

Indian and Northern Affairs Canada

Response to the
2005 Northwest Territories Environmental Audit:
DRAFT Action Plan

September 2007

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INTERIM DRAFT

This draft document is the result of internal INAC discussions and progress to date. It serves as a rolling draft for on-going internal and external discussions with the Directly Affected Parties.

LIST OF ACRONYMS

CWG	Consultation Working Group
DAP	Directly Affected Parties
EA	Environmental Assessment
EC	Environment Canada
GNWT	Government of the Northwest Territories
IRMA	Interim Resource Management Assistance
INAC	Indian and Northern Affairs Canada
LWB	Land and Water Board
MGP	Mackenzie Gas Project
MVEIRB	Mackenzie Valley Environmental Impact Review Board
MVLWB	Mackenzie Valley Land and Water Board
MVRMA	<i>Mackenzie Valley Resource Management Act</i>
NRII	Northern Regulatory Improvement Initiative
NWT	Northwest Territories
NWT CIMP	Northwest Territories Cumulative Impact Monitoring Program
NWT CEAM	Northwest Territories Cumulative Effects Assessment and Management
NWT PAS	Northwest Territories Protected Areas Strategy
REI	Regional Engagement Initiative
RRE	Renewable Resources and Environment Directorate
s.35	Section 35 of the <i>Constitution Act, 1982</i>
TK	Traditional Knowledge

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INTRODUCTION

Pursuant to Part 6 of the *Mackenzie Valley Resource Management Act* (MVRMA) and the Gwich'in, Sahtu and Tłı̄chô land claim agreements, the Minister of Indian and Northern Affairs Canada (INAC) is responsible for ensuring that an independent audit of the state of the environment and the state of environmental management in the Mackenzie Valley. The Audit makes recommendations to improve resource and environmental management and takes place at least once every five years. Under the same legislative requirements, the Northwest Territories (NWT) Cumulative Impact Monitoring Program (CIMP) will provide resources to help fill gaps in current environmental monitoring, report on the state of the NWT environment and the cumulative impacts of land and water uses and deposits of waste, and encourage community-based monitoring and capacity-building.

The NWT CIMP and Audit has been guided by a working group since 1999. The Working Group is composed of members or observers from Aboriginal, federal and territorial governments including representatives from the Gwich'in, Sahtu, Tłı̄chô and Dehcho First Nations, North Slave Métis Alliance, NWT Métis Nation, Akaitcho Territory Government, Inuvialuit, Mackenzie Valley Environmental Impact Review Board (MVERIB), Government of the Northwest Territories and the federal department of Indian and Northern Affairs Canada, Environment Canada and Fisheries and Oceans Canada.

The NWT Environmental Audit fulfills a role in the auditing function of the overall environmental management framework in the NWT (Figure 1). Stemming from a comprehensive study for the Diavik Diamonds Project in 1999, this framework was initiated by the federal Ministers of Indian and Northern Affairs Canada and Environment Canada. The NWT Cumulative Effects Assessment and Management (CEAM) Strategy and Framework were developed with the participation of representatives from Aboriginal organizations, industry, environmental non-

governmental organizations (ENGOS), the federal and territorial governments and the MVEIRB.

The NWT CEAM Framework, developed independently of the NWT CIMP, focuses on territorial-wide environmental management, with emphasis on:

- vision and objectives;
- land use and conservation planning;
- baseline studies and long term monitoring;
- research;
- environmental assessment;
- regulation and enforcement;
- information management;
- capacity building;
- coordination; and
- audit and reporting.

