summarize activities of *MVRMA* Boards and key regulatory agencies in response to the 2005 NWT Audit.

***MVRMA Boards:*** We saw many positive steps by the Land and Water Boards (LWBs), with assistance from Indian and Northern Affairs Canada (INAC), in responding to the 2005 NWT Audit. The Mackenzie Valley Land and Water Board (MVLWB) has exercised its s. 106 responsibilities under the *MVRMA* by focusing on providing consistency and clarity in the LWB decision making process, while maintaining respect for the cultural and geographic differences that underlay the initial decision to create a regional board system in the *MVRMA*.

In January 2008, the MVLWB (in partnership with the Gwich'in (GLWB), Sahtu (SLWB) and Wek'èezhìi (WLWB) Land and Water Boards) established *Standard Procedures and Consistency Working Groups* (LWB Working Groups) to improve regulatory consistency across the four LWBs. The mandate of each LWB Working Group is summarized in Table 2.3.

**Table 2.3 – Standard Procedures and Consistency Working Groups**

Working Group	Mandate
Public Engagement and Consultation Working Group (PE&CWG)	To research and find policy solutions to areas of inconsistency in consultation, communication and public engagement approaches between the Boards, and between the Boards and other agencies and communities; to identify opportunities to initiate dialogue and discussion between the Boards and with relevant agencies and communities to deal with public engagement, communication and consultation related issues; and, to provide public engagement, communication and consultation advice, coordination and support, where required, to all the working groups
Plan Review Process and Guideline Working Group (PRPGWG)	To develop a standard process for the review of management plans and to develop standard guidelines/templates for common management plan(s) under a Water License or Land Use Permit
Water/Effluent Quality Guidelines Working Group (W/EQWG)	To identify and/or develop policy options for water/effluent quality criteria, possibly in conjunction with INAC, other regulators and industry; and, to develop procedures for setting water/effluent quality criteria based on Board approved policy
Terms and Conditions Working Group (T&CWG)	To develop a clear and consistent approach for the development of: new terms and conditions; a common approach for creating new Terms and Conditions; a common template for Land Use Permit and Water License Conditions; and, a common and consistent approach to orphan measures
Application Processes Working Group (APWG)	To develop a clear and consistent approach and principles for guideline development of the following processes or products: Pre-application; Application; Amendment; Administrative; Final Plan and Letter of Clearance; Renewals and Extensions (s.157.1)
Data-Resource Working Group (DRWSG)	To develop clear and consistent standards, guidelines and/or procedures for: the submission of data resources to the Boards; consistent, timely access and/or distribution of information to clients and between the Boards; and, the management and accessibility of the Public Registry

We cannot comment on the effectiveness of the LWB Working Groups as there were limited draft and no final deliverables at the time of the 2010 NWT Audit. We heard adequate evidence to form the opinion that their output should address many of the concerns regarding LWB functions raised during the 2005 NWT Audit, provided LWB Working Groups are properly funded and staffed. \$135,000 in funding in 2009-2010 and \$135,000 in 2010-2011 was provided in support of the LWB Working Groups.

We also saw evidence of *MVRMA* Boards striving to enhance project notification, communications and awareness. Newsletters are being published. Enhanced guidance materials have been prepared. Public access to INAC inspection reports has been enhanced through posting on the MVLWB and the WLWB Public Registries. Electronic Public Registries and automated project notification systems have also been implemented, with the MVEIRB, MVLWB and the WLWB farthest along with implementing and

maintaining these registries.

The MVEIRB's 2008-09 to 2010-11 Strategic Plan indicates that "*the essential task of the Review Board is to produce quality and timely environmental impact assessments of proposed developments.*" The MVEIRB has experimented with ways to improve the EA process and has continued to develop guidance documents to assist participants in understanding EA expectations.

The Sahtu Land Use Planning Board has made great strides in developing the Sahtu land use plan (Draft 3 of the Sahtu Land Use Plan was released on July 12, 2010) and the Gwich'in Land Use Planning Board is well into its first five year review of its land use plan.

**INAC:** INAC has also made progress in responding to the 2005 NWT Audit. In November 2007, INAC announced its *Northern Regulatory Improvement Initiative* which included actions to address recommendations made in previous reviews and audits of its operations. In May 2010, INAC announced its *Action Plan to Improve the Northern Regulatory Regimes*. The *Action Plan* includes a suite of legislative actions to be completed within a two year window and provides \$11 million in funding to do so. Numerous legislative changes are being considered through a new *NWT Surface Rights Board Act* and amendments to the *MVRMA* and *NWT Waters Act*. In particular, the *Action Plan* indicates that *MVRMA* will be amended to clarify terms, enact timelines, establish thresholds, eliminate duplication, and may include board restructuring.

INAC, through the Board Relation Secretariat (BRS)<sup>8</sup>, provided additional resources and assistance to *MVRMA* Boards to improve training programs and performance reporting practices. Some improvement in the timeliness of Board appointments has been made, but we continued to hear concerns primarily around the transparency of this process. INAC also supports the NWT Board Forum where members of Boards operating in the NWT meet to discuss matters of common interest.

INAC's Consultation Support Unit (CSU), operational in 2008, provides advice and assistance to internal and external parties in relation to Crown consultation with Aboriginal people and has assisted in facilitating the consultation process. The Crown's obligation for Aboriginal consultation, however, remains a significant challenge with many uncertainties to resolve (see Sections 2.2.2 and 3.5).

Some key 2005 recommendations directed at INAC remain unresolved. An effective, adequately funded Cumulative Impact Monitoring Program (CIMP) has not been implemented. Further, INAC has not ensured adequate participant funding is available to Aboriginal organizations. To assist in CIMP implementation, the 2010 federal budget included an additional \$8 million in funding over a 2 year period (see Section 4.3 for details).

**GNWT:** GNWT did not complete the one recommendation directed exclusively at it, which was to complete an evaluation of the effectiveness of approaches used to prevent or mitigate potential socio-economic and cultural impacts attributable to development. The GNWT indicated that the mitigation of project effects is a responsibility of project applicants or developers and that the GNWT encourages best

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<sup>8</sup> The BRS, funded and administered by INAC, helps implement Land Claim agreements and supports strong working relationships and partnerships with NWT resource management boards.

practices by applicants or developers. The management of socio-economic issues was identified as a key continuing gap in the regulatory system by both regulators and Aboriginal groups. On a positive note, GNWT is implementing the Environmental Assessment Tracking System (EATS) to ensure that EA mitigation measures and suggestions directed at the GNWT or within its mandate are tracked and implemented. GNWT also passed its *Species at Risk (NWT) Act* and is updating its *Wildlife Act*. In cooperation with INAC and Aboriginal Governments, GNWT has developed the *NWT Water Stewardship Strategy* to ensure the waters of the NWT remain clean, abundant and productive. We heard that the development of this *Strategy* has contributed greatly to building partnerships and a common vision for water management in the NWT.

The GNWT announced the first territorial sponsorship of a Protected Areas Strategy candidate protected area, Buffalo Lake, River and Trails, under the Wildlife Act as a proposed Critical Wildlife Area.

**Recommendation 1:** 2005 NWT Audit<sup>9</sup> recommendations (modified as applicable) which have not been fully closed should be implemented, with a prioritization on the foundational issues identified in Section 2.2.2.

## 2.2 UPDATE TO OBSERVATIONS MADE IN THE 2005 NWT AUDIT

### 2.2.1 Overarching Comments

*MVRMA Boards continue to be asked to make decisions in the absence of a fully implemented and integrated system of land and water management.*

During the 2010 NWT Audit, we heard mixed messages on the efficiency of the system of land and water management established under the *MVRMA*. The most vocal criticism of the regime was heard from applicants and developers, both private and public. Applicants and developers believe that environmental assessment and regulation in the Mackenzie Valley is not predictable, timely or consistent.

Foundational challenges remaining within the system of land and water management are largely the same as those identified in the 2005 NWT Audit. These challenges, discussed in more detail in Section 2.2.2, include:

- Absence of Land Claims Agreements in the Dehcho and Akaitcho areas;
- Absence of approved land use plans with the exception of the Gwich'in Land Use Plan;
- Lack of progress in implementing the Cumulative Impact Monitoring Program;
- Uncertainty around Aboriginal consultations in terms of both process and capacity;
- Degree of integration of traditional knowledge in decision making; and,
- Gaps in the regulation of the environment, including the socio-economic environment.

These foundational challenges are largely outside the direct control of the *MVRMA* Boards but impact on the perceived performance of these Boards and frustrate the predictability, timelines and consistency of the Boards. We found that LWBs and MVEIRB struggle with, and are criticized for,

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<sup>9</sup> Found in Appendix A. Recommendations which have not been completed are shaded.

decision making in the absence of a fully developed regulatory system. Boards also struggle with implementing a decision making process which calls for consideration of impacts on the “land, water, air or any other component of the environment, as well as on wildlife harvesting, including any effect on the social and cultural environment or on heritage resources” but which largely restricts available regulatory instruments to mitigate any impacts found to a limited subset (land and water) of the bio-physical environment.

Conceptually, the *MVRMA* approach is similar to the Plan-Do-Check-Act model widely applied to management systems (e.g., ISO 9001 and ISO 14001). The objective of the *MVRMA* is to establish an integrated system of land and water management linking land use planning, environmental impact assessment (EIA)<sup>10</sup>, land and water regulation, and assessment of cumulative impacts.

Land use planning balances diverse interests to achieve an overall vision on acceptable uses of the lands. EIA reviews conformance to these plans specifically and assesses the impacts of proposed projects and balances these against resource development considerations. Land Use Permits and Water Licences establish the binding conditions under which development is allowed to proceed to protect the environment from significant adverse impacts. Federal and territorial laws and regulations provide for additional environmental protection and means to monitor and react accordingly. CIMP provides feedback by monitoring the cumulative impacts of external environmental factors and decisions made affording the opportunity to prevent and react to significant or cumulative regional environmental impacts and to improve the planning, assessment and decision making processes.

Decision makers in the Mackenzie Valley are being asked to proceed in the absence of some or all of the *integrated* elements, using a system that has not yet been fully implemented as designed. We heard that these uncertainties are resulting in preliminary screenings, environmental assessments and the regulatory phase being used as open forums for all issues in the region. We heard concerns from applicants and developers that regulatory agencies, reviewers and other parties use *MVRMA* processes to forward departmental or individual agendas, research projects, etc. that may not be related to the specific application. Applicants and developers told us that in completing their mandates, Boards need to do a better job in focusing discussions on the specifics relevant to the project under review.

### 2.2.2 Update on Foundational Challenges Identified in 2005

*Foundational challenges identified in the 2005 NWT Audit are still relevant and are impacting on the efficiency and effectiveness of the regulation of land and water.*

Foundational challenges identified in the 2005 NWT Audit have been well documented in Office of the Auditor General (OAG) 2005 and 2010 Audit Reports (OAG, 2005 & 2010) and the 2008 *Road to Improvement Report* (McCrack, 2008).

**Land Claims:** The completion of Land Claim Agreements (see Table 2.4 for current status) was viewed by many parties as a critical factor to the successful implementation of an integrated system of land and

<sup>10</sup> Where the 2010 NWT Audit uses the term “EIA”, this means the three-part assessment and review process defined under s.114 of the *MVRMA*, consisting of preliminary screening, environmental assessment and environmental impact review

water management. As evidence, we observed far fewer criticisms of the system of land and water management in areas where Land Claims have been settled.

The absence of settled Land Claims adds additional complexity and uncertainty to environmental management which impact on timeliness and predictability. Evidence collected is consistent with the Auditor General's observation that "Communities in unsettled claims do not feel represented in the existing process and try to influence decision making through other means. They do this by requesting additional environmental assessments and consultation, which may delay approvals" (OAG, 2005).

**Table 2.4 – Status of Land Claim and Treaty Negotiations in the Mackenzie Valley**

Agreement	Description	Date Signed	Effective Date
Gwich'in Comprehensive Land Claim Agreement	Settled comprehensive Land Claim – lands and resources Self-government negotiations continue.	22 April 1992	22 December 1992
Sahtu Dene and Métis Land Claim Agreement	Settled comprehensive Land Claim – lands and resources Self-government negotiations continue.	6 September 1993	23 June 1994
Tłı̨chǫ Land Claim and Self-Government Agreement	Settled lands, resources and self government agreement.	25 August 2003	4 August 2005
Salt River First Nation (Fort Smith)	Settled treaty land entitlement.	5 September 2008 - approximately 60% of reserve created by Order-in-Council	
Akaįtcho Territory Dene First Nations	Continuing negotiations for lands, resources and self government agreement. <ul style="list-style-type: none"><li>• Framework Agreement signed 11 August 2000.</li><li>• Interim Measures Agreement signed June 28, 2001.</li><li>• Crown land interim land withdrawal agreement reached with Canada on November 21, 2007.</li><li>• Commissioner's land interim land withdrawal agreement with GNWT 2 November 2006 (effective until November 2, 2011).</li></ul>		
Dehcho First Nations	Continuing negotiations for lands, resources and self government agreement. <ul style="list-style-type: none"><li>• Deh Cho Framework Agreement and Interim Measures Agreement signed 23 May 2001.</li><li>• Interim Resource Development Agreement signed 17 April 2003.</li></ul>		
Acho Dene Koe First Nation (Fort Liard)	Continuing negotiations for lands, resources and self government agreement. <ul style="list-style-type: none"><li>• Framework Agreement signed 14 July 2008.</li></ul>		
Northwest Territory Métis Nation	Continuing negotiations for lands, resources and self government agreement. <ul style="list-style-type: none"><li>• Framework Agreement signed August 1996.</li><li>• Interim Measures Agreement signed 22 June 2002.</li></ul>		

We noted that consultation and accommodation challenges under section 35 of the *Constitution Act, 1982* are more prevalent in unsettled areas. We also noted a higher referral rate to EA due to public concern in unsettled areas (see Section 3.6). As large developments have been concentrated in unsettled areas where land use plans do not exist, we cannot with certainty attribute this higher number of referrals solely to the Land Claims process. We did, however, identify sufficient anecdotal evidence to suggest a causal relationship.

We found that uncertainty in Land Claims is a key factor limiting the level of non-renewable resource investment in the NWT. Our findings are supported by recent Fraser Institute (an independent Canadian public policy research and educational organization) surveys<sup>11</sup> of mining and oil and gas companies on a range of policy-related factors that contribute to the ability of jurisdictions to attract exploration investment. In the NWT, disputed Land Claims was the most negatively rated policy factor (Fraser Institute, 2010a, 2010b). 37% (tied for 128<sup>th</sup> out of 133 jurisdictions, with 1 being most favourable) of oil

<sup>11</sup> The Fraser Institute's Surveys of Mining Companies: 2009/2010 represents the opinions of 670 mining executives and managers worldwide on the policy and mineral endowment of 72 jurisdictions. The Fraser Institute's Global Petroleum Survey: 2010 represents the opinions of 645 petroleum industry executives and managers regarding barriers to investment in oil and gas exploration and production in various jurisdictions around the world.

and gas companies surveyed and 50% (tied for 45<sup>th</sup> out of 51 jurisdictions) of mining companies cited disputed Land Claims as a strong deterrent or a reason not to invest in the NWT. If the mild deterrent category is included, NWT ranked lowest with respect to uncertainty in Land Claims in the oil and gas survey and next to last in the mining survey.

In 2010 the Auditor General identified that “significant delays in the Department’s provision of agreed-upon funding to some First Nations have hindered their participation in the self-government negotiations process” (OAG, 2010). Based on evidence we collected, the completion of comprehensive Land Claim and Self-government Agreements appears to be a foundational factor in moving towards greater certainty within the system of land and water management.

**Land Use Plans:** While progress has been made, there is still only one approved land use plan in the Mackenzie Valley (see Table 2.5). The parallel community-based process to establish a network of protected areas across the NWT (the NWT Protected Areas Strategy) is progressing well.

**Table 2.5 – Status of Land Use Plans**

Region	Status of Land Use Planning
Gwich'in	Approved. <ul style="list-style-type: none"> <li>Effective August 7, 2003.</li> <li>Undergoing first five year review.</li> <li>Latest draft issued in April 2010.</li> </ul>
Sahtu	Not approved. <ul style="list-style-type: none"> <li>Draft 3 released for review and comment in July 2010.</li> <li>Final draft plan expected to be adopted by early 2011 (subject to funding availability).</li> </ul>
Tłı̨chǫ	No approved land use plan. <ul style="list-style-type: none"> <li>Under the Tłı̨chǫ Agreement, a land use planning agency for all of Wek'èezhìi was not created. Mechanisms for land use planning for Tłı̨chǫ owned lands and for other lands within Wek'èezhìi are different.</li> <li>Land use planning for Tłı̨chǫ owned lands currently being undertaken by Tłı̨chǫ Government.</li> <li>Federal and/or territorial government may establish (but have not to date) a mechanism for land use planning for lands within Wek'èezhìi other than Tłı̨chǫ owned lands, national parks and community lands.</li> </ul>
Dehcho	Not approved. <ul style="list-style-type: none"> <li>Final Draft Plan ratified by Dehcho First Nations in June 2006. Canada and the GNWT did not approve due to concerns about the level of conservation and how the plan would interact with the current legislative and policy framework.</li> <li>Interim Measures Agreement withdraws some lands for the purpose of facilitating Land Claim negotiations.</li> <li>In April 2007, terms of reference and a workplan for revising the June 2006 draft were agreed upon by the Dehcho First Nations, Canada and the GNWT.</li> <li>A new version of the draft land use plan remains in the revision stage.</li> </ul>
Akaįtcho	Comprehensive land use planning not initiated. <ul style="list-style-type: none"> <li>Interim Measures Agreement withdraws some lands for the purpose of facilitating Land Claim negotiations.</li> <li>In 2007, INAC initiated the <i>Upper Thelon Land and Resource Plan</i> to provide recommendations for long term land use planning in the Upper Thelon region after the Ur-Energy EA was rejected.</li> <li>The 2010 draft <i>Upper Thelon Land and Resource Plan</i>, an initiative undertaken by INAC outside of the Land Use Planning process to deal with a project specific recommendation that addresses cultural significance in the Upper Thelon Region, was rejected by Akaįtcho chiefs. Key concerns included: lack of time to review the Plan; lack of conservation zones; lack of consideration of the cultural importance of the upper Thelon watershed; and, that terms and conditions proposed by INAC would be basically unenforceable.</li> </ul>

The absence of land use plans creates uncertainty for applicants and developers. It also adds to the workload of LWBs and the MVEIRB and the complexity of decisions they are asked to make. In some cases (e.g., the Upper Thelon River basin) the MVEIRB was obliged to make development-specific decisions about the acceptability of proposed activities within what Aboriginal people asserted was a larger cultural landscape in the absence of any formalized or draft land use planning to assist in decision-making. The MVEIRB argued in these cases that while it is required by law to decide on the merits of

individual developments, the larger question of whether areas are too sensitive for certain types of development is most appropriately dealt with within land use planning.

We heard concerns (e.g., Łutsël K'è Dene and Dehcho community members, the MVEIRB in its Screech Lake Report of EA, the MGP Joint Review Panel) that delays in land use planning may make it more difficult to effectively deal with cumulative impacts and that planning will become harder in areas where a number of developments have occurred, especially if there is a desire to protect that area from development. Land use planning organizations also expressed concerns that the perceived resistance of the federal and territorial governments to the use of density/development thresholds will have similar effects. INAC indicated that it has concern if proposed density thresholds cannot be supported with traditional knowledge or scientific evidence.

We also heard that the federal government and GNWT (e.g., for Dehcho Final Draft Plan) and industry is concerned that land use planning is too protective and is fragmenting areas allocated to development within conservation zones, making it difficult to access areas ostensibly open to development.

Supporting our findings, uncertainty in land use planning also was identified as a key negative factor in investment decisions in the NWT in the recent Fraser Institute surveys. 14% of oil and gas companies surveyed (tied for 110<sup>th</sup> out of 133 jurisdictions) and 47% of mining companies (tied for 46<sup>th</sup> out of 51 jurisdictions) cited uncertainty concerning which areas will be protected as wilderness, parks, or archaeological sites as a strong deterrent or reason not to invest in the NWT.

In 2010 the Auditor General recommended that INAC work to conclude agreements for regions without settled claims that contain provisions and clear processes for developing land use plans (OAG, 2010). We concur. INAC responded to the OAG Report by restating its commitment to *“working with First Nations and Inuit in the advancement of land use plans pursuant to Land Claim Agreements, legislation, and policy direction. The framework for land use planning will continue to be within the broader structure created by the Mackenzie Valley Resource Management Act”* (OAG, 2010).

**Cumulative Impact Monitoring Program:** The lack of progress in implementing CIMP has hindered land use planning, including the establishment of development thresholds. The lack of development thresholds or even guidelines, in turn, has put the onus on the MVRMA Boards and in some cases the MVEIRB to define appropriate thresholds on a case by case basis. This takes time and history indicates that decisions where site-specific thresholds are recommended take longer for Ministerial approval (e.g., seismic line widths for the Paramount SDL8 2-D Geophysical Program (EA506-007) being perhaps the best example).

The effectiveness of individual land use management decisions may also be impacted, especially since EIA has not had the benefit of proper regional cumulative effects information as a context within which to conduct the required project specific cumulative effects analysis. The lack of progress in implementing CIMP has also hindered the ability of land use planners, MVRMA Boards, regulators and the public to assess the cumulative impacts of decisions being made.

More detailed comments on CIMP are provided in Section 4.0.



**Community Capacity and Funding:** Community capacity constraints (e.g., limited resources, frequent changes in staff and leadership, busy schedules) as well as “consultation fatigue” continue to challenge the system and limit timely and adequate input into EIA regulatory processes. These capacity challenges make it difficult to engage community members.

The general consensus among respondents to the 2010 NWT Audit was that INAC has not made available sufficient, timely participant funding to Aboriginal organizations and communities to deal with EIA and regulatory applications. In settled land claims, funding is not available under the *MVRMA*, even though it may be available for comprehensive studies and panel reviews that fall under the *Canadian Environmental Assessment Act*. This is not an easily defensible difference and highlights a gap in the *MVRMA* legislation.

Some participant funding is available through INAC’s and GNWT’s Interim Resource Management Assistance (IRMA) program for communities in unsettled Land Claim areas to facilitate participation in land and resource management activities. IRMA includes both base funding (allocated on a per capita basis) and resource pressures funding (to cover additional costs related to major projects) by application to the IRMA Committee Resource. We heard that Aboriginal organizations and communities would prefer IRMA funding for participation in EIA to be distributed through the *MVRMA* Boards to facilitate the timely allocation of funding. INAC indicated that as part of its regulatory improvement initiative, it is continuing to look for opportunities to advance this issue. The provision of adequate participant funding remains an unresolved recommendation from the 2005 NWT Audit.

Additional comments on community consultation are provided in Section 3.5.

**Use of Traditional Knowledge:** We observed increasing acknowledgement of the role of traditional knowledge within the *MVRMA* EIA and regulatory processes. We found, however, that the use of traditional knowledge still lags behind that of western science, mostly because the EIA and regulatory systems are based on western-style governance and evidentiary models and required tighter timelines than those required to complete project-specific traditional knowledge studies. Challenges remain with the collection of traditional knowledge. Increased funding to Aboriginal peoples for traditional knowledge research, and continued open and honest communication between all parties continue to be key focal points for further progress in the use of traditional knowledge.

Additional observations on the use of traditional knowledge are summarized in Section 5.0.

**Regulatory Gaps:** The *MVRMA* is not intended to be a catch all piece legislation that takes into account all aspects from all regulators. Terms and conditions which the LWBs can include in authorizations are limited to mitigating impacts that can be linked to a land or water impact. Key gaps in legislation and regulation regulating other aspects of the environment, particularly air quality, wildlife protection and socio-economic issues are largely unresolved. Gaps also remain in the establishment of water quality standards.

We found the most progress on water quality. INAC commissioned the 2006 discussion paper *Toward the Development of Northern Water Standards: Review and Evaluation of Approaches for Managing Water Use in Northern Canada* and issued *Designing and Implementing Aquatic Effects Monitoring*

*Programs for Development Projects in the Northwest Territories (June 2009)*. The GNWT, INAC and Aboriginal Governments led the development of the *NWT Water Stewardship Strategy* with input from Aboriginal, federal and territorial governments and agencies, regulatory boards, communities, industry, environmental and non-governmental organizations. The *NWT Water Stewardship Strategy* was tabled in the Legislative Assembly in May 2010 and is now in its implementation phase. The Strategy encourages water stewardship partners and water managers to work together in a collaborative manner. It promotes initiatives that encourage responsible economic development within a sound environmental context. The Strategy also informs negotiation platforms for agreements such as the bilateral transboundary waters agreement intended to ensure the integrity of water flowing downstream from Alberta into the Mackenzie River Basin, currently being negotiated between the NWT (represented by GNWT and INAC) and Alberta. While no regulations for water quality or effluent standards have been made under the *NWT Waters Act*, the LWB W/EQWG issued a draft policy document to assist in establishing project-specific effluent quality guidelines.

Limited regulation of air quality has been accomplished through a patchwork of NWT-specific initiatives (e.g., NEB regulation of oil and gas projects, occasional use of terms and conditions in Water Licences for incinerator emissions through Environment Canada's linkage of these emissions to water impacts) and developer commitments made in EAs which may or may not be incorporated in *MVRMA* authorizations. A comprehensive approach to regulating air emissions and air quality is still lacking (see Recommendation 5 in Appendix A for further details).

INAC can enforce wildlife habitat (e.g., protection of bear den) but not wildlife protection (protection of the bear) terms and conditions in *MVRMA* authorizations. GNWT's Department of Environment and Natural Resources (ENR) has limited alternate means to regulate wildlife protection except within designated critical wildlife areas. Currently, there are three such areas, all Bluenose caribou calving grounds (Critical Wildlife Areas Regulations, R.R.N.W.T. 1990, c. W-3). GNWT, in updating its *Wildlife Act*, is exploring whether a link between the *Act* and land use permits can be made to close this gap. ENR is also exploring with the LWB *T&CWG* whether a wildlife monitoring and management plan term and condition can be included in *MVRMA* authorizations or through an updated *Wildlife Act*. INAC's position is that there is no authority in either the *MVRMA* or *MVLUR* to incorporate or enforce terms or conditions related to wildlife monitoring or management.

We consistently heard from non-renewable resource applicants and developers about the lack of clarity in environmental regulations. This audit evidence is consistent with recent Fraser Institute surveys which indicate that uncertainty concerning environmental regulations factored heavily in investment decisions in the NWT. 24% (NWT ranked 118<sup>th</sup> out of 133 jurisdictions) of oil and gas companies surveyed and 37% (NWT ranked 46<sup>th</sup> out of 51 jurisdictions) of mining companies surveyed cited this uncertainty as a strong deterrent or a reason not to invest in the NWT.

Socio-economic impacts also remain almost completely unregulated. Among the existing mechanisms used to either mitigate or monitor socio-economic impacts are:

- *Access Agreements* and *Impact Benefit Agreements*<sup>12</sup> (agreements between Aboriginal groups and applicants and developers, enforceable under contract law but largely outside of the scrutiny of parties not subject to the agreements);
- *Socio-Economic/ Socio-Economic Monitoring Agreements* (SEMAs) (between developers, the GNWT and in some cases affected Aboriginal groups. Limited to date to diamond mines and monitoring only);
- *Benefits Plans* (required under the Canadian Oil and Gas Operations Act (COGOA) and administered by INAC for oil and gas operations); and,
- Unilateral commitments made by applicants and developers.

Only Access Agreements, which tend to be very limited in scope and required commitments, are considered enforceable regulatory instruments. SEMAs have served almost, if not entirely, as monitoring agreements. There is often no regulatory mechanism, monitoring system or responsible authority willing or able to ensure implementation of unilateral commitments made by developers and enshrined as requirements by the MVEIRB in its Reports of Environmental Assessment (REAs). Efforts by the MVEIRB to include socio-economic mitigation measures in its REAs have been challenged by the Responsible Ministers in consult to modify processes. We found recent REAs include fewer socio-economic mitigation measures than previously.

We observed that regulations under the *MVRMA* do not allow for the regulation of all components included within the *Act's* definition of "environment" (see Recommendation 10 in Appendix A for details). We concluded that identified gaps will not be resolved unless regulations governing *MVRMA* authorizations are updated to allow *enforceable* terms and conditions addressing the broad definition of environment incorporated in the *MVRMA* or additional regulation, instruments and enforcement occur outside of the scope of the *MVRMA*. We saw no significant movement on either of these fronts.