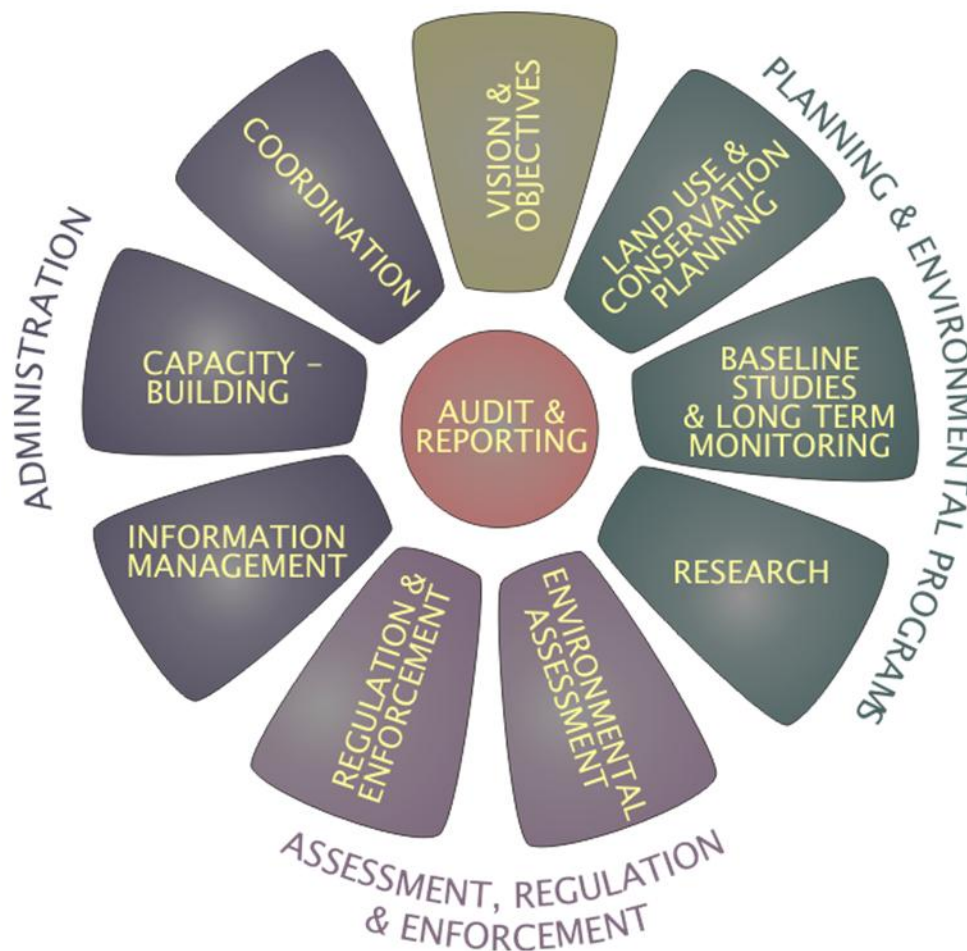


Figure 1: Northwest Territories Environmental Management Framework

The NWT Environmental Audit is meant to:

- review information about the environment to determine whether the quality of the environment is improving, deteriorating or staying the same, and determine what is causing any changes;
- determine the effectiveness of methods for monitoring cumulative impacts on the environment; and
- review the effectiveness of regulations (permits, etc.) in protecting the environment from significant harmful impacts caused by using the land and water, and depositing waste.

The findings will be presented in a report, which will summarize the health and future of the environment in the NWT, and make recommendations for ways of improving it and the way it is managed. The Audit will use a broad definition of the environment, which will include the social and cultural environment and heritage resources.

In June 2006, INAC released the first NWT Environmental Audit which was conducted by SENES Consultants Limited. The findings assist in setting the foundation for all future audits to be completed.

The organizations directly involved in the Audit will be Aboriginal organizations, boards established under the MVRMA, other co-management boards and the federal and territorial governments. Periodically, industry, non-government organizations and the public may be asked to provide comments or contribute relevant information to the audit process. The auditor is responsible for identifying the specific issues and topics to be investigated, and for obtaining information. The auditor may collect scientific, traditional or local information from people and organizations by conducting interviews or site visits.

The first NWT Environmental Audit identified trends in the current quality of the environment, factors that may be contributing to changes in the environment, and the significance of these trends. It also reviewed the effectiveness of current and proposed environmental monitoring programs, as well as the effectiveness of regulatory regimes and responsible bodies. The auditors identified 50 recommendations that focussed on broad aspects of the environmental management regime in the NWT. The Audit relates clearly back to the overarching NWT CEAM framework.

These recommendations were directed not only at Indian and Northern Affairs Canada but also at other organizations involved in the environmental management and regulatory framework in the NWT. INAC has encouraged those organizations, the "Directly Affected Parties" (DAPs) (see Table 1), to assess the recommendations

directed at them and to assist in the identification of areas where INAC can collaborate to address recommendations of common priority.

For the purpose of this report, Audit recommendations have been divided into the following categories: land use planning; regulation, environmental impact assessment; cross cutting themes; traditional knowledge; and the cumulative impact monitoring program.

Table 1: Directly Affected Parties

DIRECTLY AFFECTED PARTIES	
• Akaitcho Territory Government	• Mackenzie Valley Environmental Impact Review Board
• Dehcho First Nations	• Mackenzie Valley Land and Water Board
• Dehcho Land Use Planning Committee	• National Energy Board
• Denendeh National Office	• North Slave Métis Alliance
• Environment Canada	• Northwest Territories Water Board
• Fisheries and Oceans Canada	• NWT Métis Nation
• Government of the Northwest Territories	• Parks Canada
• Gwich'in Land and Water Board	• Sahtu Land and Water Board
• Gwich'in Land Use Planning Board	• Sahtu Land Use Planning Board
• Gwich'in Renewable Resource Board	• Sahtu Renewable Resource Board
• Gwich'in Tribal Council	• Sahtu Secretariat Incorporated
• Indian and Northern Affairs Canada	• Tłı̄chô Government
• Inuvialuit Joint Secretariat	

RELATED INAC INITIATIVES

INAC has initiated several different processes to help address previously identified weaknesses in programming in the NWT (i.e., the Office of the Auditor General (2005)). These projects include: the Northern Regulatory Improvement Initiative; internal Consultation Working Group; Joint Examination Project; NWT CEAM Framework; NWT Protected Areas Strategy (PAS); and NWT CIMP. This Audit was conducted under the NWT CIMP.

Northern Regulatory Improvement Initiative

The NWT regulatory system has been criticized frequently including in reports from the Conference Board of Canada (2007), Auditor General (2005), and External Advisory Committee on Smart Regulations (2005). Criticism has focussed on the decentralized nature of the regulatory system, the multitude of jurisdictions, the shared and diffuse decision making and regulatory approval timeliness. Given the expectations and support for change, the Northern Regulatory Improvement Initiative (NRII) is being developed to advance both effective northern resource management and the northern regulatory environment.

Regional Engagement Initiative

The Regional Engagement Initiative (REI) was developed by INAC NWT Region to focus on the improvement of the region's overall relationships with First Nations organizations, other governments and industry. To date, two preliminary discussions with organizations and has resulted in a draft plan for regional engagement, which will be discussed with INAC's partners during 2007. Final changes to the plan will be prepared and implementation of the REI is expected after these discussions have concluded.

The REI specifically focuses on the development of a Regional Crown Consultation Approach. INAC and the Boards under the MVRMA have also worked together through the NWT Board Forum to identify best practices. The outcome is a report entitled "Best

Practices for Institutions of Public Governance”. The NWT Board Forum is a mechanism designed to bring together resource co-management/ public boards and government to facilitate discussion on matters of common interest, including the sharing of best practices and solutions. INAC has adopted the NWT Board Forum as an important means to ensure ongoing consultation and communication with boards. In addition to annual/biannual meetings, working groups have been established to support and implement NWT Board Forum initiatives coordinated by the Board Relations Secretariat with in INAC.

Internal Consultation Working Group

During November 2005, INAC-NWT Region’s internal Consultation Working Group (CWG) was formed by the Region’s Senior Management Committee in an effort to coordinate the Region’s response to the *Haida, Taku*, and the *Mikisew-Cree* decisions.

The CWG provides oversight on all issues related to Section 35 (s.35) of the *Constitution Act, 1982* Consultation. Specifically:

- a. with regard to providing input on national initiatives, such as the current Government of Canada consultation initiative being spearheaded by the Litigation Management and Resolution Branch (Strategic Planning and Resolution Directorate) of INAC, the CWG will coordinate inputs;
- b. with regard to developing interim procedures on s.35 consultation, including the role of the boards in Crown consultation, the CWG will collaborate with INAC headquarters and Department of Justice to develop appropriate processes and procedures; and
- c. with regard to ensuring consistency at the operational level, the CWG will work directly with delegates from each of the regional directorates, as appropriate, to provide guidance on s.35 consultation issues as they arise (e.g. on dockets, media lines, public documents to Resource Management Boards).

The CWG is not a decision-making body, but rather an ad hoc committee that reports to the Region’s Strategic Management Committee to play a coordinating role in respect of

non-Mackenzie Gas Project s.35 consultation issues. INAC-NWT Region is currently considering how it will incorporate this function into its organizational model on a long-term basis. This initiative addresses recommendations 35-37.