## 2.3 MOVING FORWARD

The foundational challenges summarized above are touched on only briefly in Section 3.0 of this Report, largely as they interact with other observations. We do not dwell on these issues as they have been well documented in other reports (OAG, 2005; SENES, 2005; McCrank, 2008; OAG, 2010).

The remainder of the 2010 NWT Audit Report focuses on specific lines of inquiry related to key observations/themes which developed through the audit, excluding foundational challenges identified above. Also excluded from further discussion are open recommendations from the 2005 NWT Audit.

The status of unresolved recommendations is summarized in Appendix A.

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<sup>12</sup> While these contractual agreements are known by a variety of other names, Impact Benefit Agreements is the most common name for non-legally required agreements and Access Agreements the most common name for agreements required under finished Land Claims for work on or requiring travel through Aboriginal lands.

### 3.0 OBSERVATIONS AND RECOMMENDATIONS OF THE 2010 NWT AUDIT – REGULATORY REGIMES

#### 3.1 TIMELINESS

*The vast majority of MVRMA applications are processed in a timely manner. EA timelines are comparable to project timelines established under the government of Canada's Major Project Management Office initiative. Where Ministerial Decisions are made, this step often adds significant time to the EA process.*

The timeliness of the MVRMA process has been subject to ongoing discussion, with developers often commenting that the EIA and regulatory processes do not lead to timely decisions. We found applicants and developers concerned about the pace of the process as well as its timing. Some applications, such as those requiring winter road access, are particularly sensitive to timelines, with the potential to lose an entire work season if applications are not made and authorizations issued in a timely manner.

The EIA and regulatory approvals process includes up to four distinct and separate phases – community engagement by applicants, which begins prior to the submission of an application and may extend throughout the process; preliminary screening; and if necessary, environmental assessment and environmental impact review; and, the regulatory phase. Of these, the preliminary screening and regulatory approval phases are within the control of the LWBs. Greater than 97% of applications over the period reviewed proceeded directly from preliminary screening to the regulatory phase.

We identified no formal attempts to analyze the timeliness of the approval process, with the exception of the MVEIRB's performance tracking of EAs. We therefore undertook an analysis of LWB data over the 2005 to 2009 period to assess concerns with the timeliness of MVRMA processes. The data available from most of the LWBs included: application receipt date; date application deemed complete; and, date authorization was issued. The MVLWB provided additional data that allowed for a more detailed analysis.

**Timelines for Community Engagement and Consultation:** Applicants are required as part of an application to provide evidence of community engagement and consultation. We have no data on the timeliness of this pre-application community engagement process. We did hear anecdotal evidence from applicants that this can be time consuming. The extent of this community engagement and consultation is partly outside the control of the LWBs and is driven by Aboriginal organizations and communities. Guidance on expectations for community engagement being prepared by the LWB PE&CWG should provide added clarity, and potentially, timeliness to the process.

**Timelines for Issuing MVRMA Authorizations:** Four types of authorizations are issued under the MVRMA: Type A land use permits (LUPs), Type B LUPs, Type A water licences (WLs) and Type B WLs. In reviewing performance of the LWBs, we noted that only LUPs have legislated timelines.

Section 22 of the MVLUR includes the following timelines for Type A LUP applications:

- (a) Within 10 days of receipt of a Type A LUP application, LWB determines whether the application is “complete” and notifies the applicant accordingly;
- (b) Within 42 days of deeming a Type A LUP application complete, LWB must either: issue a permit; order a hearing or further studies; refer the application for environmental assessment; or refuse the permit if a requirement set out in section 61 or 62 of the *MVRMA* is not met.

Section 23 of the *MVLUR* stipulates that within 15 days of the receipt of an application for a Type B LUP, a LWB must return the application to the applicant if it is incomplete; issue a permit; refer the application for environmental assessment; or refuse the permit if a requirement set out in section 61 or 62 of the *MVRMA* is not met. Under section 23, Type B LUP applications may also follow the 42 day timeline imposed for Type A LUP applications if more than 15 days are required to gather sufficient information to fully review the application. Typically, all Type B LUP applications are subjected to the 42 day timeline to allow stakeholders a reasonable period of time to review and comment on applications.

Metrics used to assess timeliness of LWB processes were limited by the data tracked by the LWB. We excluded from the analysis:

- any projects subject to EA (which are discussed below);
- applications still in process;
- withdrawn applications and applications for which insufficient timeline information was readily available (e.g., from Public Registries) and/or provided by LWBs; and,
- Type A Water Licences, due to a small sample size (7).

Results are presented in Table 3.1 and Figure 3.1 and are discussed below.

**Table 3.1 – Land and Water Board Performance Statistics**

Authorization	Board	Number of Applications	Elapsed Time from Receipt of Application to Issuance of Authorization (4)			Elapsed Time from Deemed Complete Date to Issuance of Authorization (4)		
			Maximum	Average	Minimum	Maximum	Average	Minimum
Type A LUP	Gwich'in LWB	34	69	27	5	Data provided did not include deemed complete date		
	MVLWB	102	1280	110	24	1226 <sup>(5)</sup>	82	20
	MVLWB <sup>(1)</sup>	76	950	108	24	875	60	20
	MVLWB <sup>(2)</sup>	100	451	90	24	319	62	20
	SLWB	37	286	88	45	43	42	38
	WLWB	19	148	68	34	64	34	23
Type B LUP	MVLWB <sup>(3)</sup>	19	169	72	38	164	47	30
	MVLWB <sup>(1,3)</sup>	18	135	67	38	58	41	30
Type A WL	Gwich'in LWB	1	116	116	116	Data provided did not include deemed complete date		
	MVLWB	5	925	341	59	925	266	38
	WLWB	1	74	74	74	64	64	64
Type B WL	Gwich'in LWB	7	83	55	25	Data provided did not include deemed complete date		
	MVLWB	30	506	95	24	499	80	20
	SLWB	15	443	107	46	95	50	41
	WLWB	5	223	99	48	136	82	37

<sup>(1)</sup> Excludes projects subject to *MVLUR* s. 22(b) requests for further study or consultation under s. 35 of the Constitution Act

<sup>(2)</sup> Excluding two outliers at greater than 2 years

<sup>(3)</sup> Excluded one project where new permit was delayed until the old one expired

<sup>(4)</sup> Includes projects where data are available for authorizations issued. Excludes authorizations subject to EA

<sup>(5)</sup> MV2006C0001, due to s. 35 consultation

Figure 3.1 – Land and Water Board Performance Statistics

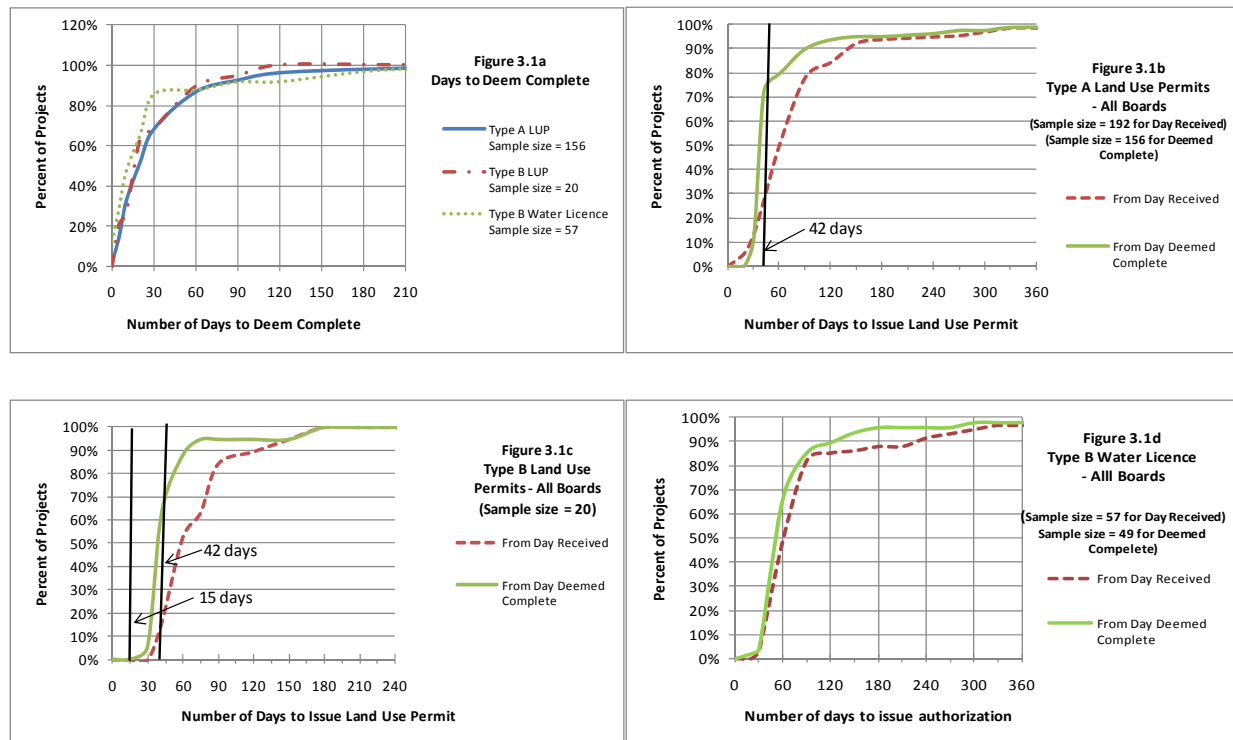


Table 3.1 demonstrates that the timelines for an application in settled regions (e.g., GLWB, SLWB and WLWB statistics) are shorter and can be more reliably predicted than for unsettled regions (e.g., MVLWB statistics).

*Days to Determine Completeness of Application:* For Type A LUP, the MVLUR requires this decision within 10 days of receipt of an application. Except for the MVLWB, data provided did not allow for a determination of the period of time that LWBs spent after receipt to make a decision on the completeness of an application.

MVLWB data indicate that this timeline is met 90% of the time. The average period of time to make the assessment of completeness was 6 days (minimum 0, maximum 28). For those review decisions exceeding 10 days, the average review period was 16 days (with 7 of 11 of these reviews being completed within 14 days).

While a performance for other types of permits is not regulated, we also looked at the time for the MVLWB to make this decision for Type B LUPs and water licences, using 10 days as an arbitrary measure. MVLWB data indicate that this decision has been made within 10 days of receipt 77% of the time. The average period of time to make the assessment of completeness was 7 days (minimum 0, maximum 23).

*Days to Deem Complete:* We heard concerns about potential delays in deeming applications complete. We found, however, that 69% of LUP applications and 86% of water licences were deemed complete within 30 days, 87% of all applications within 60 days and approximately 93% within 90 days (Figure 3.1a). These statistics include the period during which the LWB determine whether an application is

complete as well as the time it takes proponents to provide the information determined to be missing following the initial review for “completeness” by the LWB. Data to determine the statistics for the length of time it takes proponents to submit the necessary information following an “incomplete” determination are unavailable at this time. The MVLWB does report, however, that for applications it receives, the primary reasons for applications being deemed incomplete are insufficient community engagement and spill contingency planning.

*Days to Make Decision on Type A LUPs:* Within 42 days of deeming a Type A LUP application complete, the LWB must either: issue a permit; order a hearing or further studies; refer the application for environmental assessment; or refuse the permit if a requirement set out in section 61 or 62 of the MVRMA is not met. Except for the MVLWB, data provided did not allow for a determination of this decision making period.

MVLWB records demonstrate adherence to the 42 day timeline for making decisions on Type A LUP applications under section 22 of the MVLUR 91% of the time (we did not include applications referred to EA in our assessment). Permits were issued within 42 days 63% of the time. An additional 28% of applications were referred to further study under s. 22 of the MVLUR or were delayed due to s. 35 consultation issues within this period. In the remaining 9% of cases, permits were issued within 44 to 70 days of the application being deemed complete (i.e., minor delay only).

*Days to Issue a Type A LUP:* While the MVLUR only requires a decision to be made within 42 days of an application being deemed complete, we looked at the frequency with which permits were issued within this time period. We found LWBs issuing Type A LUPs within 42 days of being deemed complete between 61 and 97% of the time (see Table 3.1). Overall, 72% of all LUPs were issued within 42 days of being deemed complete (see Figure 3.1b). This indicates that the LWB are primarily deciding to issue permits rather than referring applications to environmental assessment, ordering a public hearing or ordering further study.

*Days to Issue a Type B LUP:* In data provided by LWBs, records of Type B LUPs were only available for the MVLWB. We found no Type B permits issued within the 15 day period due to the need for LWB to allow stakeholders a reasonable period of time to review and comment on applications. 60% of Type B LUPs were issued within 42 days of being deemed complete. We found 90% issued within 50 days (see **Error! Reference source not found.**Figure 3.1c).

We note that in some cases where the processing times for LUP applications were lengthier, the reason is due to LUP applications being tied to an associated water licence. While this linkage has at times delayed the issuance of LUPs, it normally does not delay the project as the WL is often required to proceed.

*Days to Issue a Type B Water Licence:* Type B water licences do not have prescribed processing times. We found 67% were issued within 60 days (see **Error! Reference source not found.**Figure 3.1d).

*Overall Length of Authorization Process:* We also looked at the total number of days from the date of receipt of an application to the date the authorization was issued as a measure of system performance. This metric provides an indication of the overall efficiency of the process. Applicants, reviewers, LWB

staff and Aboriginal governments impact on the overall timeline. The responsiveness of applicants in revising incomplete applications and responding to information requests, s. 35 consultations, hearings and MVLUR s. 22 requests all impact on this metric.

From start to finish, excluding those authorizations referred to EA, we found 90% of Type B LUPs issued within approximately 60 days. We found 90% of Type A LUPs were completed 90 days of receipt of application and 90% of Type B WL were issued within 120 days of receipt of application. These data (see *From Received Day* lines in Figure 3.1) suggest a generally efficient approvals process.

LWBs indicate that the limited capacity of some Aboriginal groups and even of other agencies to respond to applications can make the 42 days unworkable. Interim Measure Agreements which specify the MVLWB must give First Nations 30 days to consider an application are also not consistent with the MVRMA as Board staff have insufficient time to prepare reports. In responding to similar concerns raised in the 2005 NWT Audit, INAC considers existing provisions under s. 22 of the MVLUR adequate to manage these situations (See Recommendation 29 in Appendix A).

Several applicants also acknowledged their role in expediting the process. The submission of accurate information in an understandable format to allow for a full, advanced understanding of what the company is proposing was identified as an important factor in timely decisions. Applicants must also ensure that they have the required permits necessary prior to applying for LUPs (e.g., under s. 18 of the MVLUR, forestry permits and quarry permits must be obtained before applying for a LUP).

We observed LWBs working towards improved timelines through the *Standard Procedures and Consistency Working Groups*.

**Timelines for Environmental Assessment:** Environmental assessment in the Mackenzie Valley has been criticized, primarily by developers, as being slow. Table 3.2 and Figure 3.2 (see next page. Data supplied by the MVEIRB as of June 2010), provide a summary of timelines by working days<sup>13,14</sup> for EAs and an EIR (De Beers Gahcho Kué Diamond Mine) occurring during the period 2005 to 2010.

Completed EAs fall into two categories. The first lasts approximately 425 to 550 working days, the second between 900 to 1200<sup>+</sup> working days. Excluding time required for the Ministerial decision process, completed EAs required approximately 250 to 625 working days, with an average of about 368 (18 calendar months).

The MVEIRB reported that recently, EAs are getting longer. The MVEIRB attribute this situation to increased time for scoping as well as the developers requiring more time to complete the Developer's Assessment Report (DAR) (see Section 3.3 for further discussion).

INAC has built an Integrated Environmental Management System (IEMS) that tracks the EA processes in the north excluding Yukon. Baselines for the EA processes are established within IEMS. While IEMS is not available to the public we were told that an average EA time of 741 days is not too slow or out of

<sup>13</sup> All references to days are to these "working days" which excludes weekends and statutory holidays.

<sup>14</sup> Since preparation, the Report of Environmental Assessment (REA) was issued for Deze Energy and additional projects were referred to EA.



sync for the average time it takes to conduct an EA. INAC has determined that this period is consistent with other jurisdictions which have set time limits at two years to conduct an EA.

**Table 3.2 – Environmental Assessment Timelines - Recent Environmental Assessments**

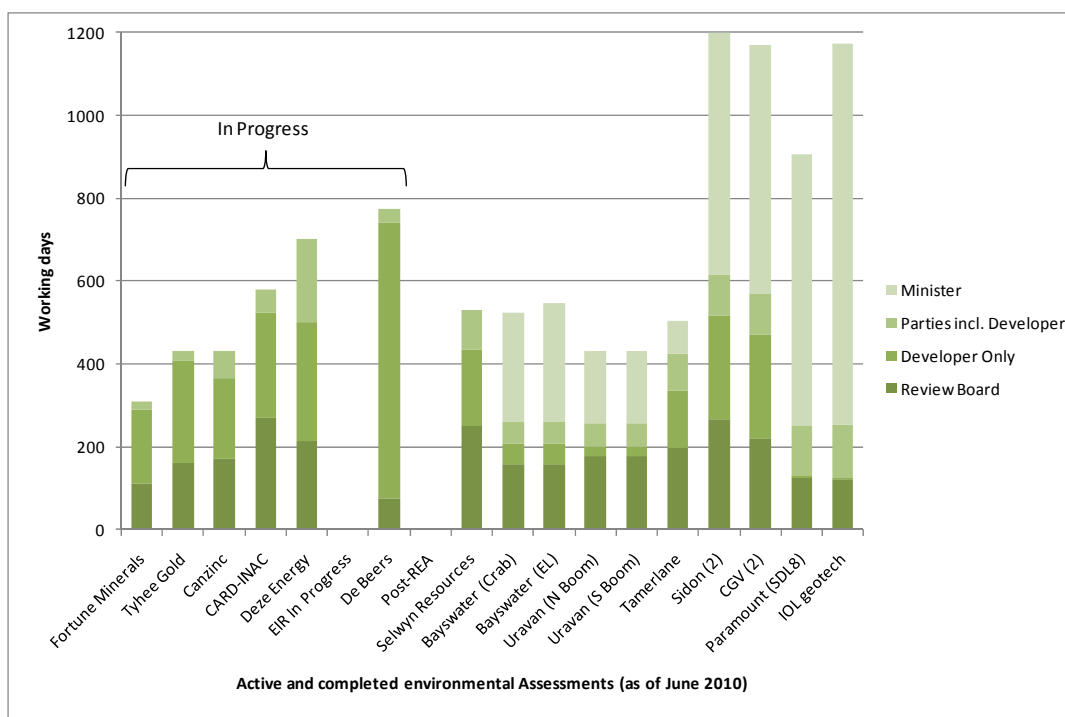
Applicant <sup>(1)</sup>	Review Board		Developer only		Parties incl Developer		Minister		Total Days
	Days	% <sup>(3)</sup>	Days	%	Days	%	Days	%	
<b>EA In Progress</b>									
Fortune Minerals	113	36%	176	57%	21	7%	N/AP		<b>310</b>
Tyhee Gold	162	38%	246	57%	24	6%	N/AP		<b>432</b>
Canzinc	170	40%	197	46%	63	15%	N/AP		<b>430</b>
CARD-INAC	271	47%	252	44%	55	10%	N/AP		<b>578</b>
Deze Energy	214	30%	285	41%	203	29%	N/AP		<b>702</b>
<b>EIR In Progress</b>									
Debeers	77	10%	664	86%	33	4%	N/AP		<b>774</b>
<b>Post-REA</b>									
Selwyn Resources	249	47%	186	35%	94	18%	N/AP		<b>529</b>
Bayswater (Crab)	159	30%	47	9%	55	11%	261	50%	<b>522</b>
Bayswater (EL)	159	29%	47	9%	55	10%	285	52%	<b>546</b>
Uravan (N Boom)	177	41%	23	5%	55	13%	175	41%	<b>430</b>
Uravan (S Boom)	177	41%	23	5%	55	13%	175	41%	<b>430</b>
Tamerlane	197	39%	140	28%	87	17%	81	16%	<b>505</b>
Sidon <sup>(2)</sup>	266	22%	250	21%	99	8%	584	49%	<b>1199</b>
CGV <sup>(2)</sup>	221	19%	250	21%	99	8%	601	51%	<b>1171</b>
Paramount (SDL8)	125	14%	5	1%	120	13%	655	72%	<b>905</b>
IOL geotech	121	10%	5	0%	126	11%	922	79%	<b>1174</b>
<b>Post-REA Average</b>	<b>185</b>	<b>29%</b>	<b>98</b>	<b>13%</b>	<b>85</b>	<b>12%</b>	<b>415</b>	<b>50%</b>	<b>741</b>

(1) Status as of June 2010

(2) Pending Ministerial Approval

(3) % of total time for EA/EIR

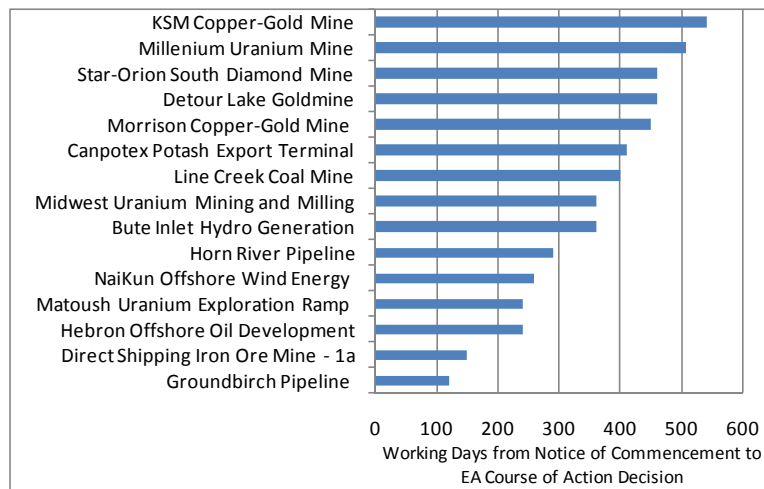
**Figure 3.2 – Environmental Assessment Timelines - Recent Environmental Assessments**



We confirmed INAC's position by assessing the timeliness of EA in the Mackenzie Valley to EAs managed through the federal government's Major Projects Management Office (MPMO) initiative in southern Canada. We found the MVEIRB's *actual* timelines comparable to the MPMO's *proposed* timelines (see Figure 3.3)<sup>15</sup>. In making this comparison we note that unlike time tracking undertaken by the MVEIRB, which has no "pause" button, the Federal Review Clock can be stopped by the MPMO if:

- the review is delayed at the request of the developer or another jurisdiction;
- the Joint Review Panel and/or Responsible Authority have indicated to the MPMO that the developer is required to provide additional information necessary for the completion of the EA, the Regulatory Review, or that the information provided is insufficient; or
- the federal review process cannot proceed as a result of circumstances related to the Aboriginal Engagement and Consultation process.

**Figure 3.3 – Proposed MPMO EA Timelines**



Note: For consistency, only EAs which start the "clock" from the Notice of Commencement (i.e., start of EA) are included. (Source, MPMO website, <http://www.mpmo-bggp.gc.ca/index-eng.php>)

In comparing *MVRMA* EA and MPMO EA timelines, we note that EA is challenging in the Mackenzie Valley. Firstly, projects are typically proposed for areas that have seen minimal to no previous industrial activity in the immediate vicinity. Secondly, the *MVRMA* process is based upon a high level of community participation. Both are factors that would be expected to slow the pace of EA in any comparable location with similar environmental management legislation. It is also worth noting that all of the MPMO EAs are for projects that are generally relatively large in scale, while several of the EAs in the Mackenzie Valley are for smaller, exploration stage developments. When applicants feel that a project should not be referred to EA (e.g., entry level exploration drilling projects) any time spent in EA may be considered "untimely" (see Section 3.6).

<sup>15</sup> As a further point of comparison, a professional practice report prepared in response to criticism of the Western Australian environmental impact assessment (EIA) being too long and costly found that EIAs fell into three categories: less than 1,000 days (29 projects, 567 day average); between 1,000 and 1,500 days (10 projects, 1,217 day average); and over 1,500 days (4 projects, 2,412) (Middle & Middle, 2010). We do not include this comparison in the main text in recognition of differences in jurisdictional requirements.

The MVEIRB completed a similar analysis in 2008 in which it concluded that even including consult to modify processes and an additional 6 months for regulatory issues, a *MVRMA* process, on average, takes no longer than a *CEAA* process<sup>16</sup>.

In its September 2010 Newsletter, the MVEIRB announced its intent to hire an outside consultant to audit the internal EA process to see where time savings can be made. We encourage the MVEIRB to consider alternate approaches used in other jurisdiction to expedite the EA process, such as Class EAs or calling upon developers to draft Terms of Reference which are then critiqued by parties during the scoping phase.

Given delays in the post-REA process, we also encourage the MVEIRB during its review of EA to consider options to expedite the post-REA process. Options may include:

- Looking carefully again at why previous efforts (e.g., EA0506-006) at issuing preliminary results and encouraging feedback from other parties failed and determining whether preliminary results could be issued in any way to expedite the overall completion of the EA (including ministerial acceptance);
- Establishing a process in which a post-hearing short, succinct statement of outstanding differences is published, without any statement of significance, that may encourage developers to make voluntary commitments or enter into contractual agreements that negate the need for proposed mitigation measures; or,
- Incorporate within wording of recommended measures what type of commitment by the developer would adequately negate the need for a party like the MVLWB to include a specific provision in its license. This could tip the developer off as to what they could state in a “post-REA” submission to the minister that would expedite acceptance of the report.

The intent of any such process would to mitigate significant adverse impacts within a timely process and avoiding the lengthy delays associated with the review of mitigation measures during the post-REA activities discussed below.

***Timelines for Post-REA Consultation and Ministerial Decisions on EAs:*** The post-REA consultation and ministerial decision phase accounts for, on average, 50% of total elapsed EA time (range 16 to 79%, see Figure 3.2)<sup>17</sup>. Files that were referred back to the Review Board for either further consideration or a ‘consult to modify’ process tend to have much longer ministerial decision timelines. Ministerial decisions were ultimately not made on the Bayswater’s El Lake and Crab Lake projects and Uravan’s North and South Boomerang Lake projects as developers withdrew applications after the release of the REAs<sup>18</sup>. Both the Selwyn Resources and Tamerlane Ventures projects were found to have no significant adverse impacts or significant public concern.

However, in the case of the Selwyn Resources project, the issuance of the authorization was further delayed as the SLWB was waiting for a response from the Responsible Ministers under s. 130(4) of the

<sup>16</sup> Analysis excluded proceedings such as Imperial Oil’s Dehcho Geotechnical field investigations and Paramount’s SDL8 seismic program [both of which had significant delays in the post-REA process], which would increase the average time to the minister’s decision.

<sup>17</sup> Ministerial decisions are pending for the Sidon International Resources Corp. mineral exploration program (EA0506-006) and Consolidated Goldwin Ventures Inc. (CGV) mineral exploration program (EA0506-005), completed February 6, 2008 and November 20, 2007, respectively.

<sup>18</sup> The Crab Lake EA had four recommended measures while the MVEIRB’s recommendation for the other three projects was that they were likely to cause adverse impacts so significant that the development could not be justified.

MVRMA. In reviewing the Responsible Ministers' responses to the Selwyn Resources and Tamerlane Ventures cases, we understand where this expectation arose. In the case of the Tamerlane Ventures project, the Minister of Indian Affairs and Northern Development confirmed in writing (May 13, 2008) *"our decision on our authority pursuant to paragraph 130(1)(a) of the Mackenzie Valley Resource Management Act" that "Indian Northern Affairs Canada and the other Responsible Ministers are in agreement not to order an environmental impact review."* In the case of Selwyn Resources, the Regional Director General – NT Region wrote (September 30, 2009) to the SLWB that *"Section 130 deals specifically with a decision by the Responsible Ministers to order an environmental impact review notwithstanding a Review Board's determination under Section 128 of the MVRMA. Since that is not what happened with Selwyn Resources Ltd., we are of the opinion that Section 130 would not be engaged ... There is no requirement that the federal Minister issue a letter indicating acceptance of the EIR decision. In fact, the Act contemplates a scheme where such a letter is not required, and sets the time frame for the Land and Water Board to proceed."* Given the difference in approaches in communicating the Selwyn Resources and Tamerlane Ventures Responsible Ministers' decisions for projects not referred to EIR by the MVEIRB, we encourage INAC to ensure LWBs understand expectations in this regard.