Joint Examination Project

The Joint Examination Project is based on a 2004 Ministerial commitment from Tłı̄ch̄o legislation. The purpose of the project is to review the MVRMA and related Mackenzie Valley-wide agreements and identify to areas of inconsistency among these various authorities. The Project also includes participation from the GNWT, and the Tłı̄ch̄o, Gwich'in and Sahtu land claim organizations. During December 2006, a participant report was completed and is currently being reviewed by all parties.

NWT Cumulative Effects Assessment and Management Strategy and Framework (www.ceamf.ca)

The NWT CEAM Framework is intended to help facilitate the protection of ecological integrity, the building of sustainable communities (including social and cultural dimensions), and responsible economic development within a sound environmental management framework. The "*Blueprint for Implementing the NWT CEAM Strategy and Framework*" represents a collective understanding of the actions needed for effective cumulative effects assessment and management in the NWT, which previously were identified as INAC's obligations, such as land use planning and environmental assessments (see Figure 1).

NWT Protected Areas Strategy

(www.nwtpas.ca)

The Northwest Territories Protected Areas Strategy (NWT PAS) was created to assist NWT communities with long term protection of special areas of land. The NWT PAS has an overall framework and criteria to guide the identification and establishment of protected areas in the NWT. This initiative is linked to recommendations 1-3.

NWT Cumulative Impact Monitoring Program

(www.nwtcimp.ca)

The NWT CIMP objective is to look at how all uses of land and water, and deposits of waste, affect the environment of the NWT now and in the future. The program is based in land claims and legislation, and follows a community-based approach to monitoring the human and biophysical aspects of the environment. The Working Group prepared the draft Five-Year Work Plan and draft Operational Plan for the NWT CIMP and Audit which outlines the steps for full implementation of the program.

SUMMARY OF AUDIT RECOMMENDATIONS

The Renewable Resources and Environment Directorate (RRE) of INAC has been working with the “Directly Affected Parties” (see Table 1) through the NWT CIMP and Audit Working Group. The Working Group identified a lead organization(s) for each of the 50 Audit recommendations; 15 recommendations are considered INAC’s lead, while shared leadership (including INAC, other governments, land & water boards (LWB), land use planning boards, and the MVEIRB) is required for 28 recommendations. Seven recommendations have been identified to specific agencies as the lead.

Overview

The three **land use planning** recommendations focused on the need to complete land use plans in areas without finalized plans and to develop thresholds for those areas with plans.

The 10 recommendations related to **regulation**, identified concerns related to air quality, social and cultural impacts, and compliance and enforcement. Education for participants regarding the regulatory process and coordination of activities in order to streamline processes. In addition, recommendations highlighted the need for clarity in instruction and communication among affected organizations.

Seven recommendations were provided in the area of **environmental impact assessment** that includes follow-up programs, social-economic-cultural aspects, climate change and information sharing. The primary focus of the recommendations was on MVEIRB activities related to information and communication management, policy guidelines and client tools. The creation of tools relating to climate change and socio-economic-cultural considerations in EAs was also highlighted.

Eight recommendations addressed **traditional knowledge** (TK), which includes TK collection guidelines, interpretation and use in decision making, awareness training and

education to bridge the gap between western science and TK, gender considerations, compensation, and acknowledgement of the source.

Two recommendations were directly related to the **NWT Cumulative Impact Monitoring Program** and focused on the need for a detailed operational plan and stable long term funding to carry out the objectives identified in the operational plan.

Twenty recommendations applied to cross-cutting themes such as board governance and operations, timeliness of appointments and notifications, capacity of communities to participate in environmental assessment activities, and public consultation during these processes. Recommendations with respect to funding of activities related to the MVRMA included the need for long term stable funding for INAC, responsive funding to boards for their activities and the need for participant funding to allow for community participation in public hearing processes.

The following table (Table 2) illustrates the lead agency for each recommendation and the action status. INAC has considered the recommendations and has responded to those within the current context of its operational mandate and activities. The action or status for each of these recommendations was divided into the following categories:

- complete;
- future activities (to be carried out in the next 2-5 years);
- underway (already underway, may be covered through activities of another initiative);
- not within the agency scope/mandate;
- does not require action; and
- requires further analysis or consideration(s).

Following Table 2 is a more comprehensive analysis of INAC’s response to the recommendations.

Table 2: INACs NWT Environmental Audit Response Summary

RECOMMENDATIONS	LEAD AGENCY	STATUS*
<p>* Future Consideration: action to be carried out in the next 2-5 years Complete: actions that are considered complete, no further action required. Underway: actions that are already underway; may be covered through activities of another initiative(s). Other: includes actions that are not within the agency scope/mandate; does not require action; or requires further analysis or considerations</p>		
<p>1. The Sahtu Land-Use Plan should be completed and approved as soon as possible.</p>	<p>Shared</p>	<p>Underway</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>Shared</p>	<p>Underway</p>

RECOMMENDATIONS	LEAD AGENCY	STATUS*
<p>* Future Consideration: action to be carried out in the next 2-5 years Complete: actions that are considered complete, no further action required. Underway: actions that are already underway; may be covered through activities of another initiative(s). Other: includes actions that are not within the agency scope/mandate; does not require action; or requires further analysis or considerations</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.	Shared	Underway
4. Boards and governments should continue their efforts to educate participants in the requirements of the approvals process.	Shared	Underway
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.	Shared	Future Consideration
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.	GNWT	Underway
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 (eg. one consolidated disposition table).	SLWB	Underway
8. Federal and territorial departments should develop formal agreements and applicable training programs to ensure that <i>all</i> permit and license conditions are subject to inspection and enforcement by appropriate <i>regulatory</i> authorities. As the lead department for the MVRMA, INAC should take the leadership role in ensuring this occurs.	INAC	Underway – Future Consideration
9. Regulatory agencies should develop cooperative agreements to optimize the effectiveness and efficiency of inspection activities.	Shared	Future Consideration
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.	LWBs	Underway

RECOMMENDATIONS	LEAD AGENCY	STATUS*
<p>* Future Consideration: action to be carried out in the next 2-5 years Complete: actions that are considered complete, no further action required. Underway: actions that are already underway; may be covered through activities of another initiative(s). Other: includes actions that are not within the agency scope/mandate; does not require action; or requires further analysis or considerations</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.	Shared	Underway
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.	Shared	Underway – Future Consideration
13. The fines and penalties provisions of the MVRMA should be amended to be more consistent with CEPA, the <i>Fisheries Act</i> , and the NWT EPA.	INAC	Future Consideration
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.	MVEIRB	Underway
15. The MVEIRB should continue to develop tools for completing social and cultural impact assessment, and monitor developments in this area in other jurisdictions.	MVEIRB	Complete
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.	Shared	Underway – Future Consideration
17. Relevant government agencies need to place increased emphasis on the social, economic and cultural aspects of their mandate during EA processes.	Shared	Underway
18. MVEIRB and relevant government agencies should more thoroughly assess climate change impacts in EAs, where appropriate for the nature of the project.	Shared	Underway
19. The MVEIRB should have direct access to relevant government expertise at all stages in the EIA process.	Shared	Complete

RECOMMENDATIONS	LEAD AGENCY	STATUS*
<p>* Future Consideration: action to be carried out in the next 2-5 years Complete: actions that are considered complete, no further action required. Underway: actions that are already underway; may be covered through activities of another initiative(s). Other: includes actions that are not within the agency scope/mandate; does not require action; or requires further analysis or considerations</p>		
<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.</p>	<p>Shared</p>	<p>Underway</p>
<p>21. Nominating parties should submit nominees no later than four months prior to the expiry of a sitting member's term of office.</p>	<p>Shared</p>	<p>Underway</p>
<p>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.</p>	<p>INAC</p>	<p>Outside Mandate</p>
<p>23. INAC should streamline the appointments process and commit to completing the process within two months of a nomination being submitted.</p>	<p>INAC</p>	<p>Underway</p>
<p>24. To the extent possible, the Minister of INAC should provide nominating parties with clear rationale for the rejection of nominees.</p>	<p>INAC</p>	<p>Outside Mandate</p>
<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>Shared</p>	<p>Underway – Future Consideration</p>
<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.</p>	<p>Shared</p>	<p>Complete</p>
<p>27. With full support from INAC, the Boards should lead the development and implementation of comprehensive training for Board members.</p>	<p>Shared</p>	<p>Underway</p>