INAC indicated that the post-REA process can be lengthy due to the need to reach consensus among all Responsible Ministers, the need to consider how the proposed development might adversely affect Aboriginal and treaty rights, and the challenges involved in identifying implementation mechanisms for recommended mitigations. INAC Resource Policy and Programs Directorate indicated that the quality and number of mitigation measures proposed by the MVEIRB can also influence the Responsible Ministers' ability to make timely decisions (see Section 3.3 for further discussion).

In reviewing MPMO project timelines, we noted an allocation of 3 to 6 months is typical for the post report Aboriginal consultation and ministerial review processes. These timelines are substantially less than those experienced for the post-REA process in the Mackenzie Valley and would represent a vast improvement.

Both developers and the MVEIRB have expressed concerns over the length of time and their perception of the lack of transparency of the post-REA process. This issue prompted one large developer to question whether INAC and other Responsible Ministries were fully engaged in the EA process or simply holding back concerns for the post-REA process. The MVEIRB is concerned that new information not subject to public review is being provided to Responsible Ministers during this process and that this is unfair to other parties as the post-REA process is not completed in the open. INAC noted that *"new information is only introduced if it was not provided during the EA process and has been provided by other parties to the EA for the RMs to consider."*

INAC's position is that the post REA process is as open and transparent as possible, with all ministerial correspondence and decisions placed on the MVEIRB public registry. In our review of the MVEIRB Public Registry, we found post-REA documentation limited to Ministerial decisions and directions to the MVEIRB. INAC indicated that the actual consultation process with aboriginal parties and the Review Board cannot be open. Legal implications and damage to the potential investment climate for developers were cited as the basis for not making this process *"more open"* prior to decisions being

made by the Responsible Ministers. We encourage INAC to assist interested parties in understanding these constraints to allay some of the concerns we identified.

INAC has indicated that changes to legislation under the Action Plan for Regulatory Improvements in the North may include timelines for environmental assessment decisions (Personal Communication, Regional Director General – NT, 3 September 2010). We believe that this change is necessary given the length of time required for the post-REA process (see Recommendation 2).

We observed that the MVEIRB encourages side bars and bilateral agreements between developers, communities and government parties during EA. We identified no similar mechanism to resolve “decision-level issues” identified by the MVEIRB which remain after public hearings. Nor did we see evidence of a National Energy Board-type process in which developers are allowed to provide input on the feasibility of proposed mitigative measures prior to the REA being issued. Evidence suggests that if the need for mitigative measures can be negated by voluntary commitments by developers prior to the REA being issued, the post-REA process is expedited (see comments above encouraging the MVEIRB during its review of EA to consider options to expedite the post-REA process).

**Other Factors Affecting Timelines:** Crown consultation requirements under s. 35 of the Constitution Act, 1982 and public concern both affect timeliness. These factors are discussed in Sections 3.5 and 3.6.

**Recommendation 2:** Under its *Action Plan to Improve Northern Regulatory Initiatives*, INAC should implement legislative changes specifying maximum timelines within which to make ministerial decisions.

### 3.2 RESOURCE MANAGEMENT BOARDS AND PROCESSES

**Concerns over the Land and Water Boards administrative processes and the timeliness of these processes are largely being addressed through the *Standard Procedures and Consistency Working Groups* established by these Boards.**

A variety of resource management boards are established under Land Claims and/or the *MVRMA*. Boards including: Renewable Resource Boards (RRBs); Land Use Planning Boards (LUPB); LWBs; and, the MVEIRB (discussed separately in Section 3.3).

RRBs established under Land Claims are the main instruments for the management of renewable resources (e.g. wildlife, forests). We identified no significant concerns regarding the operation of these Boards and heard that they interacted well with LUPBs and LWBs.

We also identified few concerns over the processes and procedures of Land Use Planning Boards (LUPB). The LUPBs were generally acknowledged for the high level of public participation in their processes. Previous staffing issues at the Sahtu LUPB appear to be largely resolved with the provision of supplemental funds which have contributed to the development of the final draft of the Land Use Plan.

Given that RRBs and LUPBs were reported to be operating with few issues, we have focused our discussion of board processes on the Land and Water Boards.

LWBs carry out three distinct functions:

- Boards complete preliminary screenings of development proposals to make a determination about whether they might cause adverse environmental impacts or might cause public concern which require referral to environmental assessment;
- Boards issue, amend, extend, renew or cancel Water Licenses and Land Use Permits (regulatory phase); and
- Boards oversee compliance with their decisions through inspection conducted by INAC (that cannot overlap with other government agencies) or otherwise (e.g., monitoring, plan reviews, monthly, annual and other reports prepared by applicants).

Aside from consultation issues (see Section 3.5), based on what we heard, there are few issues with the preliminary screening process for authorizations for small projects, except that applicants would like an opportunity to respond to review comments prior to decisions being made. For larger projects, the primary concerns reported were related to issues discussed elsewhere in this report:

- timeliness (see Section 3.1);
- community consultation requirements (see Section 3.5); and,
- uncertainty of when a project is referred to EA (see Section 3.6).

Other issues identified with the function of LWBs were:

**Deeming Applications Complete:** Some applicants expressed concern over the lack of clear criteria for determining the completeness of an application. These concerns are being addressed through the Boards' APWG.

**Management Plans:** Management Plans (and less frequently used adaptive management plans) are used within licences and permits to deal with matters that have the potential to change over the life of an authorization such as waste management and environmental monitoring. The Management Plan approach prevents authorizations from being too prescriptive, provides opportunities for in-depth discussions on certain matters such as the design of monitoring programs that are not possible during the permitting/licence phase and allows the company to modify practices without the need to amend authorizations. These Plans, initially required for large water licences, are becoming features in a broader range of projects.

For consistency, the LWBs have required similar Management Plans for all types of projects (unless there is a need for a project specific plan). Applicants indicated that clear guidelines are required for consistency in defining plan requirements and that the number and scope of management Plans need to better reflect project specific considerations, including project size. The timely approval of these Plans was also noted as an area requiring improvement, with current delays jeopardizing some projects due to the short construction seasons in the North. While some improvements in the Management Plan review process were noted, applicants noted overlap in the plan review process, with government, Aboriginal

groups and Boards all retaining outside resources to review plans. The LWB PRPGWG is addressing these issues through the development of Plan review processes and guidelines for their submission

**Lead Time for Renewal of Authorizations:** In reviewing the authorization renewal process, we noted that LWBs require up to 18 months lead time for processing renewal applications, causing challenges for some applicants (e.g., changes in planned operations between time of submission of a renewal application and the issuance of renewal). We also heard frustration from a number of applicants that applications for renewals of permits and licences were sometimes treated as new applications, starting at “ground zero”, with no credit given for past information provided or performance history under the authorization. The APWG terms of reference includes consideration of Water Licence renewals. It is not clear if this Working Group is also looking at Land Use Permit renewals. If not, we encourage the APWG to include Land Use Permit renewals within its scope.

Throughout all LWB functions, both public and private applicants felt that Boards fell short in adequately screening requests for information and/or comments. A number of applicants had a perception that (1) issues that of marginal relevance or value required their response, and (2) Boards included terms and conditions in response to “any and all” comments received, without due consideration of the protective value or the operational practicality of these terms and conditions. We encourage the Boards’ T&CWG to consider these concerns as it develops its work products.

Against the backdrop of the above concerns, we also heard positive comments related to board performance. For example, INAC, BHP Billiton and Rio Tinto have all been complementary of the professionalism of the WLWB in public forums.

As most of the issues identified above are being addressed by the Boards’ *Standard Procedures and Consistency Working Groups*, we have not included any additional specific recommendations. We strongly encourage the Working Groups to review the concerns identified in this Audit Report relative to their identified lists of products and process changes and make modifications as appropriate.

### 3.3 THE EA PROCESS

**The MVEIRB has demonstrated efforts to improve the effectiveness and efficiency of the EA process and has consistently made recommendations which are adopted (with modification to mitigative measures in some cases) by Responsible Ministers. The MVEIRB needs to continue its efforts to focus and streamline the EA process.**

Upon referral from a preliminary screener, regulatory authority, designated regulatory agency or department or agency of the federal or territorial government, Gwich’in or Sahtu First Nation, Tłıchǫ Government, or local government, or on its own motion, the MVEIRB conducts an environmental assessment of a proposed development to more thoroughly study and determine if the development is likely to have significant adverse impacts on the environment or is likely to be a cause significant public concern. In completing the required EA, the MVEIRB is mandated to assess:

- (a) the impact of the development on the environment, including the impact of malfunctions or accidents that may occur in connection with the development and any cumulative impact that is likely to result from the development in combination with other developments;*
- (b) the significance of any such impact;*
- (c) any comments submitted by members of the public in accordance with the regulations or the rules of practice and procedure of the Review Board;*
- (d) where the development is likely to have a significant adverse impact on the environment, the need for mitigative or remedial measures; and*
- (e) any other matter, such as the need for the development and any available alternatives to it, that the Review Board or any Responsible Minister, after consulting the Review Board, determines to be relevant (s. 117, MVMRA)*

The MVEIRB is challenged in implementing a timely process that addresses these broad requirements. This is especially true given the broad definition of “impact on the environment” laid out in s. 111 of the MVRMA, which includes elements of both the biophysical and human environments. The MVEIRB must balance developer’s expectations of an efficient and predictable process with the public’s expectations of a thorough and transparent examination of a project. The process needs to be complete enough to collect information that people require to provide informed input, but focused enough to keep it manageable. In executing its mandate, the MVEIRB has made recommendations that are generally upheld, but at the same time has been criticized for the scope, level of effort required of developers and the speed of these assessments.

The role of EA and EIR is advisory, with the Minister of Indian Affairs and Northern Development and other Responsible Ministers having the authority to:

- adopt the recommendation;
- refer it back to the MVEIRB for further consideration;
- after consulting the MVEIRB in a ‘consult to modify’ process, adopt the recommendation with modifications;
- after consulting the MVEIRB, reject the recommendation and order an EIR; or
- refer the proposal to the Minister of the Environment for a joint review under CEAA if the Responsible Ministers decide that it would be in the national interest to do so.

While some MVEIRB recommendations have been controversial (e.g., recommending rejection of four separate mineral exploration projects in the Thelon Basin based on a finding of significant adverse cultural impacts), a review of ministerial decisions made or pending over the 2005 to 2010 period suggests the MVEIRB has performed well in its advisory role. All (10 of 10) EA recommendations for which ministerial decisions have been made were adopted. 7 of 11<sup>19</sup> EAs were adopted without modification. Of the 65 mitigation measures included in these EAs, 37 were accepted as written and an additional 14 were adopted with editorial revision for added clarity (a combined 78%). 2 mitigative measures were rejected outright. The remainder had substantive revision through the Consult to Modify process.<sup>20</sup> The MVEIRB’s recommendations have also withstood at least one court challenge (EA0506-

<sup>19</sup> The 11<sup>th</sup> EA included is the Consolidated Goldwin Ventures where the Responsible Ministers returned the recommendation for further consideration in April 2010.

<sup>20</sup> By way of comparison, while a ministerial decision has not been made on the Joint Review Panel EIR of the Mackenzie Gas Pipeline Project, preliminary indications are that the federal government and GNWT will accept only 10 of the Joint Review Panel’s recommendations as written, 28 would be rejected outright and 77 would be acceptable with changes (Ermisch, 2010).



008 - Gahcho Kué Diamond Mine). Monitoring the effectiveness of these measures is addressed in Recommendation 14 of the 2005 NWT Audit (see Appendix A).

In our review of post-REA and Consult to Modify correspondence, we found that the measures subject to the most intense scrutiny are not unexpected in a maturing system while precedents are set and accepted. Mitigative measures prompting significant revision or rejection were of concern to the Minister of Indian Affairs and Northern Development and/or other Responsible Ministers because they:

- were intended to address cumulative effects (including other projects or areas beyond the immediate vicinity of the project);
- call for a socio-economic agreement where evidence was insufficient to warrant such an agreement;
- may create the impression that the measures are addressing areas usually covered in the context of Land Claim and self-government negotiations; or,
- may lead to confusion with existing legislative or regulatory requirements.

The MVEIRB told us that it believes that mitigative measures may need to extend beyond individual projects (e.g., land use planning, wide-spread heritage resource assessments) and that this position is consistent with its mandate under s. 117(2) to assess *“any cumulative impact that is likely to result from the development in combination with other developments.”* The Minister of Indian Affairs and Northern Development, other Responsible Ministers and developers have challenged this position. We encourage the MVEIRB and Responsible Ministers to continue to work together to gain a more full understanding of mitigative measures which fulfill MVEIRB’s mandate while being acceptable to Responsible Ministers, thereby allowing Responsible Ministers to make more timely decisions.

One federal department commented that while there are areas for improvement, the MVEIRB is good, with a high quality of EA standards and systems of continuous improvement enviable of any government. Many developers, however, told us that the EA process was too broad and all encompassing. Developers told us that EA scopes were becoming too extensive, too specific and required responses to any and all information requests without filtering of relevance or significance by the MVEIRB. One developer suggested that EAs should be high level, relatively quick affairs to identify the ‘show stopper’ environmental issues and how they need to be dealt with.

The MVEIRB is aware of these criticisms. We saw positive efforts by the MVEIRB to improve the EA process. Recently, the MVEIRB has attempted to refine the scoping process to focus on (typically, no more than three to four) key lines of inquiry which developers are to assess using an integrated, holistic approach, “leaving no stone unturned.” The Terms of Reference (TOR) for these EAs also included several other issues that emerged during scoping (sometimes called “subjects of note”), with the intent that these less critical areas were to be briefly considered to verify that no significant concerns existed. The intent of the key lines of inquiry approach was not necessarily to decrease the overall number of issues assessed but to focus efforts on key issues.

These efforts at improving and narrowing the scope of EAs have not had the intended effect. There is no evidence to suggest that this “front end loading” of the process is making the back end of EAs – the technical review phase - less onerous. One developer commented that obtaining a TOR was now a project unto itself. We heard from the MVEIRB that some developers have not adjusted to this new

approach and continue to place too much effort on lesser issues in the DAR. We heard from developers that integrated/holistic (key line of inquiry) DARs are lengthy and difficult to write (e.g., we note that the Deze Energy DAR was on the order of 4,000 pages). We found that some parties found these DARs difficult to review and requested extensions in the DAR review process.

We found that developers were also partly responsible for scope creep and delays in the EA process, particularly when the scope or nature of a project was modified during the EA process. An example of this is the Yellowknife Gold Project (EA0506-004 [2005]). The developer withdrew from the EA process during the development of the DAR when the mining method was changed from underground to open pit. We heard some concerns that developers were bringing projects forward too early, resulting in ongoing revision to, and associated delays in, EA.

We found that another significant concern with the EA process relates to whether a project should or should not be referred through preliminary screening to EA, with *public concern* being a driving consideration in these cases (see Section 3.6). We further heard that companies familiar with the EA process tend to have fewer issues once inside the process while exploration companies which are not accustomed to being subject to EA have more concerns.

### 3.4 BOARD CAPACITY

**Improvements were noted in Board capacity since the 2005 NWT Audit. Funding of co-management boards now generally meets core program activities but is still insufficient to allow boards to fulfill all mandates and implement improvement programs.**

**Board Member and Staff Qualifications:** We heard some criticisms from Aboriginal organizations and communities, government and applicants and developers that the quality and consistency of the LWBs' and the MVEIRB's work suffered due to high staff turnover. These factors were reported to result in: inconsistencies within Board activities; delays in Board processes; and, difficulties in establishing long-term relationships with Board staff.

We heard that the practice of some LWBs shuffling files, including files of active staff, between remaining staff when technical staff leaves is one of the contributing factors hindering relationships building. We encourage the LWBs to examine this practice to identify ways to minimize reassignment of files during employee turnover.

We assessed non-administrative staff turnover using data provided by the LWBs and MVEIRB (see Table 3.3, next page). We did not see unusually large staff turnover, particularly within the Northern context. For example, the estimated annual turnover rate of 25% reported for INAC's NT Region is similar to or higher than those of the MVRMA Boards<sup>21</sup> (except the WLWB during its start-up).

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<sup>21</sup> While the turnover rates between the Board and INAC may be similar at 25% a year, some of the 25% turnover at INAC is internal movements or movement to another Federal Department (or even the GNWT). In some cases, these "internal" moves may afford INAC an opportunity to retain some corporate knowledge. The use of term positions within INAC NT Region may be an offsetting capacity and efficiency factor limiting the retention of organizational knowledge. In the case of the Boards, departing staff are typically not available to provide advice to remaining Board staff.

INAC's BRS indicated that MVRMA Boards have been working to hire and train local staff (including internship programs) but, once trained, individuals are often hired by local governments or industry. BRS indicated that any staff retention issues are not due to a lack of trying, but due to an overall lack of human resources in the North, especially in more remote locations.

**We also reviewed the backgrounds (education and relevant experience) of current technical board staff (see**

Table 3.4). All Boards had college or university educated staff with disciplines relevant to the function of the Boards. Relevant work experience (defined as environmental work or technical work in industries regulated) ranged from 0 to 20 years. Absent from the technical staff of most Boards were senior (20+) employees. The observed demographics are typical of the widely held perception that staff members of many NWT organizations have higher levels of responsibility with fewer years of experience than would be typical "south of 60". Exit interviews or other sources of data on why people leave MVRMA Boards were not available to us to identify key reasons for staff turnover.

**Table 3.3 – LWB and MVEIRB Non-Administrative Staff Statistics\***

Board	Staff Metric	2010	2009	2008	2007	2006	2005
GLWB	# staff	4	4	4	4	4	4
	# incoming staff	0	0	0	0	0	0
	# outgoing staff	0	0	0	0	0	0
MVLWB	# staff	6	9	9	11	10	9
	Turnover	0	3	2	2	2	3
MVEIRB	# of staff	5	6	6	6	6	6
	# incoming staff	0	1	2	0	0	2 <sup>(1)</sup>
	# outgoing staff	0	2	1	1 <sup>(2)</sup>	0	1
SLWB	# of staff	7	6	8	7	7	8
	# incoming staff	3	0	2	1	3	0
	# outgoing staff	3	0	2	1	4	0
WLWB	# of staff	6	6	5	4	4	-
	# incoming staff	1	2 <sup>(4)</sup>	1 <sup>(3)</sup>	3	4	-
	# outgoing staff	1	0	1	4 <sup>(5)</sup>	0	-

- (1) Staff increase to 6 accounts for 1 hire  
 (2) Transfer assignment ended  
 (3) 1-year secondment from INAC  
 (4) Includes 1 return from maternity leave; excludes renewal of secondment  
 (5) Includes 1 maternity leave

\* During the Audit Verification process, the SLWB indicated that it had experience 12 technical staff changes in 5 years.

**Table 3.4 – Background of LWB and MVEIRB Non-Administrative Staff**

Board	Education		Years Related Experience on Hire
	Level	Disciplines	
GLWB	2 College Diploma 2 Technical Courses	Public and Business Administration Natural Resources Technology	2 @ 2 1 @ 10 1 @ 15
MVLWB	Typical: Bachelor Degree Also: Technical Diplomas, Masters & P.Eng.	Not provided	Range: 0 - 20 <sup>(1)</sup> Norm: 3 - 5
MVEIRB	4 M.Sc. 3 B.Sc. 1 B.Eng. 1 Unspecified	Biology, Environmental Engineering, Environmental Science & Resources Studies, Geography (Remote Sensing, Env. Sc./EIA, Biology/Marine Sciences)	2 @ 0    1 @ 1 2 @ 2    1 @ 2.5 1 @ 10    1 @ 16
SLWB	3 University Degrees 4 Diplomas	Geography, Environmental Sciences, Biology, Environmental , Ecosystem Management, Natural Resources, Management Studies	Minimal to unspecified <sup>(2)</sup>
WLWB	1 PhD 2 Masters 2 B.Sc. (P. Eng.) Technicians (little to no post secondary)	Biochemistry, Biology, Earth Sciences (Hydrology), Engineering (Mining)	Senior staff: 10+ Regulatory Specialists: < 1 to 5 Technicians: Little

<sup>(1)</sup> Work Background provided: First nation organizations, government (varying levels), consulting, industry (including mining, oil and gas and forestry) and other areas

<sup>(2)</sup> Work background: laboratory, landscape, GIS, forest survey & environmental technicians, fisheries observer

Table 3.4 indicates technical staff typically arrives with an acceptable base level of related knowledge. Board members, however, come from a wide range of backgrounds (technical knowledge and skills, regulatory knowledge and skills, and traditional knowledge holders). We saw efforts by both the BRS and the MVRMA Boards to build on technical and regulatory skills and knowledge brought into the process by both Board staff and members.

A board member orientation program and Board Forum training modules on administrative law, public hearings, decision-making as well as technical topics (to provide general knowledge of technical matters related to oil and gas and mining as well as other types of development) have been developed. Individual Boards make use of these training opportunities as well as providing both internal and external training opportunities to board members and staff. This training is at best *ad hoc* due to uncertainty about the availability of timely and adequate funding. Comprehensive staff training programs have not been extensively developed. Staff training needs are often formalized during staff performance evaluations or as part of annual professional development planning. Staff and board members from the MVLWB and WLWB tend to get a broader range of training opportunities. Further, as the LWB WGs continue to formalize the EIA process, additional and ongoing training will be required to ensure Board members and staff have the appropriate competency, skills and training to effectively use these materials for improving the EIA process.

The Auditor General “found that INAC has met its commitments and addressed many of the weaknesses identified [in supporting co-management boards], which included a lack of support for developing the capacity of board members, unclear roles and responsibilities of the boards, and lack of strategic direction to carry out their mandate ... In addition, we found that the Department provided some supplementary funding to boards to adjust for increased workloads” (OAG, 2010). INAC’s BRS and Mineral & Petroleum Resources Directorate also indicated that board members are generally more aware of their responsibilities. We generally concur with these comments.

**Board Funding:** We heard from MVRMA Boards that base funding is *generally* sufficient to cover *core* activities.<sup>22</sup> Supplemental funding is required on a project-specific basis and for non-core, but important activities such as professional development, board training, and the *Standard Procedures and Consistency Working Groups*. As was the case in 2005, funding stability, certainty (i.e., will funding be provided) and timing (Boards advised of supplemental funding part way through the year) issues were reported by Boards, particularly in relation to supplemental funding, making planning difficult. The LUPBs, the LWBs (especially the MVLWB and WLWB) and the MVEIRB continue to express concerns about the ability to access additional resources for reviewing large or numerous regulatory applications (see Recommendation 38 in Appendix A).

Boards have recently begun to explore sharing of administrative and technical resources on a regional level, as allowed under Land Claims. Sharing of resources may help to alleviate some of the technical staff-based criticisms directed at Boards and Boards are encouraged to continue to explore resource sharing opportunities.

**Board Appointments:** In 2010, we continued to hear two thematic concerns related to board member appointments carried over from the 2005 NWT Audit. While we heard that the board appointment process is still challenging and requires work, evidence suggests that the process has improved, particularly in timeliness of appointments, since the 2005 NWT Audit (see Recommendation 23 in Appendix A). We also heard that the duration of board appointments should be extended. In responding to the 2005 NWT Audit, INAC disagreed with these extensions, but evidence provided suggests that the case for extension of term appointments has validity (see Recommendation 25 in Appendix A which we do not consider “Closed”).

INAC requests that nominating parties provide multiple nominees for a Board position to expedite the appointment process in the event that one of the nominees is not deemed suitable (e.g., security issues and/or criminal record). Nominating parties disagree with this approach, believing that it has the potential to politicize the process (i.e., INAC chooses a favoured nominee). Similarly, we heard primarily from Aboriginal organizations and communities in unsettled regions that direct appointments by Aboriginal organizations and communities<sup>23</sup>, without need for ministerial approval, would better reflect the co-management approach and improve trust and consultation issues.

Experiences reported by the WLWB lend support to this direct appointment approach on a number of fronts. First, the Tłıchǵ Government appointment process is considered by the WLWB to be faster and more workable than the federal appointment process for the same board. Secondly, the WLWB reported that s. 35 consultation issues have not been a major issue on its files, partly due to:

- most board members being from and “walking amongst” the communities;
- a sense of community consultation and representation through the appointment of two board members directly by the Tłıchǵ Government; and,
- a close connection between the Tłıchǵ Government and the WLWB.

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<sup>22</sup> Challenges in SLUPB funding appear to have been resolved for the past 2 years.

<sup>23</sup> GNWT has also expressed an interest in seeking delegation of the power of appointment (under section 4.1 of the MVRMA) for those board members the GNWT is currently entitled to nominate.

We encourage INAC to look closely at results from the Tẖcẖ direct appointment situation when determining whether to extend this right to other boards and parties.

**Recommendation 3:** As part of its Northern Regulatory Improvements process, INAC should identify and secure (1) sources of *stable, long term* funding for the MVLWB, MVEIRB and WLWB and for training programs for all MVRMA Boards, and (2) a mechanism to provide timely, flexible funding to the LUPBs, LWBs and MVEIRB for fluctuations in capacity demands and other projects such as *Standard Procedures and Consistency Working Groups*.

**Recommendation 4:** With the support of INAC BRS, Boards should formalize core training requirements for board members and staff to allow for adequate long term funding of training requirements. In identifying training priorities, consideration should be given to training needs related to outputs of the *Standard Procedures and Consistency Working Groups* and to extending the scope of board member orientation and staff training to include basic technical knowledge on the activities and environmental issues associated with developments typical in the NWT.

**Recommendation 5:** To enhance trust in the MVRMA Board appointment process, INAC should either abandon its requests for multiple nominees to fill Board vacancies or implement and maintain an awareness campaign and/or materials to communicate the benefits of such a process.

### 3.5 COMMUNITY ENGAGEMENT AND CONSULTATION

*Applicants and developers, MVRMA Boards and government have a heightened awareness of the responsibility to engage and consult Aboriginal organizations and communities and are attempting to comply with this responsibility. Engagement and consultation is being frustrated by uncertainty as to the extent of interaction required, the capacity for Aboriginal organizations and communities to consult, and uncertainty related to requirements under the Constitution Act, 1982 and associated case law.*

Community engagement is central to the integrated system of land and water management. MVRMA Boards were established “to enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians” (s. 9.1 MVRMA). Confusion arises as expectations for engagement and consultation of Aboriginal organizations and community differ between applicants and developers, Boards (per sections 3 and 63 of the MVRMA), governments and Aboriginal organizations and communities.

We heard positive comments on community engagement in land use planning and the MVEIRB consultation process is incorporated in EA (see Section 3.3). We therefore focus our discussions on Crown Consultation and LWB processes. We note that the LWB PE&CWG is working on clarifying community engagement requirements in an attempt to provide guidance on requirements.

The degree of consultation required, and by whom, has become a much more prominent issue since the 2005 NWT Audit. Consultation requirements are also subject to extensive case law and are not simple matters to resolve. We found that five of the six legal proceedings involving the MVLWB initiated since 2005 have related to Crown consultation issues.

**Crown Consultation:** Adequate consultation remains one of the major challenges to the perceived efficacy and timeliness of the MVRMA's system of land and water management. One of the primary matters currently under consideration is the extent to which the Crown can delegate procedural aspects of its duty to consult with Aboriginal people under s. 35 of the *Constitution Act, 1982*.

We noted that these s. 35 challenges are much more prevalent in unsettled areas.

We also heard concerns from Aboriginal people on the need to reconcile s. 35 consultation requirements with the "free entry"<sup>24</sup> system of the Canada Mining Regulations under the *Canada Mining Act* that allows for activity in some lands without any type of notice, permission or warning. We heard that consultation should be required before a claim can be staked "as the intent of staking is to work the land." These concerns have been documented on a number of occasions (e.g., McCrank Report, MVEIRB REA on the UR Energy exploration project), apply across Canada, but have not been resolved anywhere.

In response to these challenges, INAC developed its *Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult (2008)*. INAC Northwest Territories (NT) Region developed an interim approach to s. 35 Crown Consultation, resulting in the establishment of a Consultation Support Unit (CSU) in 2008. The CSU provides advice and assistance to internal and external parties in relation to Crown consultation with Aboriginal people. We heard from the MVLWB that the CSU has improved relationships between industry and impacted communities based on improved Crown consultation communications and procedures. INAC is, however, struggling to provide appropriate support and advice in relation to Crown consultation because of capacity issues.

Additional comments on Crown Consultation are provided in Appendix A (Recommendation 35).