RECOMMENDATIONS	LEAD AGENCY	STATUS*
<p>* Future Consideration: action to be carried out in the next 2-5 years Complete: actions that are considered complete, no further action required. Underway: actions that are already underway; may be covered through activities of another initiative(s). Other: includes actions that are not within the agency scope/mandate; does not require action; or requires further analysis or considerations</p>		
28. INAC should work with Boards to develop and implement a public accountability reporting process with clearly identified standards, including performance relative to s. 58 of the MVRMA.	Shared	Underway
29. Consideration should be given to extending the Preliminary Screening review timeframe beyond the current 42 days to facilitate community input.	Shared	Future Consideration
30. Prior to the submission of REAs, the MVEIRB should provide opportunities for Responsible Ministers to review and comment on proposed mitigation measures.	MVEIRB	Underway
31. INAC should develop and implement procedures to encourage a more transparent and accountable post-REA process.	INAC	Underway
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	Future Consideration
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	Underway
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.	INAC	Future Consideration
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.	INAC	Underway

RECOMMENDATIONS	LEAD AGENCY	STATUS*
<p>* Future Consideration: action to be carried out in the next 2-5 years Complete: actions that are considered complete, no further action required. Underway: actions that are already underway; may be covered through activities of another initiative(s). Other: includes actions that are not within the agency scope/mandate; does not require action; or requires further analysis or considerations</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	Underway
37. Notwithstanding the outcome of Recommendation 36, Boards should 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/license 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).	Shared	Underway
38. INAC should investigate approaches that could be used to ensure Board funding is capable of responding to changes in workload.	INAC	Underway
39. A participant funding program should be established for Environmental Assessments and regulatory processes involving public hearing under the MVRMA.	INAC	Under Consideration
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	Underway
41. MVEIRB's TK in EIA Guidelines should be reviewed by all participants in the environmental management process to assess their broader applicability.	Shared	Complete
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	Underway
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.	Shared	Future Consideration

RECOMMENDATIONS	LEAD AGENCY	STATUS*
<p>* Future Consideration: action to be carried out in the next 2-5 years Complete: actions that are considered complete, no further action required. Underway: actions that are already underway; may be covered through activities of another initiative(s). Other: includes actions that are not within the agency scope/mandate; does not require action; or requires further analysis or considerations</p>		
44. Regional Aboriginal leadership should develop guidance that clearly defines expectations regarding the collection, release and use of TK.	Aboriginal Governments	Future Consideration
45. The participants in the system should review the issues associated with the compensation and acknowledgement related to the collection of original TK.	Shared	Future Consideration
46. Efforts to collect and use TK should include gender-specific considerations.	Shared	Future Consideration
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.	INAC	Underway
48. Verification of TK used in environmental decision-making should be carried out in a respectful manner.	Shared	Future Consideration
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 amendments as operational experience is obtained.	Shared	Underway
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.	INAC	Underway

INAC RESPONSE TO THE RECOMMENDATIONS

INAC accepted the lead to 15 recommendations, and identified shared responsibilities for an additional 28. With respect to the seven remaining recommendations that fall to an outside agency mandate, INAC has provided comments and/or a status update based on the Department's observations.

INAC-Lead Recommendations

INAC's responses to recommendations related to our mandate, processes and activities are outlined below.

Recommendation 8:

Federal and territorial departments should develop formal agreements and applicable training programs to ensure that all permit and license 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.

INAC's Operations Directorate is working with boards to standardize land use permit terms and conditions, which will then be applied to the entire Mackenzie Valley. INAC is also supporting the MVEIRB in the development of a regulatory tracking measures initiative. Federal, Territorial, Aboriginal governments representatives and affected boards are working together to standardize terms and conditions for both land use permits and land leases for the proposed Mackenzie Gas Project and regulatory authorities will make best efforts, when appropriate, to coordinate inspection and enforcement activities.

In the future, it is anticipated that through the use of intergovernmental committees, working relationships could be formalized through the development of Memorandums of Understanding and enforcement protocols, if appropriate.

Recommendation 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.

Currently, INAC does not have plans to amend MVRMA fines and penalties provisions. The Department will consider legislation in the context of the “Joint Examination Project”, which arose from the Tłı̄ch̄ô legislation. The intent of this Project is to review the MVRMA and related Mackenzie Valley-wide agreements and identify areas of inconsistency among these various authorities.

Recommendation 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.

INAC does not agree with this recommendation. Due to confidentiality requirements, the Minister is prevented from creating a new mechanism for nominating parties to track the status of nominees in the appointment process. INAC is discussing with the nominating parties and the boards potential refinements to the appointment process to improve the overall effectiveness.

Recommendation 23

INAC should streamline the appointments process and commit to completing the process within two months of a nomination being submitted.

Similar to that of recommendation 22, 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 of its completion.