**Community Engagement by Applicants and Developers:** The NWT Board Forum (2010) noted: *"Developers must be seen to be dealing fairly with Aboriginal people and cannot affect their rights without obtaining their views and/or consent. The consultation must be meaningful (sufficient in form and detail) and allow the potentially affected party an adequate time and opportunity to prepare and submit their views. Those views must then be given proper consideration."*

We found that applicants and developers understand and accept the requirement for and importance of community engagement in the EIA and regulatory process. There is, however, a lack of clarity between LWBs and Aboriginal organizations as to what constitutes adequate community engagement. We found Aboriginal organizations, MVRMA Boards and government attempting to provide clarity through engagement and consultation guidelines. Sometimes, these guidelines are inconsistent, not only across

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<sup>24</sup> The free entry system is the dominant practice for obtaining exploration and mineral development rights in much of Canada and the issue of adequate consultation is not unique to the NWT.

regions but even within different stages of the EIA/regulatory process. Continued co-operative efforts are required between organizations to minimize the extent to which these guidelines conflict.

The lack of clarity in community engagement requirements has frustrated applicants and developers. In response, applicants and developers adopt many different approaches to community engagement. This adds further uncertainty to the process. Industry further believes that it is doing more community engagement than is necessarily required to cover off government consultation requirements in an effort to ensure a project proceeds smoothly.

There is also perceived redundancies in community engagement. GNWT questioned why additional consultation by GNWT is required by LWBs above and beyond that completed under GNWT-mandated processes. Private sector applicants questioned why two rounds of consultation were required for quarry permits, limited consultation made under the INAC permit process and more comprehensive consultation under the *MVRMA* process.

We were often told that Aboriginal community engagement was more successful when applicants and developers developed relationships with these communities. This relationship building and community engagement can be complicated. Applicants and developers are frustrated by disconnects between the wants of leadership and community members at large, between land corporations and communities, and within communities themselves.

Relationship building was identified as a challenge for smaller companies and/or for smaller projects given the cost of building these long-term relationships. We note that the NWT Chamber of Mines has stepped in to provide a more stable community interface on behalf of junior exploration companies. One of the cited challenges in building these relationships is the frequency of elections in communities and resultant changes in leadership.

We heard from a number of applicants and developers that they felt delays in or potential claims of inadequate community engagement were being used as leverage by Aboriginal organizations in negotiating access and compensation agreements required under the *MVRMA*<sup>25</sup>. Applicants and developers told us that there was the potential for them to be placed in an unfavourable negotiating position given that both adequate community engagement and, for work on Aboriginal lands, agreements were required prior to being allowed to apply for/issued authorizations. We also heard some concerns that Aboriginal consultation and compensation requirements (e.g., Łutsël K'e Dene First Nation's Exploration Agreement) were too complex and costly for small projects. We note that the MVLWB has determined that a signed Exploration Agreement or similar agreement is not a requirement for issuing authorizations in either settled or unsettled regions, unless required by claim.

**Community Capacity:** We found widespread acknowledgement that there is both consultation fatigue within Aboriginal organizations and communities and inadequate participant funding. These concerns, also noted in the 2005 NWT Audit, will continue to challenge, and at times prevent, meaningfully

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<sup>25</sup> Under s. 18 of the MVLUR, an applicant must demonstrate access rights when applying for work on First Nation owned lands through an access agreement, access and benefit agreements, existing rights or otherwise. For Water Licences in relation to First Nation lands, s. 77 and 79.1 of the *MVRMA* require LWBs to ensure a compensation agreement is in place with the Sahtu, Gwich'in or Tłı̨chǫ Government in cases where a development may "substantially alter the quality, quantity or rate of flow of waters..."



participation by Aboriginal organizations and communities in the integrated system of land and water management (see Section 2.2.2 and Recommendation 39 in Appendix A).

We are recommending (See Section 5.7) that INAC provide *MVRMA* Boards with funding to allow for a new shared staffing position(s) focusing on assisting *MVRMA* Boards and applicants and developers in understanding and navigating community engagement processes and bringing the traditional knowledge perspective to the *MVRMA* boards.

### 3.6 PUBLIC CONCERN / THE “MIGHT” TEST

**Lack of clarity around the concept of *public concern* is adding to the uncertainty within the system of land and water management, especially at the preliminary screening phase.**

Public concern and impact on the environment are the two criteria defined in the *MVRMA* for use during preliminary screenings, EA and the EIR process. Subsection 125(2) of the *MVRMA* requires automatic referral of a project to environmental assessment when a preliminary screener determines that there *might* be a *cause of public concern* (the “might” test). The *public concern* criterion has been used to refer several projects to EA in recent years.

While *public concern* can be used to refer a project to EA, within EA, a project cannot be recommended for rejection on the basis of *public concern* (*MVRMA*, s. 128(1)(c)). MVEIRB can recommend that a proposal be rejected on a finding of *significant environmental impact* whereas a finding of *significant public concern* only allows for a recommendation that the project be subject to further assessment through EIR. For example, *significant public concern* was the MVEIRB’s reason for recommending the Gahcho Kué Diamond Mine (EA0506-008 / EIR0607-001) project to EIR. During EIR, the Review Panel can recommend rejection of the proposed development on the basis of significant public concern (as well as on the basis of significant adverse impact on the environment).

We found greater concerns about the use of *public concern* as a referral tool during preliminary screenings than as a factor in EA recommendations. We also found that the MVEIRB’s latitude to use the *significant public concern* finding to recommend an EIR has already withstood a judicial review in the case of the Gahcho Kué. Therefore, we focus on *public concern* within preliminary screening.

*Public concern* is not defined in the *MVRMA*. The MVEIRB provides guidance on what may prompt *public concern* in its *Environmental Impact Guidelines* (March 2004). The MVEIRB is also clarifying the concept of *public concern* within the EA context. It has issued *A Framework for Determining Whether a Proposed Development Is Likely To Be Cause of Significant Public Concern* (MVEIRB, 2009) to initiate discussion and to lay out a proposed path forward, including developing guidance materials on *public concern*. This paper does not address *public concern* in preliminary screening.

In reviewing EA records, we found that *public concern* was the most frequent reason for referral to EA. In 23 EAs initiated in 2005 or later, 8 (7 mining and 1 hydroelectric) were for projects typically referred to EA in other jurisdictions in Canada. Of the remainder:

- 13 mineral exploration projects were referred, all due to *public concern* (with significant environmental impact also being a consideration in two cases);
- 1 geophysical program was referred at the request of an Aboriginal organization; and,
- 1 contaminated sites program (Giant Mine) was referred by the City of Yellowknife.

With one exception (Selwyn Resources Ltd. (EA0708--001)<sup>26</sup>, all referrals of mineral exploration projects came from unsettled regions. We found that similar projects in the Sahtu (excepting Selwyn Resources Ltd.) and Tłıchǫ regions have progressed with no referral to EA.

The automatic referral triggered to EA by a preliminary screening determination that there *might be a cause of public concern* has resulted in some projects, such as limited exploration drilling not subject to EA in other jurisdictions, being referred to EA in the Mackenzie Valley. Applicants are concerned about uncertainty within the system, as very similar types of projects may be forced into different regulatory pathways for reasons that they believe are beyond the scope of the MVRMA. An often cited example of this was the rapid approval of Uravan Minerals Inc.'s land use permit for exploratory drilling in the Thelon Basin (MV2006C0008) followed by an EA referral of UR-Energy Inc.'s similarly designed and located Screech Lake drilling program (MV2006C0019)

The MVEIRB told us that expressions of *public concern* by Aboriginal parties during preliminary screening may be used in response to:

- lack of clarity in the allocation of benefits from development in unsettled regions versus settled regions;
- lack of land use plans; and,
- s. 35 consultation issues being used to get related issues "on the table."

History lends some support to the MVEIRB's experience. All referrals to EA due solely to *public concern* over the 2005 to 2010 period came from unsettled regions. This evidence must be tempered with the knowledge that development pressures have been greatest in the Akaitcho and Dehcho regions.

Several developers expressed similar concerns. UR-Energy Inc.'s letter to the Minister of Indian Affairs and Northern Development following rejection of the Screech Lake project is representative of these concerns. It stated that "*It appears that special interest groups are exploiting the review process to further political, cultural or environmental causes and are thwarting established regulatory and legislative procedures.*" (Boberg, 2007).

Within EA itself, some developers expressed concern that the MVEIRB has either mistakenly or purposefully re-interpreted what are effectively public concerns as significant adverse impacts on the (cultural) environment so that projects can be recommended for rejection without additional review. We note that the MVEIRB is developing *Cultural Impact Assessment Guidelines* to add clarity and to help the MVEIRB, developers, researchers and others to better understand and assess impacts on culture during EIA.

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<sup>26</sup> We excluded the Hunter Bay Mineral Exploration - EA0708-006 for which the SLWB issued a land use permit on July 3, 2007 and the MVEIRB referred to EA on September 4, 2007. This EA was ultimately cancelled after Hunter Bay Mineral Exploration issued a notice of *Discontinuance of Development Activities per Land Use Permit S07C-004*.

INAC Mineral & Petroleum Resources reported that some of the *public concern* is based on community distrust and fear of industry based on past performance, and the lack of initiatives to educate communities and industry on *MVRMA* processes and what development activities actually entail. INAC Minerals and Petroleum Resources Directorate told us that it is implementing programs to allay these fears and provide additional community education on development activities.

We also heard suggestions that the number of referrals may be reduced if LWBs in certain circumstances allow additional time for parties to find resolution to critical issues at the preliminary screening stage (e.g., through use of the “further study” provisions of s. 22.(2)(b) of the MVLUR) to try to resolve *public concerns*.

**Recommendation 6:** The MVEIRB, in consultation with Aboriginal groups, the Tłıchǵ Government, INAC, GNWT and the LWBs, should seek to achieve clarity and develop consensus-based guidelines for the application of *public concern* in the preliminary screening and EA processes<sup>27</sup>. Included in these discussions should be consideration of ways to employ s. 22.(2)(b) of the MVLUR to reduce the number of applications going to EA due to *public concern*.

### 3.7 SOCIO-ECONOMIC AND CULTURAL CONSIDERATIONS

**LWBs and the MVEIRB are required to consider social, cultural and economic matters but are not provided tools within the *MVRMA* to properly mitigate or regulate these concerns. Private agreements between applicants and developers and Aboriginal organizations and communities are being used to fill this gap. The effectiveness of these private agreements has not being formally assessed or reported on.**

The guiding principles for preliminary screening, EA and EIR are to have regard to “*the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley; and the importance of conservation to the well-being and way of life of the Aboriginal peoples of Canada ....*” (*MVRMA*, s. 115.(b)). Within the NWT, the GNWT has the fundamental responsibility for protecting and enhancing the social, economic and cultural well-being of NWT residents. Of note, we heard that communities often view impacts on people and the biophysical environment to be equally important.

To a large extent, social, cultural and economic issues appear to be well considered in EA. The MVEIRB indicated that these issues are often prominent, particularly effects on social and family structures and cultural impacts which are often “big ticket items”. We note that all projects which the MVEIRB recommended be rejected without an EIR were found to be likely to cause significant adverse *cultural* impacts (EA03-004, EA0607-003, EA0708-002, EA0708-003, EA0708-004).

We did, however, hear that despite their stated importance, social, cultural and economic well-being were not adequately addressed in preliminary screening and that GNWT Health Services (due to budget constraints) and Education, Culture and Employment (ECE) do not participate to any great extent in this

<sup>27</sup> The MVEIRB’s *Reference Bulletin: Operational Interpretation of Key Terminology* (May 2006) could be used as a starting point for these discussions.

process<sup>28</sup>. In sampling the Consultation/Reviews sections of LWB Public Registries, we found extremely limited evidence of comments by either of these organizations. The MVEIRB suggested that the LWBs need more training on and attention to socio-economic and cultural components of preliminary screening.

INAC continues to have issues related to the MVEIRB's interpretation of its authority to assess social and economic impacts and to recommend measures to mitigate these impacts. The MVEIRB considers economic concerns to be intertwined with social concerns and therefore, within its mandate. Section 111 of the *MVRMA* defines impact on the environment as including "any effect on the social and cultural environment or on heritage resources." However, the Guiding Principles of Part 5 of the *MVRMA* (s. 115), in part, state: "*The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to .... (b) the protection of the social, cultural and **economic** [emphasis added] well-being of residents and communities in the Mackenzie Valley.*" The absence of the word economic in the definition of *impact on the environment* seems to be at odds with the Guiding Principles which include protection of economic well-being as part of the MVEIRB's mandate.

The required focus on protection of social, cultural and economic well-being during EIA does not typically carry through to the regulatory phase. During implementation of the *MVRMA*, supporting acts and regulations (e.g., *NWTWA*, *MVLUR*, *NWTWR*) were not updated to address an integrated approach and do not extend beyond limited biophysical concerns. We heard a federal government department summarize the situation as: "social, cultural and economic well-being is well considered at the EA stage, but there is often no applicable instrument to take EA recommendations forward to permits."

A minority opinion was that the absence of social, cultural and economic wellbeing in the regulatory phase made the collection of relevant information in preliminary screening and EA irrelevant.

The absence of regulatory tools for social, cultural and economic well-being remains unchanged from the 2005 NWT Audit (See Section 2.2.2 for further discussion on this regulatory gap.). Aboriginal organizations and communities rely on, and, if properly structured, are largely satisfied with, the use of a variety of private instruments with applicants and developers (e.g., Impact Benefit Agreements, Co-operative Agreements, Access Agreements, collectively referred to as private agreements for simplicity) and to a lesser extent, public agreements between developers and the GNWT (SEMAAs, historically used for large-scale mining projects) to address these matters.

In response to the 2005 NWT Audit, the GNWT indicated that contractual or regulatory solutions may be more appropriate than policy instruments in addressing social, cultural and economic well-being. We heard similar comments from some boards (e.g., GLWB and WLWB) in that they were comfortable with the use of these instruments for social, cultural and economic matters. We saw no evidence of regulatory solutions to social, cultural and economic well-being issues.

The MVEIRB has in the past indicated that while it cannot rely entirely on private agreements to exempt its consideration of social, economic and cultural impacts (confidential aspects of private agreements not being available as evidence in EA), they do take comfort that some progress is being made in dealing

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<sup>28</sup> The role GNWT plays in socio-economic aspects of EAs is discussed in Appendix A, Recommendation 17.

with social, economic and cultural concerns when an agreement is signed or negotiations are proceeding to the dual satisfaction of the parties during the conduct of an EA.

We identified some concerns with private agreements. We were told by some applicants and developers that they have had difficulty negotiating these agreements and feel that benefits expectations may not align with the economics of the development. These applicants and developers believe that Aboriginal organizations and communities feel that they can control the negotiation process given that the applicants and developers will have difficulty walking away from projects and/or the significant investment tied up in land leases. We heard reports through INAC Mineral and Petroleum Resources Directorate that some applicants and developers had given serious consideration to walking away from land leases because of perceived unreasonable demands.

Private agreements are typically partially or wholly confidential. We had no access to these agreements and cannot comment on their adequacy in addressing social, cultural and economic impacts, except to note that the existence of each agreement indicates that the two parties have reached some level of agreement on these matters. The same limitation applies to MVRMA Boards, which are in part relying on private agreements, and government (e.g., GNWT ECE is made aware of main topics, but not specific contents), restricting their ability to assess whether these matters have been adequately addressed. We did, however, hear concerns from GNWT ECE that as the number of SEMAs increase, the GNWT would be hard pressed to monitor and follow-up on commitments made by applicants and developers, with SEMA compliance becoming more difficult to manage.

We noted a number of positive steps towards improving the clarity of process for social, economic and cultural including:

- indications that LWB APWG was working on guidance for the screening of socio-economic and cultural issues and for addressing mitigation measures arising from the screening process;
- the release of the MVEIRB's Socio-Economic Impact Assessment Guidelines (2007);
- the MVEIRB's ongoing work developing Cultural Impact Assessment Guidelines;
- the positive role that we heard the Gwich'in Social and Cultural Institute played in social and cultural aspects of the environmental management system and the 5-year review of the Gwich'in LUP; and,
- the \$500 million set aside by the federal government over 10 years to alleviate the socio-economic impacts on Aboriginal and northern communities along the pipeline route during the planning, construction and operation of the Mackenzie Gas Project (MGP).

This \$500 million commitment made an overt link between larger projects and potential adverse socio-economic outcomes. This commitment also provides recognition by the federal government that the mitigation of socio-economic impacts of development may not always be the sole responsibility of the developer. We found no evidence of other such recognition or commitments by either the federal or GNWT of their role alongside developers in mitigating socio-economic impacts for other large projects.

The 2005 NWT Audit recommendation to address the socio-economic regulatory gap has been revised (see Recommendation 16 in Appendix A).

**Recommendation 7:** As part of the current round of legislative reform INAC should address the discrepancy between the Guiding Principles of Part 5 of the MVRMA which

includes economic well-being and the definition of *impact on the environment* which does not include an explicit reference to economic considerations.

### 3.8 CO-ORDINATION OF INSPECTION ROLES AND RESPONSIBILITIES

*Environmental inspection and enforcement is a multi-agency responsibility in the Mackenzie Valley, with DFO, Environment Canada, INAC and GNWT-ENR having powers under various legislative authorities. The limited mandate of individual inspectors, coupled with the expansiveness of the Mackenzie Valley, creates a challenging inspection regime.*

Under s. 84 of the MVRMA and s. 35 of the Northwest Territories Water Act, the Minister of Indian Affairs and Northern Development may designate qualified persons as inspectors. To date, only INAC has been given a mandate to inspect LUPs and Water Licences. INAC inspectors are also mandated to inspect and enforce land tenure documents issued by under the *Territorial Lands Act*.

The Auditor General found that INAC had “not established what rate of compliance is sufficient and how many inspections and other enforcement actions it needs to conduct to achieve those rates. Nor does it report the extent to which inspected permit and licence holders are compliant” (OAG, 2010). In response, INAC committed to “make the necessary changes to systems and procedures to ensure that appropriate inspections are being conducted on land and water authorizations and then communicate these changes to the co-management boards” (OAG, 2010). Given the recent review of INAC inspection practices by the OAG, we did not focus on this aspect of the system of land and water management.

Overall, we found that the NWT has a multi-jurisdictional environmental inspection and enforcement model that is not substantively different from other Canadian jurisdictions. We found the various federal (e.g., Environment Canada, NEB, DFO) and territorial departments (ENR) with inspection and enforcement responsibilities have clear understandings of their respective mandates. The degree of enforcement and inspection under this multi-jurisdictional model is, however, limited in the Mackenzie Valley by the resources required to inspect remote activities. ENR and INAC have attempted to overcome some of these challenges by placing Environmental Protection Officers and INAC inspectors (Water Resource Officers and Resource Management Officers) in each region to improve familiarity, build better relationships and improve access to activities subject to inspection.

We heard of good co-operation between DFO, Environment Canada and ENR inspectors to facilitate effective inspection, with some variability in the degree of co-operation reported between regions. We heard that there is much less interaction with these departments and INAC inspectors. We found that INAC and NEB inspectors work together and are in the process of developing an Interagency Agreement for inspections.

One multi-agency initiative noted as being a successful sharing of inspection and enforcement mandates is the *Northwest Territories/Nunavut Spills Working Agreement* (April 2008).

While cross-appointment of federal and GNWT enforcement officials would increase available resources and allow for broader enforcement and inspection activities during site visits, both INAC Operations

Division and GNWT enforcement officials were reluctant to pursue this approach. The cost of cross training and maintaining competencies was cited by inspection agencies as a prime deterrent.

Other jurisdictions, such as Ontario through its *Regulatory Modernization Act, 2007*, have implemented laws which allow government officials who see something that concerns them during an inspection that is beyond their mandate to enforce, to tell the responsible authority about it. We were not made aware of any federal or territorial legislative initiatives in this direction. We are, however, encouraged by the direction of the *Inspection and Enforcement Working Group* operating under the Regulators Agreement for the Mackenzie Gas Project (MGP) in optimizing the effectiveness and efficiency of inspection activities, with a primary focus on the MGP. We encourage these efforts be extended to the whole of the Mackenzie Valley, including consideration of which processes (e.g. Ontario's *Regulatory Modernization Act, 2007*) which allow GNWT and federal government officials who see something that concerns them during an inspection that is beyond their mandate to enforce, to tell the responsible authority about it. We also note that the DFO Western Arctic is working on inspection guidelines anticipated for the fall of 2010.

We have revised the recommendation on cooperative inspections in the 2005 NWT Audit for added clarity (see Recommendation 9 in Appendix A)

### 3.9 SECURITY

**The federal government has assumed responsibility for remediating contaminated sites where adequate security was not obtained and/or where site closure was not properly monitored prior to the refund of security. While these issues are largely historic, adequate security is not being collected for some projects.**

We have heard from both INAC Operations Directorate and Contaminants and Remediation Directorate (CARD) that security deposits never cover the full cost of remediation and that there are a number of contaminated sites in INAC's inventory that do not have any security deposit. Some of these sites predate security requirements while others are for activities that were below the threshold requiring an authorization or below the security deposit thresholds established for authorizations. INAC CARD staff reported that all contaminated sites within their portfolio predate the *MVRMA*. This is an encouraging sign that the current closure/reclamation system is working more effectively. There have, however, been no major project closures since the *MVRMA* came into existence.

INAC provides security estimates to LWBs using a security model intended to fully cover all liability if the operating company walks away from a site. INAC includes mobilization costs, often resulting in government closure estimates being more than company estimates. LWBs consider INAC's submissions, applicant's submissions and any other submissions. For Land Use Permits, LWBs develop their own estimates. The LWBs choose from these amounts based on the evidence.

We heard from INAC Operations Directorate and CARD that security deposits should be required for most projects as smaller companies may walk away from sites without proper closure, having "nothing to lose" by doing so. We heard that enforcement of site clean-up prior to expiry of authorizations is

critical as INAC indicated that the Department of Justice determined that security provisions are null and void once an authorization expires.

We reviewed authorizations issued to private applicants posted on the LWB's Public Registry for the 2007 to 2010 period. We found wide variation in the use of security and security thresholds. We observed no GLWB or SLWB authorizations which required security. In one SLWB file (file S07A-015 / SO7L1-004), we noted an INAC security deposit worksheet with a security determination of \$567,946.13. The corresponding Land Use Permit included no requirement for security. Of 12 WLWB authorizations reviewed, 8 included security, 3 were assessed by the WLWB as being below an established \$5,000 threshold for site closure costs and one had no security for unspecified reasons. A sampling of MVLWB records showed consistent consideration and application of security requirements when the established \$50,000 threshold for site closure costs was exceeded. The MVLWB indicated that recently, LWBs no longer have thresholds for security, with security requirements determined on a case-by-case basis.

We note that INAC and the LWBs have established separate Working Groups to address security-related issues. We encourage these Working Groups to work in a cooperative manner to ensure consistency of process and outcomes and to ensure the following issues brought to our attention as requiring clarity are considered:

- roles and responsibilities of various parties in security matters, especially LWBs and INAC;
- determination of when a project is closed;
- who should hold security on non-federal lands;
- when security deposits are returned, both after sign off by INAC inspectors and for projects under progressive rehabilitation;
- how to adjust security deposits as additional areas are disturbed during the life of a project;
- reasons for LWBs not adhering to INAC security recommendations;
- implications of INAC holding security with LWBs having approval authority over closure and reclamation plans; and,
- minimization of duplication arising from a variety of instruments and different requirements for security by different organizations (e.g., INAC under land tenure documents and LWBs).

### 3.10 TRANSBOUNDARY AND TRANSREGIONAL PROJECTS

**Use is being made of established processes for the assessment and management of transboundary and transregional projects. Agreements with adjacent provincial agencies responsible for environmental assessment need to be completed to formalize the MVEIRBs ability to fully participate in EA as envisioned in the MVRMA.**

Provisions for addressing transboundary projects (i.e., within the Mackenzie Valley impacting more than one settlement area) were provided for LUPBs and the MVLWB in the MVRMA. Provisions were also made for the MVEIRB with respect to transregional projects (i.e., project partly inside and partly outside the Mackenzie Valley or wholly outside the Mackenzie Valley). We examined the extent to which use was made of these provisions.



**Land Use Planning Boards:** s. 45 of the *MVRMA* allows the GLUPB and SLUPB to cooperate with any land use planning agencies in adjacent areas. We examined the extent to which LUPBs and other land use planning agencies interacted as an indicator of integration in the system of land and water management. We found no specific concerns about interactions between land use planning bodies.

Land use planning is occurring for Tłıchǫ owned lands, and the Sahtu, Gwich'in and Dehcho regions. We found that the final (Gwich'in) and draft (Sahtu) land use plans were not seamless but that there were some similarities such as capturing the Mackenzie River as a Special Management Zone. The GLUPB and SLUPB have discussed harmonization of land use zones during regular communications and have agreed to do more follow-up during the next review cycle of their respective plans, expected to occur late fall 2010. The SLUPB also indicated that discussions have taken place with Nunavut and the Dehcho about overlap zoning.

We found that processes for cooperative land use planning in boundary areas were being established and utilized for LUPBs established under the *MVRMA*. We encourage land use planning bodies to work co-operatively to minimize disjoints at plan boundaries.

**Mackenzie Valley Land and Water Board:** Under s. 103 of the *MVRMA*, the MVLWB is responsible for conducting preliminary screenings and issuing land use permits and water licences for developments occurring in more than one settlement region. The MVLWB must work with the regional panel(s) in which the proposed development is to take place during the processing of applications. The LWBs have gained experience with this, especially for smaller developments and there is general agreement that the LWBs are working cooperatively on transboundary applications. We heard only one isolated concern regarding the processing of transboundary applications.

Regulatory processes for larger, more complex transregional developments such as the Mackenzie Gas Project have not yet been tested. Procedural rules and processes developed for the MGP could serve as precedence and "lessons learned" for future complex transregional and transboundary developments.

**MVEIRB:** Sections 138.1-142 of the *MVRMA* provides for coordinated environmental impact assessments of transregional projects. The MVEIRB has made obtaining cooperative agreements with other jurisdictions as a priority and has made significant progress with cooperative processes documented and signed with the: Yukon Environmental and Socio-economic Assessment Board (YESAB); Environmental Impact Screening Committee and the Environmental Impact Review Board in the ISR; NEB; Nunavut Impact Review Board (NIRB); and, Government of the Yukon. The MVEIRB also recognizes the need for similar agreements or memoranda of understandings with neighbouring provinces. Discussions with Alberta are in progress.

The most common transregional concern we heard from Aboriginal leaders and communities, federal and territorial governments, NGOs, and during all open houses was that "water knows no bounds." Uncertainties surrounding the impacts to the Mackenzie River basin by existing environmental impacts from oil sands development in Alberta (Athabasca River) and potential environmental impacts from the proposed Site C hydro development in British Columbia (Peace River) were the catalyst for these concerns. Co-operative environmental assessment agreements have not been signed with Alberta and British Columbia.

To our knowledge, the only transregional EA/EIR since the MVEIRB's inception is the MGP. We found evidence that the MVEIRB was exercising s. 138.1-142 authorities. The MVEIRB notified adjacent assessment boards of EAs (e.g., the NIRB for Ur Energy Screech Lake and the YESAB for Selwyn Resources) and had been notified and participated in EAs in other jurisdictions (e.g., the NIRB for the Bathurst Inlet Port and Road Project, YESAB for Mactung). The YESAB and the MVEIRB subscribe to each other's public registry updates and Alberta Environment notifies the MVEIRB of all oil sands environmental assessments. There have been no exchanges with British Columbia and Saskatchewan.

**Recommendation 8:** The MVEIRB should expedite efforts to complete cooperative agreements for environmental assessments with the authorities responsible for the examination of environmental effects of projects in Alberta and British Columbia to formalize the right to participate in transregional EAs for projects that might have a significant adverse impact on the environment in the Mackenzie Valley.

### 3.11 ENVIRONMENTAL MANAGEMENT & REGULATORY PROCESSES ON RESERVE LANDS

There are unresolved questions as to the application of the *MVRMA* and the authority to issue, inspect and enforce land use permits and water licences on reserve lands.

There are two Indian Reserves in the NWT. The Hay River First Nation Reserve (K'atl'odeeche First Nation) is in Dehcho territory and the Salt River First Nation Indian Reserve is in Akaitcho territory. Both were set aside to fulfill federal obligations to set aside reserve lands under Treaty No. 8.

While the administration and control of reserve lands fall under the regime set up by the *Indian Act*, the federal government's position is that the *MVRMA* applies to Indian Reserves<sup>29</sup>. Both the K'atl'odeeche First Nation and INAC (NWT Regions) Department of Indian and Inuit Services within INAC NT Region raised questions as to applicability of the *MVRMA* to reserve lands.

Generally, under the *Indian Act*, INAC has jurisdiction to manage lands (but not water) and resources and approve developments, including the disposition of oil, gas, minerals and timber, and to regulate pollution and waste disposal. Bands can exercise aspects of the control and management of reserve lands under various sections of the *Indian Act* and can enact by-laws for this purpose. The *First Nations Land Management Act* (S.C. 1999, c.24) also allows Band Councils to enact a land code and to become the decision-maker in relation to on-reserve lands (including waters) and resources.

Aboriginal and treaty land and water rights which attach to reserve lands may also differ from off-reserve surface and water rights.<sup>30</sup> This in turn will affect the decision-making process that governs land and water management on reserve lands. Further complicating an understanding of the applicability of the *MVRMA* to reserve lands is that NWT reserve lands are located on federal Crown lands,

<sup>29</sup> Where inconsistencies exist between these two Acts, the *Indian Act* prevails (s. 5 *MVRMA*)

<sup>30</sup> Jack Woodward, *Native Law*, Looseleaf (Toronto: Thomson Carswell, 1989) c. 8 at 8.9. With respect to water rights for instance, the issue of whether the reserve boundaries include bodies of water, the extent of the right to use water for livelihood, and the extent of the riparian and groundwater rights, are still unsettled. This has implications in terms of the issuance of water licences and Aboriginal control over uses of waters which may impact reserve lands.

commissioner lands, and in the case of the Salt River First Nation Indian Reserve, partly in the Wood Buffalo National Park.

We found that powers of environmental inspection and enforcement were also unclear, as INAC has no delegated authority under the *Indian Act* to inspect on reserves lands while the *MVRMA* delegates inspection authority to INAC.

To date, no specific development applications have been made which test the applicability of the *MVRMA* to reserve lands. The primary concern of the K'atl'odeeche First Nation and Indian and Inuit Services is the uncertainty associated with regulatory processes for potential future development.

**Recommendation 9:** INAC (Indian and Inuit Services, Operations and Justice), the Salt River and K'atl'odeeche First Nations, the MVLWB and MVEIRB should work together to fully define and resolve issues associated with environmental assessment and regulatory processes for reserves in the NWT.

## 4.0 OBSERVATIONS AND RECOMMENDATIONS OF THE 2010 NWT AUDIT - CUMULATIVE IMPACT MONITORING PROGRAM

### 4.1 LEGISLATED MANDATE FOR CIMP

**INAC has not met its legislated responsibility to monitor cumulative impact.**

Section 146 of the *MVRMA* requires “the responsible authority..., subject to the regulations, [to] analyze data collected by it, scientific data, traditional knowledge and other pertinent information for the purpose of monitoring the cumulative impact on the environment of concurrent and sequential uses of land and water and deposits of waste in the Mackenzie Valley.”

The Cumulative Impact Monitoring Program was developed to fulfill this obligation. By law, CIMP applies to the Mackenzie Valley as defined in the *MVRMA*. By design, the CIMP also includes the Inuvialuit Settlement Region and the NWT portion of Wood Buffalo National Park.

Section 150 of the *MVRMA* provides authority to the Governor in Council to make regulations respecting the collection and analysis of cumulative impacts information. In the 2005 NWT Audit, the CIMP Secretariat indicated that the intent was to have the CIMP fully implemented and working well before drafting such regulations. The *5-Year Work Plan for the CIMP and Audit* reviewed in the 2005 NWT Audit identified the preparation of draft regulations as a task that will be conducted in the period between 2005 and 2010. No such regulations have been promulgated.

The Auditor General of Canada reviewed CIMP in its 2010 Audit and concluded that “In all regions of the NWT, our audit found that INAC has not met its responsibility to monitor cumulative impact” and recommended that “INAC should develop and carry out a program to monitor cumulative impact in the NWT” (OAG, 2010). We made similar observations.

The Joint Review Panel (JRP) for the Mackenzie Gas Project succinctly identified the following key hurdles to full implementation of CIMP:

- *Establishment of CIMP — while there has been a great deal of time and resources devoted to the preliminary planning for the CIMP, the focus must now shift to the formal establishment and implementation of the CIMP.*
- *Delegation of a responsible authority for CIMP — the Minister of Indian Affairs and Northern Development has not yet designated a Responsible Authority under the MVRMA, to undertake activities for the purpose of monitoring cumulative impacts on the environment. Without a responsible authority designated to be responsible and accountable for its successful implementation, CIMP will not be able to achieve its monitoring and management goals.*
- *Application of CIMP to the ISR — the Panel notes that the application of CIMP has been extended to the ISR by a Memorandum of Understanding and that the Inuvialuit currently participate as full members in the CIMP working group. However, given that many of the cumulative impacts would occur within the ISR, the Panel questions whether an administrative agreement is a sufficiently robust instrument to ensure the implementation of CIMP within the ISR. Ideally, the application of CIMP would be extended to the ISR by legislation so that it would apply on the same legal footing throughout the Northwest Territories.*

- *Fulfillment of legal obligation to enable CIMP — the lack of secure long-term funding for CIMP is another obstacle that has impeded the establishment and implementation of CIMP.*
- *Contents of the CIMP program — establishment of the CIMP would benefit from clear guidance with respect to the program design. It would also benefit if the design of the CIMP research were informed by the analysis of scenarios of possible future development in the NWT. CIMP's effectiveness would also be enhanced through the establishment of thresholds, as discussed in Chapter 11, to determine if and when management actions were needed. (JRP, 2010)*

Based on our observations, we concur with the Auditor General and JRP.

## 4.2 USE OF CIMP DATA

### **Data collected by CIMP are not being used in the EIA and regulatory processes.**

We reviewed questionnaire responses on the extent to which CIMP data were used in decision making. A total of two (2) RRBs, six (6) Aboriginal governments/organizations, seven (7) MVRMA Boards, eight (8) proponents, five (5) NGOs, and thirteen (13) regulatory agencies (INAC, DFO, EC, GNWT departments) provided comments.

We found **one** reported use of CIMP data in the EIA and regulatory processes, this being by a developer (with the caveat that the data were not very useful). We found a general level of dissatisfaction with the manner in which the CIMP data are currently provided. CIMP was largely viewed as a database of “many short term projects rather than a coordinated long term monitoring program” and as “a repository for individual studies, some of which produce data and some of which are focused on community capacity building and create no data.” The following representative comment summarizes the major criticisms of CIMP data:

*“The CIMP website is not particularly user-friendly. Data is often presented in chart format rather than a spreadsheet that would allow investigation of specific data points. The monitoring protocols should be consistent both spatially and temporally. The data presented is not comprehensive enough to allow trends to be identified. We are unclear how specific project monitoring fit into this (i.e., is monitoring data from development projects included), and how CIMP is going to be expanded to take into account other effects of climate change (i.e., will other variables such as permafrost melting be included?)”*

In response to these concerns, a NWT monitoring portal (IM/IT strategy), which is bringing data together (e.g., republishing last 10 years of projects and harvesting monitoring data from MVLWB), has been adopted and funded by CIMP. As this portal does not provide for any analysis of data in a meaningful manner, INAC Environment and Conservation reported that in 2011/2012 work on a data management strategy will be undertaken.

CIMP is also advocating for common standards which will allow monitoring data collected from disparate sources to be collected, stored and analyzed in a meaningful manner.

### 4.3 CIMP FUNDING

**CIMP funding has historically been *ad hoc* and inadequate. A-Base funding has now been provided and \$8 million in additional B-Base funding over 2 years was announced for the *CIMP and Nunavut General Monitoring Plan*. Despite funding increases, CIMP must rely on other sources of external monitoring data to cover all Valued Components.**

Since 1999, CIMP has not received dedicated funding, with funding being largely *ad hoc* and received too late in the year to correspond with field season requirements. An A-Base allocation was only made starting in 2009, affording an opportunity to structure longer term programs. An additional \$8 million over 2 years for the *CIMP and Nunavut General Monitoring Plan* was announced during the 2010 Throne Speech.

Increased funding is to cover salary dollars, operations and maintenance (O&M) and grants and contributions (G&C). G&C funding goes to eligible recipients for monitoring or capacity building activities. Funding provided to communities through grants and contributions can be leveraged through O&M provided to INAC or other government departments for active project participation. We note that over the 5-year period FY2010-11 to FY2014-15, approximately 36% of the \$17.5 million budget requested in the PM Strategy will go to G&C funding. An unallocated portion of the O&M budget may also go directly to communities.

In its Performance Management Strategy (PM Strategy) document, INAC notes that program “risks were assessed based on current levels of funding and operation and highlight the fact that the current CIMP resources and structure are inadequate to deliver on CIMP’s mandate. The program presented in this PM Strategy is based on increased levels of funding and a revised program structure that have been designed to mitigate these risks.”

Despite these funding changes, INAC Environment and Conservation acknowledges that CIMP cannot possibly monitor all VCs over NWT. CIMP will need to leverage existing monitoring programs and tie into the existing decision making framework in the NWT (Decision Makers, Industry and other regulators) as sources of monitoring information.

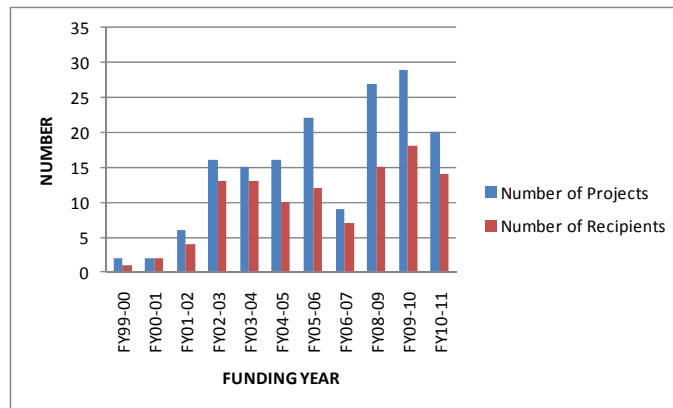
### 4.4 CIMP ACTIVITIES

**While CIMP has made investment in monitoring and capacity building projects, the majority of efforts expended and funding have been, and will continue to be for the next few years, directed towards program and systems development.**

CIMP activities have been largely planning focused over the past 10 years with more than 60 governance and planning related documents having been prepared in support of the CIMP program over this period. Over the same period of time, 164 monitoring and capacity development projects have been funded (see Figure 4.1). We are encouraged with the approximate doubling in funded projects (107 vs. 57) over the FY2005-2011 period versus the FY1999-2005 period.

An increase in G&C funding (tripling from \$525,000/yr to \$1,530,000/yr for FY2012-2013 to FY2014-2015) is proposed for monitoring and capacity development projects. We heard that CIMP activities over the next few years will, however, continue to focus on developing and implementing the required framework, supporting programs and data management strategy that have not been developed to date.

**Figure 4.1 –CIMP-funded Monitoring and Capacity Building Projects**



While a formal review and approval process has been established for funding CIMP projects, we saw limited evidence of these decisions being made with a long term vision. Project funding has helped to achieve a program objective of community capacity building but has resulted in the approval of largely unrelated community monitoring programs and projects. We found little evidence of a strategy or vision intended to approve projects with the intent of weaving results into a useful regional or NWT-wide database or network appropriate for monitoring cumulative impacts.

#### 4.5 CIMP INITIATIVES

##### **A Performance Management Strategy has been developed to move CIMP forward.**

The CIMP PM Strategy, consisting of a Program Profile, Logic Model, Performance Measurement Matrix, Implementation Plan, Risk Assessment (Risk Profile summary), and Evaluation Strategy was prepared in August 2010, consistent with Treasury Board Secretariat policy requirements. The PM Strategy is intended to serve as a management tool for the CIMP Working Group. The focus of the PM Strategy is on information collection and transformation into knowledge relevant to decision makers in the North. Implementation of the PM Strategy is in its early stages. Planned activities include: setting up a data management system and program framework; focus on capacity building; building and maintaining partnership agreements; holding monitoring workshops and training sessions; the collection, analysis and synthesis of environmental data; protocol development and promotion; development of geoportal/databases; reporting (State of Knowledge, State of the Environment reports); environmental audits; and, communications and awareness and administering the Request for Proposal process for other data collection.

The NWT Environmental Stewardship Framework (ESF) (formerly the Cumulative Effects Assessment & Management Framework) issued *A Blueprint for Implementing the Cumulative Effects Assessment and Strategy and Management Framework in the NWT and its Regions* (December 2007). This *Blueprint* was developed in consideration of the 2005 NWT Audit recommendations and contained recommendations and actions for cumulative effects assessment and management in the NWT. CIMP was identified as an integral part of the *Blueprint*, providing baseline studies and monitoring programs for the Cumulative Effects Assessment & Management Framework. The absence of a fully functional CIMP is impacting on the broader implementation of the ESF.

On August 20, 2010, the Minister of Indian Affairs and Northern Development announced a CIMP-type approach for the ISR. The Beaufort Regional Environmental Assessment (BREA) is a multi-stakeholder initiative to sponsor regional environmental and socio-economic research that will inform potential offshore oil and gas activities in the Beaufort Sea. The initiative is to help ensure governments, Inuvialuit, and industry are better prepared for oil and gas exploration and development in the offshore by: 1) anticipating regional data gaps related to offshore oil and gas activities; and 2) supporting effective and efficient regulatory decision-making by providing detailed scientific and socio-economic information to all stakeholders.

We found that the objective of initiative is substantively identical to the Beaufort Region Environmental Assessment and Monitoring Program (BREAM) initiated in 1991 (and funded to FY1993-94) by Indian and Northern Affairs Canada, Environment Canada and the Department of Fisheries and Oceans to assist in the planning component of the Northern Oil and Gas Action Program. BREAM's objectives were to establish research and monitoring priorities related to future oil and gas development and transportation in the Beaufort Sea, Mackenzie Delta and Mackenzie Valley, and to assist in the assessment of the potential impacts of these future developments on the environment, its resources and resource use by northerners.

We encourage INAC to incorporate results of the BREAM initiative to minimize planning duplication and overlap with the recently announced BREA initiative.



## 5.0 OBSERVATIONS AND RECOMMENDATIONS OF THE 2010 NWT AUDIT - TRADITIONAL KNOWLEDGE

*MVRMA boards and other participants in MVRMA processes are empowering Aboriginal people through their efforts to incorporate traditional knowledge into decision making processes. The use of traditional knowledge, however, still lags behind that of western science due to a variety of factors, including cultural and procedural differences in its application within MVRMA processes. Increased efforts supporting traditional knowledge research and continued open and honest communication between all parties were identified as the key factors for success in furthering the use of traditional knowledge.*

MVRMA boards are to consider traditional knowledge made available to it in exercising their powers (MVRMA, s. 60.1 & 115.1).

### 5.1 UNDERSTANDING THE MEANING OF TRADITIONAL KNOWLEDGE

We heard some desire for a common definition of traditional knowledge to clarify the collection, use, verification and provision of this knowledge (see Section 5.4) and not as a definition in and of itself. Aboriginal organizations indicated that a single definition is inappropriate for a variety of reasons. The MVEIRB, in its *Guidelines for the Incorporation of Traditional Knowledge into Environmental Impact Assessment* (2005), specifically avoided a set definition for traditional knowledge.

Despite the absence of a singular definition, most involved in the EIA and regulatory processes have a general understanding of traditional knowledge as being the knowledge, experience and values of Aboriginal people gained by living on the land and passed on orally from generation to generation. Non-aboriginal responses were not as detailed as those provided by holders of traditional knowledge or those associated with them. Responses were, nonetheless, encouraging.

### 5.2 RESPECT AND ACCEPTANCE OF THE IMPORTANCE, USEFULNESS AND ROLE OF TRADITIONAL KNOWLEDGE

Decision makers and users of traditional knowledge were found to demonstrate an increasing respect for and acceptance of the importance, usefulness and role of traditional knowledge in MVRMA processes, with some developers providing examples of how traditional knowledge played a useful role in project planning. Some MVRMA boards and federal and territorial government departments have made efforts to formally incorporate traditional knowledge into operations through guidelines, etc. (see examples in Table 5.1). Other efforts to clarify the role and nature of traditional knowledge are ongoing by MVEIRB (ongoing initiative to develop *Cultural Impact Assessment Guidelines*), the LWBs<sup>31</sup> and Aboriginal Organizations.

<sup>31</sup> As a result of discussions within the LWB APWG and in consideration of the diverse groups under each region, the LWB APWG determined that each LWB would work with regional organizations to develop regional policies for the collection of traditional knowledge.

**Table 5.1 – Examples of Traditional Knowledge Policies, Guidelines & Operational Documents**

Organization	Traditional Knowledge Policies, Guidelines and Operational Documents
Dehcho First Nations	Traditional Knowledge Research Protocol (2004)
Dehcho Land Use Planning Committee	Traditional Knowledge Policy (2003)
GNWT	Policy 53.03: Traditional Knowledge (2005) Summary of Best Practices for Applying Traditional Knowledge in Government of the Northwest Territories Programming and Services (2005) Traditional Knowledge Policy Implementation Framework (2009) ENR Traditional Knowledge Implementation Plan (2009)
Gwich'in Tribal Council	Traditional Knowledge Policy (2004)
MVEIRB	Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment (2005)
SLWB	SLWB Policy Paper on Traditional Ecological Environmental Knowledge in Support of Applications for Permits or Licences (2003)

We encourage organizations working on traditional knowledge guidance to coordinate efforts to: minimize inconsistency; remain compatible with the views of Aboriginal groups, which can vary between culture group and communities; and, revise documents as perspectives evolve.

We noted that many non-Aboriginals, especially government representatives, qualified statements about the use of traditional knowledge in the EIA and regulatory process with “but I am not a traditional knowledge expert.” While showing respect to traditional knowledge holders, this hesitation is reflective of the challenges in the full integration of traditional knowledge into land and water management.

We found general agreement on traditional knowledge’s important role in land use planning, EIA and regulatory processes. We noted some confusion with the role of traditional knowledge in reviews of advanced project design and development of plans (e.g., reviews of drawings and management plans for engineered structures required by *MVRMA* authorizations). A review of the MVEIRB Public Registry also identified challenges by applicants and developers in identifying the role of traditional knowledge in determining potential impact significance and the delineation of areas that are highly culturally or ecologically sensitive or valued. We encourage the LWB APWG to include these matters in its work.

### 5.3 AVAILABILITY OF TRADITIONAL KNOWLEDGE

Traditional knowledge is required by INAC to fulfill its mandate to monitor cumulative impacts and the status of the environment. Traditional knowledge is required in EIA and regulatory processes to ensure projects are designed and operated in a way that protects Aboriginal interests and the environment. We found that the availability of traditional knowledge for these purposes is subject to the accessibility of the holders of traditional knowledge and the recording and preservation of traditional knowledge in a format compatible with requirements of *MVRMA* processes and changing technologies.

We found a shared approach between Aboriginal groups, applicants and developers, and the federal and territorial governments in preserving Aboriginal languages, culture, spirituality, and knowledge. Aboriginal governments have established organizations such as the Dene Cultural Institute (Yamozha K’ue Society) and the Gwich’in Social and Cultural Institute. We found some applicants and developers providing support through Benefits Agreements and/or by hiring Aboriginal resources to collect the traditional knowledge they required. The federal government funds various programs (e.g., the *New Horizons for Seniors* program which provides funding for Elders Committees) and promotes the

collection and preservation of traditional knowledge and capacity building to do so through CIMP (see Section 2.2.2). School curriculums (e.g., Take a Kid Trapping Program), direct funding, support for elders to share their knowledge (e.g., Hunters of the Alpine Ice: The NWT Ice Patch Study), and funding of the Prince of Wales Northern Heritage Centre (PWNHC) represent several examples of GNWT efforts to preserve traditional knowledge.

We found that the NWT Archaeological Sites Database and archives maintained by the Prince of Wales Northern Heritage Centre were important in both the preservation and use of traditional knowledge. LWBs access this database during the application review process to determine the location of archaeological sites within the vicinity of proposed developments. Aboriginal groups, especially in the unsettled regions, expressed concern that the database is incomplete, potentially enabling development to proceed in ways that disturb undocumented sites. The PWNHC is aware of these potential gaps and provides a caveat with the licence agreement that the database is incomplete and there may be undocumented archaeological sites in the development area. In cases where there is a risk of impact to undocumented archaeological sites, the PWNHC recommends – in the context of the land use review process – that the applicant or developer hire an archaeologist to complete an archaeological impact assessment of the project prior to development activities.

Land use planning was also found to be a useful mechanism for collecting traditional knowledge, providing support for the importance of land use planning (see Section 2.2.2). We found processes used in land use planning and periodic reviews to be similar to the ways in which traditional knowledge is traditionally shared (i.e., visual and oral based communication ongoing through time).

Despite these efforts, we heard from Aboriginal groups that traditional knowledge is being lost due to: rapid changes in lifestyles and the wage economy; the passing on of elders and other holders of traditional knowledge; and with Aboriginal youth spending less time on the land, limiting opportunities for the teaching and sharing of traditional knowledge. We heard that assistance from the federal and territorial governments is needed to help preserve the traditional knowledge. We heard from applicants and developers that for traditional knowledge to be considered in decision making, it needs to be more readily available or at least accessible in a timely manner.

**Recommendation 10: The federal and territorial governments, either through CIMP or other means, should provide adequate long term, stable funding to Aboriginal organizations to create their own traditional knowledge research programs (including training of local Aboriginal researchers) and repositories for collected knowledge.**

**Recommendation 11: The Prince of Wales Northern Heritage Centre, directly working with Aboriginal peoples, should develop a partnership program to improve and expand upon the existing archaeological and heritage resources database.**

#### 5.4 COLLECTION, DOCUMENTATION, VERIFICATION AND REPORTING OF TRADITIONAL KNOWLEDGE IN CULTURALLY APPROPRIATE WAYS

We heard from some Aboriginal groups and staff working for Aboriginal organizations and Renewable Resource Boards that culturally appropriate methods are generally not being used for the collection, documentation, verification and reporting of traditional knowledge. Table 5.2 provides examples of identified concerns. We also heard that the effective collection and use of traditional knowledge within regulatory processes continues to be a challenge, as traditional knowledge requirements and expectations are different throughout Mackenzie Valley regions and communities.

**Table 5.2 – Concerns with Traditional Knowledge Processes**

Action	Concerns
Collection	<ul style="list-style-type: none"> <li>assuming an individual of Aboriginal heritage is a holder of location-specific, culturally appropriate traditional knowledge</li> <li>not going through proper cultural channels to identify knowledge holders and ways to collect information</li> <li>application of western science based methodologies in collecting traditional knowledge (e.g. the use of structured, multiple choice surveys largely created and delivered by non-Aboriginal people rather than taking a more holistic view,)</li> <li>the process of consultation is frequently confused with the process for collecting traditional knowledge</li> <li>lack of recognition that properly trained people and the use of rigorous established methodologies are required for the successful collection of traditional knowledge</li> <li>some applicants and developers, rather than Aboriginal communities, coordinate or conduct traditional knowledge research</li> <li>frequently insufficient numbers of traditional knowledge holders of <u>both genders</u> are invited to participate</li> <li>Lack of recognition that traditional knowledge collection is fundamentally a knowledge sharing exercise, and should not be used merely for data collection for industrial development</li> <li>applicants and developers concerns that their projects can face significant delays if an Aboriginal group refuses to share traditional knowledge with them</li> <li>applicants and developers concerns that they will be forced to take on extra costs associated with desires of Aboriginal groups to have larger traditional knowledge collection exercises, much of it unrelated to the project being proposed</li> <li>applicants and developers concerns that community-led traditional knowledge efforts are often subject to weak capacity, long timelines and inadequate final product for the purposes of the EIA/regulatory process</li> <li>compartmentalizing traditional knowledge to only include observations of plants, animals and the physical environment, neglecting the social, economic and cultural side of traditional knowledge</li> </ul>
Documentation	<ul style="list-style-type: none"> <li>assumption that recordings, maps and other tangible formats for storing traditional knowledge are the property of the collector rather than the traditional knowledge holders</li> <li>inappropriate interpretation of traditional knowledge information in the applicant or developer's submissions (written almost exclusively by non-Aboriginal consultants) in the EIA/regulatory process</li> </ul>
Verification	<ul style="list-style-type: none"> <li>use of individuals rather than a community of people to "verify" traditional knowledge may be contradictory to traditional forms of decision-making</li> <li>lack of Aboriginal verification of interpretations made in writing prior to EIA and regulatory submissions (original data may be ground truthed, but not how it is written up)</li> <li>using inappropriate verification methods such as requirement for written comments, immediate responses, or simple "yes" or "no" answers on accuracy of information presented</li> <li>no room for reconsideration and revisions to the traditional knowledge at a later time in the process</li> </ul>
Reporting	<ul style="list-style-type: none"> <li>Sources of traditional knowledge must be credited but sometimes this doesn't occur</li> <li>Use of plain language, easily readable summaries, in English and appropriate Aboriginal languages, is often missing, as are audio summaries of findings</li> </ul>

At a higher level, staff from Aboriginal organizations and Renewable Resource Boards suggested that most of these concerns can be proactively avoided by:

- Using members of Aboriginal communities specially trained in traditional knowledge research to preserve traditional knowledge and respectfully continue the cultural tradition of traditional knowledge holders sharing their traditional knowledge with the youth and children of their communities;
- Using methodologies that are culturally appropriate. For example, traditional knowledge collection should be driven by Aboriginal groups and be carried out by going on the land with traditional knowledge holders to listen to and learn from them;

- Establishing culturally appropriate ongoing monitoring traditional knowledge research programs to confirm information and to detect changes; and,
- Engaging in respectful and thorough consultation processes. Consultation does not equate to traditional knowledge research but successful consultation will often lead to successful traditional knowledge research.

We found that Aboriginal organizations have, or are intending to, develop traditional knowledge process protocols incorporating these principles which will help to address concerns we heard from non-Aboriginal organizations (see Table 5.1) that there is a lack of understanding and poor communication of the Aboriginal people's expectations regarding traditional knowledge. We did, however, hear from some applicants and developers and some federal and territorial government staff that some established protocols for traditional knowledge research are too financially onerous and take too time much to complete, especially for smaller developments.

We also heard that Aboriginal expectations outlined in the protocols can differ from environmental assessment and regulatory process requirements, creating uncertainty for applicants and developers (see Section 5.1). These concerns were heard mainly in unsettled regions. We discovered that the LWB APWG has, in consideration of the diverse groups under each region, determined that each LWB would work with regional organizations to develop regional policies for the collection of traditional knowledge. This regional approach would be expected to impart a level of consistency within regions and promote culturally appropriate ways of collecting, documenting, recording and verifying traditional knowledge.

## 5.5 PROPRIETARY CONSIDERATIONS AND CONFIDENTIALITY REQUIREMENTS

Aboriginal leaders and organizations expressed concerns about risks to food and medicine source areas (e.g., berry patches) and culturally significant sites if the public gains access to traditional knowledge (e.g., by posting traditional land use area maps on Public Registries as part of the public record). These individuals were also concerned that ownership of traditional knowledge will transfer from traditional knowledge holders to the public domain as information is made publically available.

Processes to protect proprietary and sensitive traditional knowledge exist. MVRMA Boards can receive and consider confidential submissions. For example, the Yellowknives Dene and Łutsël K'è Dene First Nations provided the MVLWB with information under confidential cover during the preliminary screening of the TNR Gold Corporation's Moose property land use permit application. This information was used to support their claims that the proposed development may impact traditional land use activities and archaeological and heritage resources. The MVLWB ultimately referred the project for EA based on public concern. MVEIRB has also built confidentiality requests into its rules of procedure and accepts submissions under confidential cover.

We heard concerns that confidential submissions may result in possible challenges under federal Access to Information laws and raise questions of administrative fairness. Reasons for Decision may not be as clear, referrals to EA due to public concern may be more uncertain and applicants may not have an opportunity to modify project plans during preliminary screening to address Aboriginal concerns. We were not made aware of any formal challenges having been made along these lines.

## 5.6 MEANINGFUL SHARING OF TRADITIONAL KNOWLEDGE

The rules of procedure and processes legislated by the *MVRMA* are based on western-style governance. Aboriginal leaders and organizations indicated that this places an inherent obstacle to the meaningful sharing of traditional knowledge despite efforts to integrate traditional knowledge EIA and regulatory processes. Key issues for these parties include:

- Questions of most importance: The LWBs and the MVEIRB are most concerned with whether a project will have adverse impacts and how these can be mitigated. Traditional knowledge holders may prefer to begin with questions about whether the project is necessary for the well being of their community.
- Business is conducted in English: English is not the first or preferred language for many traditional knowledge holders. Translation is often difficult because of a lack of equivalent terms to convey concepts.
- Perceived Burden of Proof: Many Aboriginal groups expressed concern that the regulatory system burdens Aboriginal peoples to prove that a project will be detrimental rather requiring the applicant or developer to prove that a project will be beneficial. Capacity shortages within Aboriginal organizations frequently prevent them from participating in regulatory processes. Such absence is misinterpreted as an absence of concerns.
- Reliance on written evidence: Traditional knowledge is often based on intangible and oral information and knowledge. Transforming this knowledge into a tangible format (e.g., report or map) takes more time than is available in standard EA and regulatory processes.
- Structured and formal public hearing processes and settings: Aboriginal communications are based on the exchange and discussion of information to reach a mutual understanding and perhaps a decision. The adversarial setting, time limits and cross-examination associated with public hearings may frustrate or intimidate Aboriginal participants. *MVRMA* boards attempt to address these issues by holding hearings in communities; hosting less formal sessions; providing opportunities for the sharing of oral history and knowledge during proceedings; and requesting plain language presentations and summaries.
- Compartmentalization of the environment Vs. Aboriginal people's more holistic view of the environment.

We found that creating processes that provide for the meaningful sharing of traditional knowledge that remain within the legal framework within which *MVRMA* Boards operate continues to be a challenge. Meaningful sharing of traditional knowledge within *MVRMA* processes is not yet routine, as recognized by the *MVRMA* Boards. We found that processes are being evaluated and modified to be more conducive to the meaningful sharing of traditional knowledge.

## 5.7 DECISION MAKERS AND USERS OF TRADITIONAL KNOWLEDGE UNDERSTAND HOW TO APPROPRIATELY USE TRADITIONAL KNOWLEDGE IN PROJECT PLANNING AND DECISION MAKING

We heard that understanding how to use traditional knowledge in project planning and decision making can be challenging. Applicants and developers require clarity about the requirements for use of traditional knowledge in project planning. *MVRMA* Boards are required to consider any traditional knowledge *provided to them* in their decision making. The MVLWB indicated that while it is provided with traditional knowledge, it receives limited direction or recommendations on how it should be considered or used. Aboriginal membership on the *MVRMA* Boards may assist in promoting and facilitating the use of traditional knowledge, however, Aboriginal Board members may not themselves be considered holders of traditional knowledge.

The challenges faced by each of the *MVRMA* boards are different due to their differing mandates and, for the LWB, due to regional differences. The multiple opinions on the appropriate relationship

between traditional knowledge and western science (e.g., integration of the two paradigms, parallel use of the paradigms) also complicate the use of traditional knowledge.

**Land Use Planning Boards:** Traditional knowledge is used in land use planning to set land use zones and to identify particular conditions that must be adhered for certain land uses. We heard a range of opinions on whether traditional knowledge is being appropriately gathered and used for land use planning. We heard that of all the MVRMA processes, land use planning is currently most conducive to the appropriate gathering and use of traditional knowledge. In addition to requesting written comments, workshops and other information gathering sessions are held in communities. This community approach helps in satisfying two principles heard repeatedly from all regions within the NWT: decision makers should “go to where the traditional knowledge holders are” and “talk to the traditional knowledge holders using their ways.” The required periodic reviews of the Gwich’in, Sahtu and Dehcho land use plans also provides an opportunity for land use planning agencies to collect and use traditional knowledge in a manner similar to the ways in which traditional knowledge is shared traditionally (i.e., visual and oral ongoing through time).

Besides land use planning initiatives required by land claims, we found that traditional knowledge is used extensively in the Protected Areas Strategy and joint management of the Nahanni National Park Reserve of Canada by Parks Canada and the Dehcho First Nations. We heard positive comments about these processes with respect to the gathering and use of traditional knowledge decision making, with areas proposed for protection identified by Aboriginal peoples based on their traditional knowledge.

**MVEIRB:** EA processes are conducive to the receipt and use of traditional knowledge because the biophysical (including people), social, cultural and economic spheres of the environment are examined together; higher level questions important to Aboriginal groups can be asked (e.g., is an area suited to certain types of activities); and, compared to the regulatory phase, there is more time for Aboriginal groups to provide traditional knowledge. The MVEIRB has formalized its values and approaches to using traditional knowledge in a series of adopted and draft guidelines, including its *Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment* (2005). These guidelines assist the MVEIRB in diligently fulfilling its requirement to fully consider any traditional knowledge provided to it in its decision making.

In reviewing Reports of EA, we found evidence that traditional knowledge is presented to and considered in the MVEIRB decision making process. As with land use planning, we heard a range of opinions on how effective this use was.

**Land and Water Boards:** The LWBs use traditional knowledge to make decisions on preliminary screenings, in setting the terms and conditions of water licences and land use permits, and in the review and approval of some plans required under licences and permits. We heard that the level of comfort with using traditional knowledge in decision making varies depending on land claim status.

The regional LWBs (Sahtu, Gwich’in and Wek’èezhìi) report a greater degree of comfort with using traditional knowledge in decision making than the MVLWB, with the following reasons cited as contributing factors:

- Regional panels draw upon the Renewable Resource Boards and Councils (where established) to bring forward community level information and their own traditional knowledge research.
- Membership of regional panels is more likely to include members from the communities within the settled land claim region.
- The Sahtu and Gwich'in LWBs require compensation agreements and access agreements for work on Aboriginal-owned lands to be signed prior to the issuance of water licences and land use permits, respectively. This requirement opens lines of communication between applicants and developers and Aboriginal governments and requires adherence to the traditional knowledge related protocols established by the Aboriginal governments.
- Aboriginal organizations (e.g. Gwich'in Social and Cultural Institute) have also been established in settled claims areas to promote and protect Aboriginal ways of life and knowledge and to collect, document and report traditional knowledge to the relevant LWB.

Despite these regional differences, we found that LWBs face common challenges when using traditional knowledge in decision making. These include short timelines for preliminary screenings of land use permits; creating enforceable permit and licence conditions based on the traditional knowledge provided; and the fact that site-specific traditional knowledge is not always available.

Improvements in the incorporation and role of traditional knowledge in *MVRMA* decision making have been observed but its use still lags behind that of science. All parties to the *MVRMA* processes, especially the land and water boards and MVEIRB, need to maintain focus on this key issue.

**Recommendation 12:** Aboriginal groups, with assistance from the federal government and the GNWT, should create and deliver regionally-based training programs to be periodically provided to all parties to *MVRMA* processes with the objective of raising awareness of the importance: of preserving traditional knowledge; culturally appropriate ways of collecting, documenting, verifying and reporting traditional knowledge; appropriate uses of traditional knowledge within the context of *MVRMA* processes; and, regional expectations.

**Recommendation 13:** INAC should review with *MVRMA* Boards the merits of creating new traditional knowledge/community consultation<sup>32</sup> staff resource(s) to be shared between Boards, which would liaison closely with regional Aboriginal governments and communities with the objective of assisting Boards and applicants and developers in understanding regional community consultation expectations and working with Aboriginal groups to facilitate the incorporation of traditional knowledge expectations in decision making.

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<sup>32</sup> The recommendation for a shared resource community consultation position made in Section 3.5 has been incorporated in this recommendation in consideration that the staff position(s) could full both roles.



## 6.0 STATUS OF THE ENVIRONMENT SUMMARY

### 6.1 INTRODUCTION

A major component of the 2010 NWT Audit was an evaluation of information on the environment in order to determine trends in environmental quality, potential contributing factors to changes in the environment and the significance of those trends. The detailed findings of this evaluation will be presented in a separate companion document entitled *NWT Environmental Audit 2010 – Supplementary Report on the Status of the Environment*. This chapter provides a high-level overview of the Status of the Environment (SOE) report.

The term “environment” is broadly defined as follows:

*The components of the Earth and includes:*

- a) land, water and air, including all layers of the atmosphere;*
- b) all organic and inorganic matter and living organisms; and,*
- c) the interacting natural systems that include components referred to in paragraphs (a) and (b).*

Given the above context, the SOE report covers seven major components of the NWT environment:

- atmospheric environment (including air quality, climate and climate change);
- freshwater aquatic environment;
- marine environment;
- terrestrial environment;
- permafrost, ground ice and snow;
- human health; and,
- socio-economic and community wellness.

### 6.2 SUMMARY OF SIGNIFICANT TRENDS

As was found with the 2005 SOE, overall, environmental quality in the NWT was found to be favourable for most components. In some cases it was difficult to determine the current condition of an environmental component or evaluate trends due to a lack of adequate baseline data for the NWT. Where data were sufficient, several instances of unfavourable conditions and deteriorating trends were identified. The two most disturbing of these are: the recent large decreases recorded for the size of caribou herds that Aboriginal people living in the NWT rely on as a major source of subsistence; and, the need for action in the area of socio-economics and community wellness.

The most significant development in the status of terrestrial mammals in the NWT since the 2005 SOE is the massive decline in major barren-ground caribou herds. Surveys conducted in 2005 and 2006 indicated many of the mainland herds in the NWT had declined. The change in herd size has led to major restrictions on hunting. By 2010 most resident and outfitter hunting of caribou was closed. All harvest of Cape Bathurst herd was closed. Aboriginal harvest of Bluenose West and Bathurst Caribou

was restricted. As noted in 2005, with changes to the environment from climate change and the potential for increasing development near calving grounds, the need for accurate data on the status of the individual caribou herds and their habitat is increasingly important.

With respect to socio-economics and community wellness, while traditional economic indicators show that the NWT population and economy are growing, progress in community wellness have not kept pace with numerous measures of social well-being being found to be less favourable than national averages. In the case of education, while data show that secondary school graduation rates have increased steadily since 2004–05, other key indicators of student achievement (e.g., Alberta Achievement Test results, secondary school diploma examination results, and functional grade levels) show limited or no progress since 2004–05. Overall, social problems appear even more pronounced in the NWT smaller communities and are more associated with the Aboriginal population. This situation requires action by government agencies that have health and social service mandates.

Looking forward, climate change is expected to have a profound effect on the Canadian North. Evidence of Arctic warming comes from the widespread melting of glaciers and sea ice, and a shortening of the snow season. The potential effects extend to all components of the environment ranging from: increasing precipitation; shorter and warmer winters; substantial decreases in snow and ice cover; loss of permafrost conditions in some parts of the NWT; increased erosion of river banks and shorelines; changes in vegetation coverage and animal habitat; increased mobility of nutrients and organic and inorganic contaminants; and, changes in the quality and availability of traditional foods. These projected changes are likely to persist for centuries.

Additional research is required in a number of areas to improve the understanding of the effects of climate change on all components of the environment. The magnitude, frequency, and causes of extreme events in Arctic weather, stream flow, lake and sea ice, snow cover and other climatic-related variables need careful study in order that trends in global climate change are correctly interpreted and understood.

## **7.0 CONSIDERATIONS FOR FUTURE AUDITS**

We have identified the following considerations for future NWT Audits:

1. The 2010 NWT Audit was the first NWT Audit where there were recommendations from a previous Audit requiring review. Lead agencies disagreed with a number of recommendations made in the 2005 NWT Audit. There are no protocols in place for the disposition of recommendations that have not been accepted. The ASC should provide a protocol for addressing such situations.
2. INAC's response to the first audit was made over 1.5 years after release of the 2005 NWT Audit Report. Consideration should be given to establishing a shorter timeframe within which a response to an NWT Audit is to be made public and when progress reports should be published.
3. Significant effort was spent on identifying potential audit participants. ASC members have knowledge of the respective organizations within their regions which should be considered for inclusion in the audit process. To allow for the more efficient use of audit time, ASC members should provide a preliminary, comprehensive list of potential audit participants and their contact information.
4. Open houses were generally poorly attended. Given the significant cost associated with these open houses, the ASC should consider whether open houses continue to be a component of the NWT Audit Terms of Reference and if so, identify methods to enhance participation rates.
5. Given the lack of information on the success of IBAs and the importance on SEMAs, it is recommended that the next audit include focused discussions with parties to these agreements to determine whether these parties feel that the IBAs and SEMAs are working as intended.

## 8.0 SUMMARY OF RECOMMENDATIONS AND OPPORTUNITIES FOR IMPROVEMENT

### 8.1 RECOMMENDATIONS

The following new recommendations were made in the 2010 NWT Audit:

<b><i>Recommendation # (Location in Report)</i></b>	<b><i>Recommendation</i></b>
<b>Recommendation 1: (Section 2.1)</b>	<i>2005 NWT Audit recommendations (modified as applicable) which have not been fully closed should be implemented, with a prioritization on the foundational issues identified in Section 2.2.2.</i>
<b>Recommendation 2: (Section 3.1)</b>	Under its Action Plan to Improve Northern Regulatory Initiatives, INAC should implement legislative changes specifying maximum timelines within which to make ministerial decisions.
<b>Recommendation 3: (Section 3.4)</b>	As part of its Northern Regulatory Improvements process, INAC should identify and secure (1) sources of stable, long term funding for the MVLWB, MVEIRB and WLWB and for training programs for all MVRMA Boards, and (2) a mechanism to provide timely, flexible funding to the LUPBs, LWBs and MVEIRB for fluctuations in capacity demands and other projects such as Standard Procedures and Consistency Working Groups.
<b>Recommendation 4: (Section 3.4)</b>	With the support of INAC BRS, Boards should formalize core training requirements for board members and staff to allow for adequate long term funding of training requirements. In identifying training priorities, consideration should be given to training needs related to outputs of the Standard Procedures and Consistency Working Groups and to extending the scope of board member orientation and staff training to include basic technical knowledge on the activities and environmental issues associated with developments typical in the NWT.
<b>Recommendation 5: (Section 3.4)</b>	To enhance trust in the MVRMA Board appointment process, INAC should either abandon its requests for multiple nominees to fill Board vacancies or implement and maintain an awareness campaign and/or materials to communicate the perceived benefits of such a process.
<b>Recommendation 6: (Section 3.6)</b>	The MVEIRB, in consultation with Aboriginal groups, the Tłıchǫ Government, INAC, GNWT and the LWBs, should seek to achieve clarity and develop consensus-based guidelines for the application of <i>public concern</i> in the preliminary screening and EA processes <sup>33</sup> . Included in these discussions should be consideration of ways to employ s. 22.(2)(b) of the MVLUR to reduce the number of applications going to EA due to <i>public concern</i> .

<sup>33</sup> The MVEIRB's *Reference Bulletin: Operational Interpretation of Key Terminology* (May 2006) could be used as a starting point for these discussions.

<b>Recommendation # (Location in Report)</b>	<b>Recommendation</b>
<b>Recommendation 7: (Section 3.7)</b>	As part of the current round of legislative reform INAC should address the discrepancy between the Guiding Principles of Part 5 of the MVRMA which includes economic well-being and the definition of impact on the environment which does not include an explicit reference to economic considerations.
<b>Recommendation 8: (Section 3.10)</b>	The MVEIRB should expedite efforts to complete cooperative agreements for environmental assessments with the authorities responsible for the examination of environmental effects of projects in Alberta and British Columbia to formalize the right to participate in transregional EAs for projects that might have a significant adverse impact on the environment in the Mackenzie Valley.
<b>Recommendation 9: (Section 3.11)</b>	INAC (Indian and Inuit Services, Operations and Justice), the Salt River and K'at'l'odeeche First Nations, the MVLWB and MVEIRB should work together to fully define and resolve issues associated with environmental assessment and regulatory processes for reserves in the NWT.
<b>Recommendation 10: (Section 5.3)</b>	The federal and territorial governments, either through CIMP or other means, should provide adequate long term, stable funding to Aboriginal organizations to create their own traditional knowledge research programs (including training of local Aboriginal researchers) and repositories for collected knowledge.
<b>Recommendation 11: (Section 5.3)</b>	The Prince of Wales Northern Heritage Centre, directly working with Aboriginal peoples, should develop a partnership program to improve and expand upon the existing archaeological and heritage resources database.
<b>Recommendation 12: (Section 5.7)</b>	Aboriginal groups, with assistance from the federal government and the GNWT, should create and deliver regionally-based training programs to be periodically provided to all parties to MVRMA processes with the objective of raising awareness of the importance: of preserving traditional knowledge; culturally appropriate ways of collecting, documenting, verifying and reporting traditional knowledge; appropriate uses of traditional knowledge within the context of MVRMA processes; and, regional expectations.
<b>Recommendation 13: (Section 3.5 &amp; 5.7)</b>	INAC should review with MVRMA Boards the merits of creating new traditional knowledge/community consultation staff resource(s) to be shared between Boards, which would liaison closely with regional Aboriginal governments and communities with the objective of assisting Boards and applicants and developers in understanding regional community consultation expectations and working with Aboriginal groups to facilitate the incorporation of traditional knowledge expectations in decision making.

## 8.2 OPPORTUNITIES FOR IMPROVEMENT

The following opportunities for improvement were identified in the 2010 NWT Audit Report:

- We encourage the MVEIRB to consider alternate approaches used in other jurisdiction to expedite the EA process, such as Class EAs or calling upon developers to draft Terms of Reference which are then critiqued by parties during the scoping phase. (Section 3.1)
- Given delays in the post-REA process, we also encourage the MVEIRB during its review of EA to consider options to expedite the post-REA process. (Section 3.1. Note: Additional commentary provide in Section 3.1)

- Given the difference in approaches in communicating the Selwyn Resources and Tamerlane Ventures Responsible Ministers' decisions for projects not referred to EIR by the MVEIRB, we encourage INAC to ensure LWBs understand expectations in this regard. (Section 3.1)
- We encourage INAC to assist interested parties in understanding constraints limiting openness and transparency in the post-REA process to allay some of the concerns we identified. (Section 3.1)
- We encourage the APWG to include within its terms of reference Land Use Permit renewals. (Section 3.2)
- We encourage the Boards' T&CWG to consider applicant perceptions that (1) issues of marginal relevance or value require applicant responses, and (2) Boards included terms and conditions in response to "any and all" comments received as it develops its work products. (Section 3.2)
- We strongly encourage the Working Groups to review the concerns identified in this Audit Report relative to their identified lists of products and process changes and make modifications as appropriate. (Section 3.2)
- We encourage the MVEIRB and Responsible Ministers to continue to work together to gain a more full understanding of mitigative measures which fulfill MVEIRB's mandate while being acceptable to Responsible Ministers, thereby allowing Responsible Ministers to make more timely decisions. (Section 3.3)
- We encourage the LWBs to examine ways to minimize the need to reassign active files managed by remaining staff when balancing workloads resulting from employee turnover. (Section 3.4)
- We encourage INAC to look closely at results from the Tłıchǫ direct appointment situation when determining whether to extend this right to other boards and parties. (Section 3.4)
- Continued co-operative efforts are required between Aboriginal organizations, MVRMA Boards and government to minimize the extent to which community engagement and consultation guidelines conflict. (Section 3.5)
- We encourage efforts to optimize the effectiveness and efficiency of inspection activities, primarily focused on the MGP, be extended to the whole of the Mackenzie Valley, including consideration of which processes (e.g. Ontario's Regulatory Modernization Act, 2007) which allow GNWT and federal government officials who see something that concerns them during an inspection that is beyond their mandate to enforce, to tell the responsible authority about it. (Section 3.8)
- We encourage the INAC and LWB Working Groups addressing security-related issues to work in a cooperative manner to ensure consistency of process and outcomes (Section 3.9)
- We encourage land use planning bodies to work co-operatively to minimize disjoints at plan boundaries. (Section 3.10)
- We encourage organizations working on traditional knowledge guidance to coordinate efforts to: minimize inconsistency; remain compatible with the views of Aboriginal groups, which can vary between culture group and communities; and, revise documents as perspectives evolve. (Section 5.2)
- We encourage the LWB APWG to include consideration of identifying the role of traditional knowledge in determining potential impact significance and the delineation of areas that are highly culturally or ecologically sensitive or valued in its work. (Section 5.2)
- We encourage INAC to incorporate results of the Beaufort Region Environmental Assessment and Monitoring Program to minimize planning duplication and overlap with the recently announced Beaufort Region Environmental Assessment initiative. (Section 4.5)
- Given MVRMA and regulatory constraints on performance-based terms and conditions, we encourage the LWB T&CWG to consult with INAC, Operations Directorate to ensure proposed terms and conditions, particularly any performance-based or management plan-based terms and conditions are enforceable and consistent with the MVRMA and regulations. (Appendix A: 2005 NWT Audit Recommendation 10)

- Government organizations should consider whether there are any benefits to advising boards of the reason (e.g., outside mandate, no concerns with project) when a decision not to participate in EIA is made. (Appendix A: 2005 NWT Audit Recommendation 20)

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Table A.1 –2005 Audit Recommendations - Closed

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
4. Boards and governments should continue their efforts to educate participants in the requirements of the approvals process.	<b>SHARED /</b> Joint function of boards & government (including INAC)	<p><b>Continuing efforts are being made to educate participants in the requirements of the approvals process. (CLOSED)</b></p> <p><i>A number of new and ongoing initiatives geared at educating participants were observed. Example include:</i></p> <ul style="list-style-type: none"> <li>• MVEIRB presentations at numerous conferences and workshops within and outside the Mackenzie Valley;</li> <li>• MVEIRB staff visits to schools and workshops in communities throughout the Mackenzie Valley;</li> <li>• Additional s.120 Guidelines by MVEIRB on socio-economic impact assessment in 2007;</li> <li>• Improved Board web sites (in particular MVEIRB, Board Forum and MVLWB) and government websites;</li> <li>• MVLWB and MVEIRB Newsletters;</li> <li>• s.106 Working Groups which are defining guidelines for products and review processes;</li> <li>• ENR's Commercial Timber Harvest Planning and Operations Standard Operating Procedures Manual to guide applicants and developers applying to harvest timber and in preparing harvest plans;</li> <li>• Periodic NEB presentations on its environmental screening and regulatory decision process.</li> </ul> <p><b>A new recommendation has been made in Section 3.8 of the 2010 Audit Report to implement a long-term, programmatic approach to participant education.</b></p> <p><b>Impact of Implementation Efforts:</b> Effective. We observed a generally higher degree of awareness of MVRMA processes during the 2010 NWT Audit than during the 2005 NWT Audit with associated improvement in system processes.</p>
7. The Sahtu LWB should augment its current summary comment tables to include a column that shows how each application review comment has been addressed (e.g., one consolidated disposition table).	<b>SLWB /</b> Sahtu Land & Water Board	<p><b>SLWB has implemented a Record of Dispositions Summary Sheet as routine procedure. (CLOSED)</b></p> <p><b>Impact of Implementation Efforts:</b> Effective. The use of the Record of Dispositions Summary Sheet has added clarity of process to SLWB decision making.</p>
8. Federal and territorial departments should develop formal agreements and applicable training programs to ensure that all permit and licence conditions are subject to inspection and enforcement by appropriate regulatory authorities. As the lead department for the MVRMA, INAC should take the leadership role in ensuring this occurs.	<b>INAC /</b> Federal & territorial departments	<p><b>INAC has the exclusive mandate to inspect and enforce authorizations under the MVRMA. (CLOSED)</b></p> <p><i>This recommendation is linked to NWT 2005 Audit Recommendation 9 and was driven by the inclusion of unenforceable terms and conditions in MVRMA authorizations.</i></p> <p><i>INAC inspectors only inspect and enforce terms and conditions consistent with legislative authorities under the MVRMA and associated regulations. Conditions not meeting these criteria (e.g., fish screens on water intakes, requirement to cease operations when caribou are in the area; air quality; wildlife protection; social, economic or some cultural aspects) are not enforced by INAC nor by other inspection authorities (e.g., ENR, DFO) as they have no mandate under the MVRMA. INAC inspectors indicate that the extent to which unenforceable conditions are included in authorizations varies by board, with more issues noted with water licences.</i></p> <p><b>Impact of Implementation Efforts:</b> Effective. MVLWBs demonstrated increased awareness of enforceable terms and conditions and demonstrated better efforts at limiting terms and conditions to those that are enforceable by INAC.</p>
20. It may be beneficial for government agencies and departments to develop policy guidelines to communicate the rationale for when departmental participation is or is not deemed to be required at community hearings and public information sessions.	<b>SHARED /</b> Government agencies	<p><b>Governments are participating at community hearings and public information sessions based on the information being presented and on available resources. (CLOSED)</b></p> <p><i>Government organizations are participating in community hearings and public information sessions subject to resource availability and, for some organizations (e.g., GNWT) based on the information being presented. INAC in particular has written to MVEIRB conveying its commitment to participation. While GNWT has no policy guidelines, its approach is to participate at community hearings and public information sessions based on the information being presented at the meeting/hearing and on available resources.</i></p> <p><i>Government organizations should consider whether there are any benefits to advising boards of the reason (e.g., outside mandate, no</i></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
		<p>concerns with project) when a decision not to participate is made.</p> <p><b>Impact of Implementation Efforts:</b> No specific actions were undertaken in response to the recommendation. It was closed due to its general nature and absence of similar issues or concerns noted in the 2010 NWT Audit.</p>
21. Nominating parties should submit nominees no later than four months prior to the expiry of a sitting member's term of office.	SHARED / Nominating Parties (various)	<p><b>The timeliness of the nominations process has improved allowing Boards, with isolated exceptions, to maintain quorum since 2005. (CLOSED)</b></p> <p><i>With a growing awareness of the time required for appointments, nominating parties have largely resolved issues around the timeliness of their nomination process resulting in a significant reduction in the quorum issues since 2005. The Board Relations Secretariat reported that in last 2 years, approximately two Boards were out of quorum for less than 8 weeks. Most delays now appear to be on the appointment side of the process.</i></p> <p><b>Impact of Implementation Efforts:</b> Effective. Since to 2005 NWT Audit, we found substantively fewer instances where Board quorum could not be met due to lack of Board members.</p>
26. Similar to the MVEIRB, other Boards should prepare guidance regarding the job functions and expectations of board members. This guidance should be provided to nominating organizations.	SHARED / Boards	<p><b>Board Member roles, responsibilities and expectations are defined in Orientation Materials (CLOSED)</b></p> <p><i>Significant work has been carried out to develop an Orientation Binder for NWT Board Members and associated orientation modules, both on an individual Board level and by the NWT Board Forum Training Initiative. These modules include information on board member roles and responsibilities. These materials are available to nominating organizations through the NWT Board Forum website.</i></p> <p><b>Impact of Implementation Efforts:</b> Effective. Board Member roles are now clearly defined and Board Members are made aware of these responsibilities through training programs. Compared to the 2005 NWT Audit, we heard little criticism of and concern over competency of Board Members.</p>
27. With full support from INAC, the Boards should lead the development and implementation of comprehensive training for board members.	SHARED / Boards	<p><b>Orientation materials for MVRMA board members have been developed. (CLOSED)</b></p> <p><i>See NWT 2005 Audit Recommendation 26.</i></p> <p><i>Board may wish to consider whether training materials for different classes of projects (e.g., quarries, mining, oil &amp; gas, water supply and treatment) would enhance board member capacity and understanding.</i></p> <p><b>Impact of Implementation Efforts:</b> Effective. See NWT 2005 Audit Recommendation 26 for details.</p>
29. Consideration should be given to extending the Preliminary Screening review timeframe beyond the current 42 days to facilitate community input.	SHARED / Boards & INAC	<p><b>Section 22.(1)(b) of the MVLUR provisions can be used to extend the review period if required for additional community consultation. (CLOSED)</b></p> <p><i>INAC is not in agreement with this recommendation and has no current plans to amend the Mackenzie Valley Land Use Regulations to extend the Preliminary Screening review timeframe beyond the current 42 days. INAC noted that the Mackenzie Valley Land Use Regulations provide for the land use permit preliminary screening timeframe to be extended beyond 42 days if "further study" is required and indicated that if communities request an extension to the comment deadline on or before the deadline, the Land and Water Boards are generally willing to extend deadlines.</i></p> <p><i>Some Land and Water Boards have indicated that they invoke the "further study" provision if additional time is required to confirm the adequacy of Crown consultation, in part because 42 days is not adequate, often resulting in longer delays as Boards must use other mechanisms to allow adequate time for the process to be completed.</i></p> <p><b>Impact of Implementation Efforts:</b> No changes were made.</p>
32. The next NWT Audit should evaluate whether adequate firewalls exist between the different mandates of regulatory authorities, particularly within INAC and the GNWT.	INAC / INAC	<p><b>The 2010 NWT Audit heard no evidence to suggest that environmental protection was being compromised as a result of conflicting mandates within INAC and GNWT. (CLOSED)</b></p> <p><i>An evaluation of conflicting mandates between various INAC directorates and GNWT departments was not included in the Terms of Reference for this Audit. Given isolated concerns we heard over this matter, this recommendation was included as a line of inquiry in</i></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
		<p>the Audit. We did not, however, focus on the internal operations of government.</p> <p>While the potential for conflicting mandates exist, particularly given GNWT's one window approach to providing input on EAs and discussions held within the federal family (e.g., DFO, EC, INAC) to promote a consistent position, we heard no evidence to suggest that environmental protection was being compromised. Government personnel with mandates for socio-economic and environmental files did not indicate that their concerns were not adequately reflected in government submissions. The potential for conflicting mandates within the preliminary screening process is lessened for GNWT departments, as each department is responsible for its own submission.</p> <p><b>Impact of Implementation Efforts:</b> No changes made. Concerns noted in the 2005 NWT Audit were not prevalent in this Audit.</p>
33. Government departments should identify and evaluate mechanisms to optimize the use of existing technical expertise, including collaborative measures between various levels of government.	SHARED / All Government Agencies	<p><b>Collaboration between the Federal government and GNWT occurs, but is largely ad hoc. (CLOSED)</b></p> <p>A formal evaluation of opportunities for collaboration between Federal government departments, GNWT and Aboriginal and local governments have not occurred. GNWT indicated that it works cooperatively with federal departments and Aboriginal and local governments on matters that require specific technical expertise related to practices and processes, and will continue to do so. INAC indicated that it seeks opportunities to collaborate with other organizations for board submissions, technical expertise and external consultants. During environmental assessments and major regulatory processes, INAC indicated that its staff meets regularly with other government parties and work together as required. Although the formal review has not occurred, informal arrangements are in place to coordinate work which meet the intent of the recommendation</p> <p><b>Impact of Implementation Efforts:</b> No formal changes were made. Concerns noted in the 2005 NWT Audit were not prevalent in this Audit. Informal mechanisms in place appear to limit overlap of efforts.</p>
36. INAC should lead a study to specifically assess the consultation process to identify those aspects that are working well and result in public satisfaction, and those areas that are ineffective and need revision.	INAC / INAC	<p><b>No action taken. (CLOSED)</b></p> <p>INAC has indicated that with respect to the procedural aspects of Aboriginal Crown consultation that are undertaken by the MVRMA Boards, a public study would be inappropriate, as the Crown's duty to consult is a common law legal obligation, and not one that should be influenced by public opinion, especially given the complexity and rapidly evolving nature of the law.</p> <p>A broader assessment of the MVRMA consultation process in its entirety has not been undertaken. Given the uncertainty in consultation requirements at this time, the completion of such a study may be premature. Therefore, we have considered this recommendation CLOSED.</p> <p><b>Impact of Implementation Efforts:</b> Not applicable</p>
41. MVEIRB's TK in EIA Guidelines should be reviewed by all participants in the environmental management process to assess their broader applicability.	SHARED / All agencies in EA process & MVEIRB	<p><b>Parties to MVRMA processes are familiar with MVEIRB's Traditional Knowledge in EIA Guidelines. (CLOSED)</b></p> <p>This recommendation focused on awareness of the MVEIRBs Traditional Knowledge in EIA Guidelines. This has been accomplished. Efforts have now shifted to developing guidelines for the collection and use of traditional knowledge (see Section 5.2).</p> <p><b>Impact of Implementation Efforts:</b> Difficult to assess impact as recommendation was general in nature. We noted that LWBs and First Nations were working on guidelines specific to their individual needs and circumstances.</p>
42. If requested, government agencies should assist Aboriginal communities in their efforts to collect and compile TK in a way that is amenable to use in environmental decision-making.	SHARED / Government Agencies	<p><b>INAC and the GNWT have provided support Aboriginal communities in their efforts to collect traditional knowledge. (CLOSED)</b></p> <p>Aboriginal groups and organizations emphasized that traditional knowledge research needs to be community driven to ensure research is completed in culturally appropriate ways. The GNWT provides assistance to groups and communities interested in collaborating on traditional knowledge research through in-kind support and by some limited contributions to communities wanting to develop capacity to carry out traditional knowledge research. INAC, through CIMP has also provided funding for traditional knowledge projects.</p> <p>Given the loose, ad hoc manner in which this recommendation was phrased, we have considered it CLOSED. A new recommendation is provided in Section 5.3 to address support for a more strategic, long-term approach to the collection of traditional knowledge.</p> <p><b>Impact of Implementation Efforts:</b> Difficult to assess impact as recommendation was general in nature.</p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
48. Verification of TK used in environmental decision-making should be carried out in a respectful manner.	<b>SHARED /</b> All parties	<p><b>While the adversarial nature of the EIA and regulatory process may be cause holders of traditional knowledge some discomfort, we heard of no significant issues with verification of traditional knowledge during the EIA and regulatory processes. (CLOSED)</b></p> <p><i>MVRMA Boards rely on Aboriginal groups and other parties to provide traditional knowledge and to raise concerns about the authenticity of any information submitted as traditional knowledge. The Dehcho First Nations, Gwich'in Tribal Council, the MVEIRB, Dehcho Land Use Planning Committee, SLWB and the GNWT have prepared protocols and other "best-practice" documents to improve traditional knowledge processes, including verification.</i></p> <p><i>Given the difficulty in verifying implementation of this recommendation we have considered this recommendation to be CLOSED. We encourage all parties to operate under the principle of respect in this and all matters within the EIA and regulatory processes.</i></p> <p><b>Impact of Implementation Efforts:</b> <i>Difficult to assess impact as recommendation was general in nature.</i></p>

Table A.2 –2005 Audit Recommendations - Unresolved or In Progress

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
<p>1. The Sahtu Land Use Plan should be completed and approved as soon as possible.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<b>SHARED /</b> Sahtu LUPB	<p><b>An approved Land Use Plan has not been issued. (IN PROGRESS)</b></p> <p><i>Over the 2008/09 period, new SLUP board members were appointed and new staff hired. A 3-Year Strategic Workplan and Budget prepared in 2008 identified the funds, human resources and activities required to complete the Plan. The SLUPB received significant additional incremental funding for the last two fiscal years to hire technical planning staff and to undertake the required research and consultations. Draft 3 of the Sahtu Land Use Plan was issued for public comment on July 12, 2010. Subject to adequate funding, a Final Draft for submission to the Parties for approval is anticipated by the end of the 2010/11 fiscal year.</i></p>
<p>2. In partnership with Canada and the GNWT, Aboriginal groups in areas that lack land use plans should take immediate steps to develop and implement plans for their areas. This should be performed in consultation with interested parties. If required, provisions to honour these plans should be established until land claims agreements are settled.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<b>SHARED /</b> Land Use Planning Boards	<p><b>No new Land Use Plans have been approved. (UNRESOLVED)</b></p> <p><i>Land use planning continues in some regions. See Table 2.3 for status of all Land Use Plans.</i></p>
<p>3. In areas where land use plans have been approved, and in new land use plans, consideration should be given to the identification of development density thresholds.</p>	<b>SHARED /</b> Land Use Planning Boards	<p><b>Density thresholds have not been included in any approved Land Use Plans. (UNRESOLVED)</b></p> <p><i>Density thresholds have only been included in the unapproved 2006 Final Draft Dehcho Land Use Plan (Table 2).</i></p> <p><i>The SLUPB is considering the use of landscape thresholds and held a workshop in 2007 on their use. While generally supported, it was recognized that this is a contentious issue and plan approval should not be delayed by their inclusion. The SLUPB undertook further research on thresholds and is considering how best to incorporate these into the plan in a way that will not be a barrier to approval.</i></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
		<p>Thus far, the SLUPB indicated that it has seen no evidence that the GNWT or INAC are willing to accept attempts to implement thresholds. INAC indicated concern if density thresholds could not be supported with traditional knowledge or scientific evidence.</p> <p>The GLUPB indicated that it is difficult to determine thresholds (development density) for land use without adequate information from CIMP.</p> <p>MVEIRB has participated in a research project to define and develop thresholds for valued ecosystem components. MVEIRB encourages the consideration of thresholds.</p>
<p>5. Canada (including the NEB), the GNWT and LWBs need to reach an understanding on jurisdiction over air quality throughout the NWT. Based on this understanding, appropriate regulatory tools for the establishment and enforcement of air quality standards should be created and implemented.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<p><b>SHARED /</b> Joint Canada, GNWT &amp; Land and Water Boards</p>	<p><b>Significant gaps in the regulation of air quality still exist. (UNRESOLVED)</b></p> <p>Limited progress has been made on the regulation of air quality (AQ) through a patchwork of initiatives. While the GNWT advocates a consistent and coordinated approach on AQ by all regulatory agencies in the NWT and is prepared to participate in further discussions with affected agencies, such an approach is lacking. While the NWT Environmental Protection Act (EPA) is a law of general application that applies to the whole of the Northwest Territories, by policy and practice, ENR develops and delivers environmental management programs for Commissioner's Lands only. GNWT provides advice and recommendations to federal and Aboriginal regulatory agencies on AQ and emissions management. GNWT acknowledges responsibility for AQ on Commissioner's Land but has issued no regulations. INAC has deferred to Environment Canada as the federal lead on AQ but Environment Canada has played a limited role in the regulation of AQ in the NWT. INAC inspectors have indicated that they will not enforce AQ conditions in MVRMA authorizations unless there is a clear linkage to deposits onto land or water. The Canadian Council of Ministers of the Environment is working on a Comprehensive Air Management System (CAMS) for Canada which speaks to the issue of who is responsible for what and which may resolve some of the jurisdictional uncertainty in the NWT.</p> <p>Measure undertaken to close some of the regulatory gaps include:</p> <ul style="list-style-type: none"> <li>• Use of Environmental Agreements to address AQ monitoring plans at mines;</li> <li>• Incorporation of terms and conditions for incinerator emissions in some licences and permits by linking air emissions to deposits of waste in waters and the protection of the biological or physical characteristics of the lands (MVLUR, s.26.1 (q)) (led by Environment Canada); and,</li> <li>• Regulation of upstream oil and gas activities, including flaring and production operations, which can result in air emissions by the NEB. Operators must demonstrate to the NEB that their operations meet ambient AQ objectives and standards. NEB has also made some movement in requiring AQ Management Plans for oil and gas projects.</li> </ul>
<p>9. Regulatory agencies should develop cooperative agreements to optimize the effectiveness and efficiency of inspection activities.</p> <p><b>SEE REVISED RECOMMENDATION UNDER STATUS/COMMENTS</b></p>	<p><b>SHARED /</b> Regulatory Agencies</p>	<p><b>Interagency agreements and cooperative measures for regulatory inspections are under discussion on a limited basis, but no formal agreements have been developed. (IN PROGRESS)</b></p> <p>Within the Federal family there is some coordination. DFO, INAC and the NEB on occasion work together to ensure inspection and monitoring activities are coordinated where appropriate. INAC and NEB are in process of developing an Interagency Agreement for inspections.</p> <p>The GNWT sees benefit in cooperatively addressing compliance inspections. Currently the GNWT is participating in An Inspection and Enforcement Working Group under the Regulators Agreement for the Mackenzie Gas Project. One of the purposes of this working group is to optimize the effectiveness and efficiency of inspection activities. This can serve as a model for other major projects.</p> <p>An interagency spill investigation agreement has been entered into between INAC and GNWT which defines roles and responsibilities for the investigation of spills in the NWT.</p> <p><b>Revised Recommendation 9-RA: INAC, should, with the involvement of DFO, Environment Canada, NEB and GNWT ENR assess and implement, as feasible, strategies, including legislative change as required, to foster co-operative and co-ordinated inspection and enforcement for environmental protection in the Mackenzie Valley. The Inspection and Enforcement Working Group under the Regulators Agreement for the MGP could serve as a forum and model for these broader discussions.</b></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
<p>10. LWBs should ensure that permit and licence conditions are written in such a manner as to be inclusive of all mitigative and monitoring requirements and to provide operational flexibility while being protective of the environment by establishing performance-based requirements.</p>	<p><b>LWBs /</b> Land &amp; Water Boards and MVEIRB</p>	<p><b>While a mix of prescriptive and performance-based standards is being applied, the scope of regulations made under the MVRMA continues to limit the ability for authorizations to be inclusive of all recommended mitigations. Alternate approaches are required. (IN PROGRESS)</b></p> <p><i>INAC Operations Directorate's position is that regulations made under the MVRMA limit the types of mitigative measures that are enforceable in MVRMA authorizations (e.g., air quality, wildlife, socio-economic and some cultural terms and conditions are not enforceable). Some alternate non-regulatory mechanisms are used on an ad-hoc basis to address these gaps (e.g., Environmental and Socio-Economic Agreements, developer commitments). INAC Operations Directorate's position is that certain monitoring and mitigative measures are within the mandate of regulatory bodies other than LWBs/INAC cannot be included in permit or licence conditions and should be included in other authorizations.</i></p> <p><i>The LWB T&amp;CWG is working on developing enforceable permit and licence conditions and is addresses the issue of "orphan measures". While this focus resolves the inspection issue, full regulation of the environment requires more than the land use permits and water licences (i.e., the broader issue of regulatory gaps addressed under other recommendations). Orphan measures, particularly in the EA process, have not been resolved to everyone's satisfaction. See NWT 2005 Audit Recommendation 9 above.</i></p> <p><i>Land use permits tend to be more prescriptive than water licences as projects tend to be simpler and more amendable to prescriptive terms and conditions. We saw some use of performance-based terms and conditions and management plans with performance-based content being used to allow larger projects flexibility in managing environmental impacts. The inclusion of performance-based terms and conditions is consistent with requests by larger applicants to move away from prescriptive terms and conditions (e.g., a rotating biological contactor must be 38 used to treat septic waste).</i></p> <p><i>INAC, Operations Directorate, however, indicated that short of repealing and rewriting the MVRMA and regulations to become performance-based, there is no ability to change the intent of the MVRMA and regulations, which were developed, consulted on, and promulgated on the premise of specificity.</i></p> <p><i>As the LWB T&amp;CWG's work on terms and condition is not completed, this recommendation was classed as IN PROGRESS. Given MVRMA and regulatory constraints on performance-based terms and conditions, we encourage the LWB T&amp;CWG to consult with INAC, Operations Directorate to ensure proposed terms and conditions, particularly any performance-based or management plan-based terms and conditions are enforceable and consistent with the MVRMA and regulations.</i></p>
<p>12. INAC and the LWBs should collaborate on the collection and sharing of information required for licensing, inspection and enforcement activities, without compromising potential prosecutions.</p>	<p><b>SHARED /</b> INAC &amp; Boards</p>	<p><b>Inspection reports for MVRMA authorizations are being provided to Boards for posting on Public Registries, with the exception of ongoing investigations. (IN PROGRESS)</b></p> <p><i>An INAC Field Operations Directive has been developed to provide guidance on information sharing related to inspection and enforcement activities. This information has been shared with the inspectors and the LWBs. INAC inspection reports of authorizations under MVRMA are routinely made available to the Boards.. An exception is made for "ongoing investigations" where information may be required for legal proceedings. Boards expressed satisfaction with this process.</i></p> <p><i>We heard from a range of individuals that inspection reports were still not available, suggesting that ongoing education is required to inform the public of how to access these reports and that LWBs need to continue to work on Public Registries to make these reports available. Improvements in search functions within the Public Registries would assist in locating inspection reports, which we ourselves found difficult to quickly locate. We found inspection reports posted only on the MVLWB and WLWB Public Registries.</i></p>
<p>13. The fines and penalties provisions of the MVRMA should be amended to be more consistent with CEPA, the Fisheries Act, and the NWT EPA.</p>	<p><b>INAC /</b> INAC</p>	<p><b>INAC is seeking authority to address this recommendation. (IN PROGRESS)</b></p> <p><i>INAC is seeking authority to address this recommendation.</i></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
<p>14. Institutionalized mechanisms to perform follow-up on the implementation of EA measures, particularly those which are not tied directly to a regulatory instrument, would provide an important improvement to the EA and regulatory system. To this end, it is recommended that the MVEIRB develop follow-up programs for Environmental Assessments, where appropriate.</p> <p><b>SEE REVISED RECOMMENDATION UNDER STATUS/COMMENTS</b></p>	<b>MVEIRB / MVEIRB</b>	<p><b>Regulatory changes to allow for follow-up programs for developments subject to EAs have not been made. (UNRESOLVED – REVISED RECOMMENDATION)</b></p> <p><i>The MVRMA has not been amended to allow MVEIRB to consider the need for “follow-up” programs for environmental assessments as allowed for environmental impact reviews under subsection 117(3). As such, MVEIRB does not have the authority to compel regulators or governments to report on the implementation and success of mitigation measures.</i></p> <p><i>GNWT is developing an Environmental Assessment Tracking System (EATS), a multidepartment system to support GNWT participation in environmental assessments and related activities. One of the purposes of this system is ensure that EA mitigation measures and suggestions <u>that are directed at the GNWT or within the mandate of the GNWT</u> are tracked and implemented. The EATS, under development for 4 years, is still not fully implemented.</i></p> <p><b>REVISED RECOMMENDATION 14-RA: Provisions for a follow-up program for developments subject to EA, similar to provisions under s. 117(3) of the MVRMA, should be included in the current round of revisions to the MVRMA.</b></p>
<p>15. The MVEIRB should continue to develop tools for completing social and cultural impact assessment, and monitor developments in this area in other jurisdictions.</p>	<b>MVEIRB / MVEIRB</b>	<p><b>MVEIRB has issued Socio-Economic Impact Assessment Guidelines and is developing cultural impact assessment guidelines (IN-PROGRESS)</b></p> <p><i>Since the 2005 NWT Audit the MVEIRB has issued the Socio-Economic Impact Assessment Guidelines which outline MVEIRB’s expectations for the socio-economic impact assessment of proposed developments that may have such impacts. MVEIRB anticipates issuing draft cultural impact assessment guidelines in the near future. MVEIRB also sponsored, along with IAIA Western and Northern Canada, a conference on cultural impact assessment in 2008 which assisted the Board in monitoring developments in this area.</i></p>
<p>16. In situations where measures dealing with socio-economic impacts are made in EA decisions and there is no associated regulation, governments should develop and use policy instruments to facilitate the implementation of the measures.</p> <p><b>FOUNDATIONAL ISSUE</b></p> <p><b>SEE REVISED RECOMMENDATION UNDER STATUS/COMMENTS</b></p>	<b>SHARED / GNWT</b>	<p><b>No action taken. (DIASGREE – REVISED RECOMMENDATION)</b></p> <p><i>GNWT agrees that the developer and/or relevant governments must find a means to implement recommended measures accepted by Responsible Ministers, to the extent of their authority. The GNWT, however, does not believe that policy instruments are the proper mechanism for the implementation of measures and indicated that contractual or regulatory solutions may be more appropriate.</i></p> <p><i>Socio-economic monitoring agreements, primarily used for large mining projects, and Impact-Benefit Agreements, which are confidential and not available for review, continue to be the primary instruments for addressing socio-economic issues.</i></p> <p><b>REVISED RECOMMENDATION 16-RA: The GNWT should develop and publicize a strategy, regulatory or otherwise, to be considered by LWBs and MVEIRB in addressing social, economic and cultural well-being during the EIA and regulatory process, including consideration of Project Certificates used in Nunavut.</b></p>
<p>17. Relevant government agencies need to place increased emphasis on the social, economic and cultural aspects of their mandate during EA processes.</p> <p><b>(SEE REVISED RECOMMENDATION UNDER STATUS/COMMENTS)</b></p>	<b>SHARED / All government agencies including INAC</b>	<p><b>There are differing opinions on the adequacy of government agency involvement in the EA process specific to consideration of impacts on the human environment (UNRESOLVED – REVISED RECOMMENDATION)</b></p> <p><i>We heard conflicting opinions on the adequacy of government (especially GNWT) involvement on socio-economic issues. MVEIRB believes that the GNWT is not presenting adequate information is concerned that this lack of input is resulting in recommended measures being driven by community concerns, increasing the risk that measures may not be feasible. GNWT believes that its participation emphasizes social, economic and cultural aspects to ensure that decisions balance the GNWT’s sustainable development priorities for the long-term economic, cultural and social well-being of northern residents. Without extensive case study, we cannot resolve this difference of opinions.</i></p> <p><b>REVISED RECOMMENDATION 17-RA: The GNWT and the MVEIRB should hold frank discussions to clearly understand each others’ position on what level of GNWT input is required for social, economic and cultural impact assessment during EAs.</b></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
18. MVEIRB and relevant government agencies should more thoroughly assess climate change impacts in EAs, where appropriate for the nature of the project.	<b>SHARED /</b> MVEIRB & other government agencies	<b>Increased attention is being given to climate change within the EA process (IN PROGRESS)</b>  <i>In environmental assessments initiate since 2008 MVEIRB has required developers to consider the potential impacts of climate change on the proposed development and potential contribution of the project to climate change (e.g., in the term of reference for NICO Project (2009), Yellowknife Gold Project (2008), Prairie Creek Mine (2008), Giant Mine Remediation (2008)). General guidance on incorporating climate change, particularly the contribution of a project towards climate change does not yet exist. The Taltson Hydroelectric Expansion Project (2007) referenced The Federal-Provincial-Territorial Committee on Climate Change and Environmental Assessment's Incorporating Climate Change Considerations in Environmental Assessment: General Guidance for Practitioners" as being of further guidance on climate change issues.</i>
19. The MVEIRB should have direct access to relevant government expertise at all stages in the EIA process.	<b>SHARED /</b> MVEIRB & all government agencies	<b>Governments are providing expertise as a party to the environmental assessment process. (IN PROGRESS)</b>  <i>We saw evidence of government involvement in the environmental assessment as a party to the environmental assessment. MVEIRB retains "independent experts" as required. Governments need to continue to make ensure that specialists provide input to their responses and are made available at MVEIRB proceedings, community hearings and public information sessions to address topics as appropriate. There are a variety of small things that could still occur, such as the secondment of government experts to MVEIRB and more extensive government expert involvement in the review and technical reporting during the technical phase of EAs, and most particularly in identification of implementable mitigation.</i>
22. INAC should complete its work with Boards on developing a better defined and transparent appointments process from the soliciting of nominees through to appointment by the Minister. Within this process, INAC should create a mechanism that allows nominating parties to track the status of nominees in the appointment process.	<b>INAC /</b> INAC	<b>The board appointment process has improved since the 2005 NWT Audit, but still needs work. (IN PROGRESS)</b>  <i>INAC has undertaken discussions with the nominating parties and the Boards to refine the effectiveness of the current appointment process. Certain aspects of the appointment process fall outside of INAC's control (i.e., security clearances), which in turn affects the timeliness and transparency of its completion.</i>  <i>We heard from both Boards and nominating parties that the board appointment process has improved since the 2005 NWT Audit; however, a number of boards continue to have concerns with the appointment process (e.g., year-long vacancy in Dehcho appointment to MVLWB).</i>
23. INAC should streamline the appointments process and commit to completing the process within two months of a nominating being submitted.	<b>INAC /</b> INAC	<b>INAC is requesting nominations 8-months in advance. (IN PROGRESS)</b>  <i>While the board appointment process has improved since the 2005 NWT Audit, the Board Relations Secretariat is still asking for nominations 8 months in advance, well in excess of the 2 months recommended. The Board Relations Secretariat cites certain aspects of the appointment process which fall outside of INAC's control (i.e., security clearances) as affecting timeliness.</i>  <i>A number of nominating parties have expressed concern that the timeliness of appointments affects applicants' willingness and interest to stand or their availability to serve (e.g., changes in employment status since nomination).</i>
28. INAC should work with Boards to develop and implement a public accountability reporting process with clearly identified standards, including performance relative to s. 28 of the MVRMA.	<b>SHARED /</b> INAC & Boards	<b>INAC developed guidance documents for Board strategic planning, business planning and annual reporting; however, while Boards have made progress in reporting on activities and performance beyond financial performance, only the MVEIRB had substantively implemented INAC annual reporting guidance (IN PROGRESS)</b>  <i>MVEIRB is the only board whose annual reporting substantively meets INAC guidance. The WLWB &amp; SLWB issue Implementation Annual Reports which include discussions on board activities. The GLUPB reports included progress against annual plans. Annual reports were not received from the GLWB and SLUPB for review. We found no evidence that the Minister of Indian Affairs and Northern Development had made provision to make submitted reports available to the public access in a readily accessible manner (i.e., internet posting). Additional effort is required by LWBs to implement INAC guidance documents.</i>



2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
30. Prior to the submission of REAs, the MVEIRB should provide opportunities for Responsible Ministers to review and comment on proposed mitigation measures.	MVEIRB / MVEIRB	<p><b>The opportunity to review and comment on proposed mitigation measures was pilot tested with no discernable impact on the efficiency of the post-REA process. (IN PROGRESS)</b></p> <p><i>MVEIRB provided all parties with proposed mitigation measures in two environmental assessments and submitted the reports in November 2007 and February 2008 respectively. A response to the November 2007 report was received in late April 2010. Despite providing Responsible Ministers with an opportunity to review proposed mitigation and provide input, the Minister of Indian Affairs and Northern Development returned the report for further consideration. A response for the February 2008 report is still outstanding. As the Review Board has not have time to carefully review the Minister's response MVEIRB considers an evaluation of providing proposed measures to be premature at this point. The Review Board, however, is of the opinion that active engagement of governments in the EA process remains the best approach.</i></p> <p><i>Although the recommendation was implemented, albeit unsuccessfully, on a test basis, as a final decision on the approach for trying to streamline this process has not been made, this recommendation was classified as IN PROGRESS.</i></p>
31. INAC should develop and implement procedures to encourage a more transparent and accountable post-REA process.	INAC / INAC	<p><b>The post-REA process largely remains closed to all parties beyond the Responsible Ministers. The post-REA process is a notable contributor to many EA timelines, with significant time lags noted for Ministerial decisions for some EAs. (UNRESOLVED)</b></p> <p><i>INAC reported that an Integrated Environmental Management System has been under development for three years which is to address the post-REA process and improve the ministerial decision making process to be more transparent and accountable to other agencies, public and other government departments. No evidence of this process yielding results was noted.</i></p> <p><i>A discussion on the timeliness of post-REA Ministerial decisions and associated recommendation is found in Section 3.1.</i></p>
34. Building on previous work undertaken by the National Roundtable on the Environment and the Economy, INAC should fund an independent evaluation of the capacity of Aboriginal communities to participate in environmental and resources management processes. The findings and recommendation of this evaluation should be acted on.  <b>FOUNDATIONAL ISSUE</b>	INAC / INAC	<p><b>An independent evaluation of the capacity of Aboriginal communities to participate in environmental and resources management processes has not taken place. (UNRESOLVED)</b></p> <p><i>The capacity of Aboriginal communities to participate in environmental and resources management processes continues to be a significant concern of Aboriginal organizations and communities, government co-management Boards and applicants and developers.</i></p> <p><i>We have seen little progress to address this concern.</i></p>
35. INAC should review the November 2004 Supreme Court ruling and assess whether there are any implications to the consultation process under the MVRMA for areas with unsettled land claims. The findings of this review should be shared with other participants in the NWT's environmental management regime.  <b>FOUNDATIONAL ISSUE</b>	INAC / INAC	<p><b>Aboriginal consultation continues to be a challenging and uncertain process. (IN PROGRESS)</b></p> <p><i>INAC NWT Region has developed an approach to Crown consultation in relation to the MVRMA which has been communicated to the Boards, Aboriginal groups and stakeholders. However, as the common law related to Aboriginal consultation is young and evolving rapidly, it is likely that there will be an increased role for the Boards (where they are final decision makers) for consultation. Evidence indicates that neither the Crown nor the Boards are currently resourced adequately to fulfill these duties in a timely and thorough manner; resources for any increased role will need to be considered.</i></p> <p><i>The issue of consultation is currently before the courts (Yellowknives Dene First Nation, Łutsël K'e First Nation et al. v. The Attorney General of Canada and North Arrow Minerals Inc., Federal Court of Canada Court No. T-1349-09), with the key issue being whether in determining if its duty to consult has been met, the Crown is entitled to rely on the regulatory process of the MVLWB as well the consultative processes of third parties.</i></p>
37. Notwithstanding the outcome of Recommendation 36, Boards should	SHARED / Boards & others	<p><b>Work continues on improving the notification and consultation process required by the Board review processes. (IN PROGRESS)</b></p> <p><i>Boards have established Public Registries systems to facilitate notification and transmission of documents, with MVEIRB, MVLWB and</i></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
develop a streamlined notifications and consultation process that reduces the potential to overwhelm the resources of interested parties (e.g., initial notice of projects to make interested parties aware of the permit/licence application, with delivery of full documentation only to those parties that request this information based on their assessment of the initial notice of the project).  <b>FOUNDATIONAL ISSUE</b>		<p><i>WLWB being the farthest advanced in electronic notification processes. MVERIB no longer distributes materials directly but provides notification via a customizable subscription service allowing interested parties immediate access to any document of interest online. The MLWB, WLWB and MVEIRB have established a web feed system (RSS feed) which automatically downloads updates to subscribers. All Public Registries, with the exception of the SLWB, appeared to be relatively up-to-date.</i></p> <p><i>Land and Water Boards have established a Public Engagement and Consultation Working Group to research and identify the role of the Boards with regard to public engagement, communication and consultation and to develop consistent and clear public engagement and consultation policies and guidelines.</i></p> <p><i>We heard few concerns from Aboriginal groups regarding the notification process, with identified concerns related to adequate resources, time, and the use of culturally appropriate forums for participation by Aboriginal groups.</i></p>
38. INAC should investigate approaches that could be used to ensure Board funding is capable of responding to changes in workload.	INAC / INAC	<p><b>INAC is reviewing Board funding options to reflect variable workloads but has implemented no meaningful changes in funding programs. (IN-PROGRESS)</b></p> <p><i>INAC's Implementation Management Directorate is reviewing Board funding as part of a 10 year process, with a report due in 2012. In response to the Auditor General of Canada's 2007 Audit, issues with respect to workload and financial reporting have been considered by INAC. For example, INAC and the boards have worked together to generate a report entitled "Environmental Scan and Workload Analysis for the NWT Board Planning Process". However, while INAC has discussed the option of allowing Boards to put forth work load based proposals for additional funding, these discussions have not resulted in any changes in Board funding and a reserve to distribute to Boards based on workload pressures has not been established. INAC is reportedly working on a flexible funding program that would allow Boards to carry over surplus as opposed to turning this back.</i></p>
39. A participant funding program should be established for Environmental Assessments and regulatory processes involving public hearing under the MVRMA.	INAC / INAC	<p><b>A participant funding program has not been implemented. (UNRESOLVED)</b></p> <p><i>In 2008, the Minister of Indian Affairs and Northern Development issued a letter to the MVEIRB that it was working on a pan-northern policy approach to participant funding. There was, however, no evidence of movement on this recommendation. Participant funding available under CEAA for comprehensive studies and panel reviews (but not for screening level EAs) is not available under the MVRMA (Land Claims Agreements and the MVRMA do not establish the requirement for participant funding in EIA). IRMA funding is available for communities in unsettled land claim areas to facilitate to participate in land and resource management activities. MVERIB has built participant funding into its business plans annually but has not received any funding. INAC can make participant funding available on a project-by-project basis (e.g., for projects that have triggered other federal or joint review process (e.g., MGP)).</i></p>
40. INAC should receive long term stable "A base" funding commensurate with its roles and responsibilities under the MVRMA. A review should be undertaken to assess appropriate funding mechanisms that will provide the funds in a timeframe linked to the constraints of the unique northern setting and institutional context.	INAC / INAC	<p><b>INAC NT Regional funding is still reported to be inadequate. (UNRESOLVED)</b></p> <p><i>INAC NT Region reported that while INAC as a whole has adequate funding, INAC NT is currently underfunded for base level work. Funding for inspection is currently the biggest challenge.</i></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
<p>43. All boards and government agencies involved in environmental management should ensure that relevant staff members are capable of understanding basic principles of TK collection and use. Training should be provided to individuals that lack this capacity.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<p><b>SHARED /</b> Boards &amp; Government Agencies</p>	<p><b>Traditional knowledge awareness programs and guidance materials have been developed or are under development but this work is incomplete. (IN PROGRESS)</b></p> <p><i>GNWT and DFO have formal programs for training staff in Aboriginal awareness, including training to understand the collection, interpretation and assessment of traditional knowledge.</i></p> <p><i>Existing and developing guidelines and best practices documents prepared by Aboriginal groups, MVEIRB and GNWT are also useful resources for staff of MVRMA Boards and governments. Aboriginal board members may also raise awareness in the staff of their Boards, and some training programs have been initiated.</i></p> <p><i>We have classified this recommendation as IN PROGRESS as INAC (which has not designated a traditional knowledge lead), Environment Canada and the NEB did not provide information on their approach to traditional knowledge awareness training. In light of the GNWT and DFO responses and the recommended a shared traditional MVRMA knowledge/consultation position in Section 5.7, NWT 2005 Audit Recommendation 43 applies only to INAC, Environment Canada and NEB on a moving forward basis.</i></p>
<p>44. Regional Aboriginal leadership should develop guidance that clearly defines expectations regarding the collection, release and use of TK.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<p><b>ABORIGINAL GOVERNMENTS /</b> Aboriginal agencies</p>	<p><b>Aboriginal governments are developing protocols for traditional knowledge and community engagement (IN PROGRESS)</b></p> <p><i>Most regions and many individual communities have developed traditional knowledge protocols in relation to research. These protocols generally outline acceptable ground-rules for engagement with communities and traditional knowledge holders regarding the gathering and use of traditional knowledge.</i></p>
<p>45. The participants in the system should review the issues associated with the compensation and acknowledgement related to the collection of original TK.</p>	<p><b>SHARED /</b> All parties</p>	<p><b>There is increasing recognition, particularly amongst regulators, that traditional knowledge holders should be compensated for information provided. (IN PROGRESS)</b></p> <p>We generally heard that providing compensation for traditional knowledge was appropriate, but heard conflicting views and approaches on how this should be and is accomplished (e.g., who receives compensation and for what -- the collection of or the traditional knowledge itself). The MVEIRB has recently started researching this issue and is hoping to develop a policy by 2011. The GNWT's Traditional Knowledge Best Practices Guide and Traditional Knowledge Protocols provide guidance on compensation issues and DFO is one of several agencies that incorporate compensation for the collection of traditional knowledge. Some applicants and developers advocate a 'user pays' system to allow Aboriginal groups to drive research programs and streamline the process for gathering traditional knowledge during project planning.</p> <p>The matter of compensation and the issue of giving credit to holders of traditional knowledge is still a developing area.</p>
<p>46. Efforts to collect and use TK should include gender-specific considerations.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<p><b>SHARED /</b> All parties</p>	<p><b>Awareness of the need to include gender-specific research is increasing but its use is not widespread. (IN PROGRESS)</b></p> <p>Some Renewable Resource Board staff and staff of Aboriginal environmental organizations report that traditional knowledge research is often focussed on hunters and wildlife with little consideration of female traditional knowledge holders.</p>
<p>47. INAC should establish and support forums for ongoing training and education to improve the common understanding of scientific and traditional knowledge terminology, issues and approaches. While these forums should build on existing project-specific initiatives, they should be free-standing, long-term initiatives.</p> <p><b>FOUNDATIONAL ISSUE</b></p> <p><b>(SEE REVISED RECOMMENDATION</b></p>	<p><b>INAC /</b> INAC</p>	<p><b>INAC support has largely focused on project-specific initiatives and not on developing a long-term training and awareness strategy. (IN PROGRESS)</b></p> <p>This recommendation focused on the challenges in communicating traditional knowledge and cultural terminology and concepts to non-aboriginals and holders of traditional knowledge, respectively, in a manner that bridges language and communication barriers. INAC has supported opportunities to do so through operational, project-driven workshops and activities (e.g., NWT Protected Areas Strategy Sahtu Translators Workshop). The MVRMA Boards have addressed this need by) working with translators before sessions and hearings to identify appropriate translations for specific terms and requesting plain language summary documents from applicants and developers. The MVEIRB indicated it prepares dictionaries for particular sessions and hearings if required.</p> <p>These efforts have been directed at the project level and should continue. The free-standing, longer-term initiative envisioned to "institutionalize" an understanding and awareness of scientific and traditional knowledge terminology has not been implemented. As</p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
<b>UNDER STATUS/COMMENTS)</b>		<p>such, this recommendation was classified as IN PROGRESS.</p> <p>The recommendation is revised to reflect a broader range of responsible parties.</p> <p><b>REVISED RECOMMENDATION 47-RA: Federal and territorial governments should establish and support forums for ongoing training and education to improve the common understanding of scientific terminology, issues and approaches used within their mandates (e.g. forest science – GNWT; fisheries biology – DFO). While these forums should build on existing project-specific initiatives, they should be free-standing, long-term initiatives.</b></p>
<p>49. The Working Group should make the development and implementation of a detailed, operational work plan, which clearly identifies and addresses monitoring needs, and immediate priority. The preparation of the plan should provide for involvement of interested parties without unduly delaying the process; plan preparation and review should occur in tandem. The implementation plan should be subjected to periodic review and amendment as operational experience is obtained.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<b>SHARED /</b> CIMP Working Group	<p><b>INAC has made little progress in developing an operational plan for the CIMP. (UNRESOLVED)</b></p> <p><i>The 2010 OAG report noted that “The federal government is not meeting its responsibilities for cumulative impact monitoring ... In 2009, [INAC] developed a draft operational plan that identified tasks for a program to monitor cumulative impact and began to increase spending in this area. However, the draft plan does not identify specific monitoring requirements, the resources needed to carry out the program, or timelines for key milestones. We found that, 11 years after receiving the mandate to do so, INAC had not yet put in place a program to monitor cumulative impact.”</i></p> <p><i>While additional funding for CIMP was announced during the 2010 Throne Speech (but not yet released) since the time of the OAG report and additional human resources have been assigned, significant planning is required before CIMP will begin to meet program expectations and deliver results.</i></p> <p><i>In the Second NWT Audit, INAC identified high level plans for implementation of CIMP (see Section 4.5). The next NWT Audit should use these as benchmarks to assess progress in the implementation on the Program.</i></p>
<p>50. Given that CIMP activities will extend in perpetuity, a source of long-term, stable funding will be required, with periodic reviews to account for changing program needs.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<b>INAC /</b> INAC	<p><b>While some short-term funds have been identified (but not released) for CIMP, long-term funding for CIMP is still uncertain. (UNRESOLVED)</b></p> <p><i>The 2010 Throne Speech identified \$8 million over two years to support CIMP and the Nunavut General Monitoring Program; however, the type of funding is not yet known. A-base (core funding) funding is not yet allocated to CIMP. A Treasury Board submission based on Cabinet Directive is being prepared with submission by August anticipated. Some funds are expected to be available by fall 2010.</i></p>

Table A.3 –2005 Audit Recommendations for Which Lead Agency Disagreed

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
<p>11. INAC should work with the LWBs to investigate means by which confidential terms and conditions relevant to the environmental management process can be provided to LWBs without compromising confidentiality requirements.</p> <p>SEE REVISED RECOMMENDATION UNDER STATUS/COMMENTS</p>	<p><b>SHARED / Joint, INAC &amp; LWB's</b></p>	<p><b>No action taken. (DISAGREED – REVISED RECOMMENDATION)</b></p> <p><i>INAC does not agree with this recommendation. INAC cited federal privacy acts as preventing the release of confidential information (i.e., leases), but indicated that it makes every effort to provide relevant information to the LWB's for the environmental management processes.</i></p> <p><i>Although processes are established for the receipt and use of confidential information, we were told that Boards are denied access to INAC lease agreements. The potential exists for inconsistencies to arise between INAC leases and MVRMA authorizations. Without access to a sampling of leases, we could not confirm the existence of any inconsistencies; however, we did hear from applicants that there continue to contradictions, inconsistencies and redundancies between these instruments.</i></p> <p><b>REVISED RECOMMENDATION 11-RA: To avoid inconsistent and potentially contradictory terms and conditions between INAC land tenure documents and authorizations issued under the MVRMA, INAC and the LWBs should develop a process whereby INAC can advise LWBs if any proposed terms and conditions are in conflict with any requirements under land tenure documents.</b></p>
<p>6. The GNWT should conduct an evaluation of the effectiveness of approaches that are being used to prevent or mitigate potential socio-economic and cultural impacts attributable to development. Findings of this evaluation should be given to other participants in the regulatory process to assist them in developing better tools for impact prevention and mitigation.</p> <p><b>FOUNDATIONAL ISSUE</b></p>	<p><b>GNWT / GNWT</b></p>	<p><b>The GNWT has not completed the recommended evaluation. (DISAGREE)</b></p> <p><i>The GNWT indicated that the mitigation of project effects is a responsibility of project applicants or developers and that the GNWT encourages best practices by applicants or developers. Where socio-economic monitoring programs are in place, the GNWT reports results of specific indicators used to monitor socioeconomic conditions. GNWT also indicated that the selected indicators are relevant to predicted impacts and allow determination of long-term trends. While annual reports are available to the public, monitoring programs are not linked to any requirement for adaptive management if conditions more adverse than predicted are encountered.</i></p> <p><i>The 2005 NWT Audit recommendation focused on assessing the effectiveness of mitigative measures, using the types of indicators identified by GNWT, to provide feedback on any required improvements in how these measures are incorporated into decisions. GNWT's response focused on responsibility for implementing measures and monitoring impacts and not on the recommended assessment of effectiveness. Further, GNWT's response does not address the wider issue of assessing socio-economic impacts where SEMAs do not exist.</i></p> <p><i>We believe that the recommendation is still valid, and GNWT should complete this assessment in cooperation with the federal government and potentially-affected communities that have agreements in place, provided that contractual confidentiality restrictions (often limited to specific financial clauses) are not breached.</i></p>
<p>24. To the extent possible, the Minister of Indian Affairs and Northern Development should provide nominating parties with clear rationale for the rejection of nominees.</p>	<p><b>INAC / INAC</b></p>	<p><b>No action taken. (DISAGREE)</b></p> <p><i>INAC does not agree with this recommendation. Similar to NWT 2005 Audit Recommendation 22, INAC indicated that national and personal confidentiality requirements prevent the Minister of Indian Affairs and Northern Development from providing nominating parties with clear rationale for the rejection of individual nominees.</i></p> <p><i>We continued to hear concerns over the lack of transparency in Ministerial decisions in the Board appointment process.</i></p> <p><i>Trust in the appointment process was an issue identified in this Audit (See Section 3.4).</i></p>

2005 NWT Audit Recommendation	Responsibility / Lead Agency	Status / Comments
<p>25. The appointment period for board members should be extended from the current 3 year term to a 5 year term. Where possible, appointments should be staggered to minimize the risk of failing to meet quorum.</p>	<p><b>SHARED / Various – government agencies depending on legislation</b></p>	<p><b>No action taken. (DISAGREE)</b></p> <p><i>INAC is not in agreement with this recommendation. INAC indicated that the current appointment period for board members is defined by legislation and INAC does intend to modify legislation at this time. INAC further indicated that for most boards, membership is already staggered and appointments can be renewed.</i></p> <p><i>We continued to hear concerns from some boards and applicants or developers over the appropriateness of a 3-year term. Comments focused on whether the following themes: three years is barely enough time for a new board member to become comfortable with the processes and issues; land use plan review cycles are 5 years; and, with EAs lasting 2 to 3 years, there is a greater potential for Board appointments to change over the course of the EA.</i></p>

## Appendix B: Regulatory Gaps, Areas of Uncertainty and Considerations

In addition to the broad primary thematic issues presented in the main body of the 2010 NWT Audit Report, we heard concerns and comments related to a broad variety of topics. This Appendix summarizes and classifies these secondary issues and concerns which we feel are appropriate for further consideration. In the interest of focusing responses to the 2010 NWT Audit on the key primary issues and challenges identified in the main body, we have chosen to itemize these secondary issues in this Appendix. While we have attempted to be inclusive, we may have inadvertently missed some issues.

***While the focus of responses to this Audit should be on the primary issues, we strongly encourage INAC, the GNWT, MVRMA Boards, Aboriginal organizations and responsible agencies to consider these secondary issues as well as issues identified through other work<sup>34</sup> within the broader context of continual improvement activities and regulatory reform on an ongoing basis as capacity and opportunity allow.***

Issues are classified as:

- G: Regulatory Gap – Legislation or regulation may not adequately address the issue
- U: Uncertain – A lack of clarity in requirements was noted
- C: Considerations – Potential areas of improvement where no immediate issues were identified

Class	Description of Issue	Regulatory Citation	Lead Agency
G	The term of Land Use Permits may not be consistent with Water Licences and Quarry Permits	MVLUR s. 26, Territorial Quarrying Regulations s.12	INAC
The MVLUR limits the term of LUPs to 5 years, with extensions of up to 2 years. The Territorial Quarry Regulations limit quarry permits to 1 year. The NWTWR allows Water Licences to be issued and renewed for up to 25 years. For projects requiring a LUPs and a Water Licence and/or quarry permit, developers would like the term of all permits and Water Licences to match. This is currently not possible as well as longer term LUPs for simpler activities, such as quarry operations.			
G	Limited ability to regulate All Terrain Vehicles (ATVs)	-	GNWT/INAC
Outside of parks established under GNWT's <i>Territorial Parks Act</i> , the use of ATVs is unregulated. We heard of environmental impacts occurring in the Sahtu claim area resulting from use of ATVs.			
G	No authority to follow-up on recommendations made in Archaeologist Reports	MVLUR s. 26.(j)/LUPs	LWB T&CWG
Archaeological permits required archaeologists to provide a report to the Prince of Wales Cultural Heritage Division. These reports may provide the Division with additional knowledge of site conditions that could be used to better define terms and conditions in land use permits. Further, there are no mechanisms to monitor recommendations made in archaeologist reports. A solution proposed was to include a term and condition in LUPs that required an applicant to adhere to any recommendations made in the archaeological report that are accepted in writing by the Division.			
G	Archaeological impacts not be fully considered in prospecting activities	-	INAC
Some prospecting activities do not trigger the need for a LUP and, as such, are not subject to review by the Prince of Wales Cultural Heritage Division. The Division reported some evidence of archaeological impacts from these activities. Due to the confidential nature of prospecting, INAC does not provide information on prospecting permits to the Division, other than annual maps showing where prospecting is occurring. A solution proposed was for INAC to include handouts on archaeological requirements when prospecting applications are made, similar to existing programs for lodges.			
G	Absence of regulatory expertise in the field of anthropology	-	GNWT
Neither GNWT nor INAC employ anthropologists to assess subsistence economy, cultural anthropology and social anthropology in the management of land and water under the MVRMA. The Prince of Wales Northern Heritage Centre is being requested to make these assessments without a legislative mandate or the resources to do so.			

<sup>34</sup> e.g., Joint Examination Project Working Group, 2006. *Report on the Joint Examination Project: An examination of the Mackenzie Valley Resource Management Act and related Land Claims Agreements*; GNWT, 2009. *Building a Path for Northern Science: Government of the Northwest Territories' Science Agenda*.

Class	Description of Issue	Regulatory Citation	Lead Agency
G	<b>No legislation to protect paleontological finds</b>	-	GNWT
The absence of legislation to protect paleontological finds was identified in the GNWT Science Agenda. The Agenda calls for the development and implementation of legislation related to paleontological discoveries to ensure their protection			
G	<b>Regulation of frozen in barges for winter fuel storage</b>	-	GNWT
The use of frozen in barges for winter fuel storage is regulated by Transport Canada which has limited regulations to address environmental impacts. This storage is not subject to land and water management under the MVRMA as would land-based bulk fuel storage. We heard that GNWT ENR is working with Transport Canada to take the lead on this issue.			
G	<b>Regulation of land use within boundaries of local government unclear</b>	MVRMA s. 53, 90.2, 98	MACA / LWB
There is no clarity of opinion on the requirement/authority for LWBs to issue LUPs on lands within boundaries of local government. Some interpret the MVRMA as requiring LWBs to regulate land use if local government does <i>not</i> regulate land use (e.g. with by-laws). The opposing viewpoint is that a determination by the LWB and MACA, in consultation with the local government, must be made on the extent to which the LWB can regulate land use. No such determinations have been made and the use of land within the boundaries of local government (e.g., fuel tank farms) generally remains unregulated.			
G	<b>Terms and conditions to protect remediated sites</b>	MVRMA	LWBs / INAC
A process has not been established to ensure that remedial measures implemented by INAC are not disturbed by future applicants (e.g., drilling through a tailings cap).			
G	<b>Redundancy in preliminary screenings for Timber and Land Use Permits</b>	MVLUR s. 18(a)	INAC
s. 18(a) of the MVLUR prevents LWBs from processing Land Use Permit applications for forestry operations unless the applicant has obtained a valid timber permit/licence. The Preliminary Screening Requirement Regulations, SOR/99-12, requires two preliminary screenings, one for the timber permit/licence and one for the Land Use Permit. Concurrent preliminary screenings of these related applications is not allowed. (Note that quarry permits are also required before a Land Use Permit is issued; however, quarry permits are not subject to preliminary screening.)			
G	<b>Minimal co-ordination on sites with multi-permit holders</b>	MVRMA	LWBs
We were told LWBs were not coordinating LUPs to address cumulative impacts (e.g., staging from the same landing strip) arising at sites with multi-permit holders (e.g., through terms and conditions requiring, in the event of multiple LUPs issued for a site, for applicants to reach operational agreements) There is also no clear approach to how responsibility for corrective actions and for closure on multi-permit sites is to be managed.			
G	<b>Increased enforcement tools for INAC inspectors</b>	MVMRA	INAC
INAC inspectors indicated that their range of enforcement options is limited. Options between the current extremes of warning letters and courts action are required. Inspectors indicated that designation as Peace Officers and the authority to issue Summary Conviction Tickets would enable them to better enforce MVRMA authorizations.			
G	<b>Scientific Research Licence</b>	Scientists Act, s. 2	GNWT
Some monitoring program under Water Licences trigger the need to Scientific Research licences under the Scientists Act. This requirement creates redundancy in the system and can slow down implementation of Water Licence terms and conditions.			
G	<b>Regulation of the offloading and disposal of vessel wastes</b>		GNWT
There are no Port Authorities to regulate the offloading and land disposal of wastes from vessels. Impacts of these practices on the capacity of community infrastructure (landfills and sewage lagoons) were identified as a concern.			
G	<b>Site clean-up site after an authorization expires</b>	MVLUR/NWTWR	INAC
We were told that the requirement to renew or obtain a new authorization for site clean-up once an authorization expired acted as a deterrent to cleaning-up sites.			
G	<b>Registration of small fuel caches</b>	MVLUR, s. 7	INAC
We heard that developers are not registering small fuel caches with LWBs, as required. The potential that these sites are largely unregulated and may require future clean-up is of concern to INAC Contaminants & Remediation Directorate. This could also be problematic as we were told fuel storage may be divided into several caches to avoid triggering the need for a permit.			
U	<b>Authorizations not issued in a timely manner for emergency situations</b>	MVRMA s. 119	LWB/INAC
s. 119 of the MVRMA exempts a proposal carried out in response to an emergency from preliminary screening, EA or EIR, but not permit or licence requirements. We heard that there was uncertainty as to who makes the decision that a proposal is related to "emergency" and what constitutes an emergency. We also heard that the permit or licence approval process was not timely enough to deal with/prevent emergencies (e.g., collapsing bridge, culvert/bridge washout, overtopping of tailings dams, herbicide application to prevent forest fire).			
U	<b>Overlap between Water Licences and Fisheries Act requirements</b>	Fisheries Act/NWTWR	DFO/LWBs
The Fisheries Act and MVRMA have conflicts and uncertainty as to who regulates what (e.g., where is the boundary on fish & fish habitat between DFO and MVRMA, Habitat Compensation Agreement with DFO vs. requirements for site rehabilitation under LWB mandated closure plans, dual requirements for aquatic effects monitoring agreement under Habitat Compensation Agreement and Water Licences).			



Class	Description of Issue	Regulatory Citation	Lead Agency
U	<b>Definitions of watercourse differ for the purpose of water withdrawals</b>	NWTWR	LWBs
LWB adopt different definitions of watercourses for the purpose of water withdrawals, with watercourses being defined as an individual body of water (e.g., a stream) and as water systems (e.g., lake plus associated streams). This leads to uncertainty, when identifying water sources and establishing withdrawal limits, especially for applicants working across regions.			
U	<b>Redundancy and inconsistency in MVRMA Land Use Permits and INAC land tenure instruments</b>	MVRMA	INAC
Redundancies and inconsistency were reported between LUPs and land tenure instruments issued under the <i>Territorial Lands Act</i> . While we did not have access to land leases, we were told that these instruments include terms and conditions which may not align with LUPs. Similar issues were reported between First Nation leases and LUPs. We heard that quarry permits and NEB authorizations generally aligned well with LUPs.			
U	<b>Scope of field modifications and amendments for MVRMA authorizations</b>	MVRMA	INAC/LWB
Inspectors and LWBs need to agree upon when field modifications are appropriate, how Boards are notified of these modifications and whether and how Boards can overturn these modifications. This clarification is one of the expected products from the LWB Application Processes Working Group. Clarification on the difference between amendments and medications was also requested.			
C	<b>Self-referral to Environmental Assessment</b>	MVRMA s. 126	INAC
Self-referral by a developer to EA was raised as an option to speed up the EIA process. Currently, the bypassing of preliminary screening would require a referral by a party listed under s. 126(2) or 126(3) of the MVRMA.			
C	<b>Authorizations for investigations required by EA</b>	Exemption List Regulation	INAC
We heard that the requirement to obtain MVRMA authorizations for investigative work required under an Environmental Assessment's Terms of Reference / EA information request delays the EA process.			
C	<b>Approval of plans required by MVRMA authorizations</b>	MVLUR/NWTWA	LWBs
We heard that for added accountability, when plans are required by MVRMA authorizations, a requirement should be included for the plans to be submitted for approval and that if a plan is not acceptable, timelines or provision for resubmission be set out by the LWBs			
C	<b>Review of Activity Thresholds</b>	MVLUR, NWTWR	INAC
We heard that a review and revision of the activity thresholds triggering land use permit and water licences was warranted to reflect changes in technologies and to clarify trigger points (e.g. does driving a truck on existing road at abandoned minesite trigger requirements for an LUP?).			
C	<b>Transfer of legislative responsibility for preliminary screening to MVEIRB</b>	MVRMA, s. 124	INAC
We heard that consolidating preliminary screenings with the MVEIRB could provide for consistency of approach and allow for the development of technical expertise in the review of various types of projects.			
C	<b>Defined process does not exist for applicants to review and comment on drafts of MVRMA authorizations</b>	MVLUR s. 26(2), NWTWR s. 18	LWBs
Other than for draft type A water licences, applicants do not typically have an opportunity to review and comment on drafts of authorizations terms. Should the applicant object to a term and condition, it must seek an amendment under processes defined in the MVLUR and NWTWR. Consideration should be given to providing applicants an opportunity to review draft authorizations to avoid the need to proceed through a formal amendment process should modifications be requested, as amendments tend to be treated as new applications by LWBs. After considering all the evidence, the LWBs still make the final decision about what conditions to include in water licences and land use permits.			
C	<b>Accessibility of data provided to LWB and MVEIRB</b>	-	LWBs
We were told that mining companies have asked for greater access to data and information used in previous environmental applications. The NWT Geoscience Office was cited as a model for data accessibility. The posting of NTS map sheets on Public Registries which identify available data was suggested. The Water Withdrawal Database, which is being developed by LWBs and DFO to track cumulative water withdrawals and bathymetric surveys, is another example of data accessibility.			
C	<b>List of agencies, mandates and authorization requirements</b>	Various	INAC
We heard from applicants that the permit/licence application process does not clearly identify upfront all regulatory agencies, with becoming clear only when the application is sent out for review by LWBs and comments are received. Several applicants suggested that it would be helpful to have a list of agencies and their various responsibilities, contact details, and required permits/authorizations by issuing agency.			

Class	Description of Issue	Regulatory Citation	Lead Agency
C	<b>Multiple authorizations and associated plans for highway operations and maintenance</b>	MVLUR, Exemption List Regulations	LWB
Consideration should be given to how to streamline the issuance of MVRMA authorizations and associated plan requirements for road construction and maintenance in consideration of the road construction and maintenance exemption (s.13. Exemption List Regulations). We were told that each road maintenance application requires its own spill plan, consultation and wildlife management plans (by some LWBs). Regional, or preferably NWT-wide permits and licences (e.g., by considering road maintenance a transboundary project) was cited as being beneficial.			
C	<b>Use on community landfills for disposal of wastes from development</b>		INAC
We heard that LWBs are reluctant to include requirements in community water licences restricting the receipt of wastes at landfills to that generated within the community. We heard that INAC has directed operators to dispose of their wastes in community landfills. The GNWT ENR and MACA are not in favour of this practice as it utilizes landfill capacity.			
C	<b>Clarification on the term "deposit of waste"</b>	NWTWA s.9, NWTWR s. 5 & Schedules	LWB/MVEIRB
We heard that for water licences, the interpretation of "deposit of waste" may be unclear and inconsistently applied. This may inappropriately trigger a water licence where none may be required and open otherwise non-regulated activities to regulation. For example, is a water licence required for discharging treated oily water to land from a barrel cleaning operation and, if so, is the entire operation may subject to water licence conditions, including greywater, even if it does not meet the trigger points established in Schedules to the NWTWR?			