Recommendation 24

To the extent possible, the Minister of INAC should provide nominating parties with clear rationale for the rejection of nominees.

INAC does not agree with this recommendation. Similar to recommendation 22, privacy requirements prevent the Minister of INAC from providing nominating parties with clear rationale for the rejection of nominees.

Recommendation 31

INAC should develop and implement procedures to encourage a more transparent and accountable post-REA process.

INAC is developing an Environmental Assessment (EA) Management System, to compile departmental information related to the Ministerial decision (post REA) process, including the timeliness for the EA process. The functional requirements and project charter of this web-based EA tracking and monitoring system are complete. Web development commenced during May 2007, and are scheduled to be completed by February 2008.

Recommendation 32

The next NWT Audit should evaluate whether adequate firewalls exist between the different mandates of regulatory authorities, particularly within INAC and the GNWT.

As required under the MVRMA, INAC is responsible for the completion of an independent environmental audit every five years. Therefore, this recommendation will be considered by the CIMP and Audit Working Group in the development of the draft

2008 NWT Environmental Audit Terms of Reference. The second NWT Environmental Audit is scheduled to be conducted in 2010.

Recommendation 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.

INAC recognizes the importance and requirement of Aboriginal community participation in the environmental and regulatory process. As part of a larger community of departments and agencies responsible for environmental management, INAC has a number of capacity building programs and initiatives that assist in fulfilling this requirement. For example, the NWT CIMP provides project specific support to communities; the Interim Resource Management Assistance (IRMA) program provides support to communities in unsettled land claim areas to facilitate participation in resource management activities; and various other programs managed by Indian and Inuit Services. The NWT CIMP and Audit Working Group have developed a questionnaire on capacity issues within Aboriginal organizations. This is an initial step towards the implementation of this recommendation.

Still in the planning stages, the Northern Aboriginal Leadership Program, supported by Indian and Inuit Services (INAC) is intended to assist Aboriginal people who wish to shape their future and support their chosen way of life. INAC will also consider this recommendation in the context of the NRII.

INAC will continue to work with communities and Aboriginal organizations to assist them with their capacity requirements.

Recommendation 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.

The Government of Canada is developing policy related to the topic of s.35 Crown Consultation and Accommodation (with INAC acting as the lead department), but in the interim there has been a need for a proactive, coordinated approach in the NWT to deal with non-pipeline related Crown Consultation issues. Due to requests for direction from partners and operational demands, INAC-NWT has been developing an interim approach to s.35 Crown consultation. This interim approach to s.35 Crown consultation has included the formation of a regional internal Consultation Working Group (see page 10).

Recommendation 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, through various initiatives including the REI and NWT Board Forum Training Workshops, reviewed the NWT Region's overall relationships with Aboriginal organizations, other governments and industry. A draft plan for regional engagement is currently under development.

Recommendation 38

INAC should investigate approaches that could be used to ensure Board funding is capable of responding to changes in workload.

INAC and the boards are working together to develop products related to board strategic planning issues and how to manage roles and responsibilities. Templates for strategic planning and a “how to” workbook for use by the boards have been developed.

Through a response to the Office of the Auditor General of Canada (2007), issues with respect to workload and financial reporting have been addressed. 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”.

In addition to assisting the boards with tools to better manage workload responsibilities, INAC is undertaking a review of board funding and how it relates to boards workload.

Recommendation 39

A participant funding program should be established for Environmental Assessments and regulatory processes involving public hearing under the MVRMA.

INAC has undertaken policy research on intervenor funding and is currently developing options for consideration by senior management. To date, interim participant funding for public hearings pursuant to the MVRMA has been evaluated and provided on a project-by-project basis.

Recommendation 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 is working to ensure that the Northern Affairs Organization A-base is adequate, multi-year and predictable. Funding for INAC’s MVRMA roles and responsibilities has been requested and included with the 2006 departmental business case submission.

Recommendation 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.

INAC continues to support opportunities to improve the understanding and awareness of scientific and TK terminology. To this end, INAC is involved in ongoing operational, project-driven workshops and activities, related to training and education. For example, INAC has supported and participated in the Dene Cultural Institute Workshop on TK, NWT Protected Areas Strategy Sahtu Translators Workshop, and NWT Board Forum Training Workshops.

Recommendation 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.

INAC is working to secure long term funding for CIMP to allow for the monitoring of valued ecosystem components over time to assess change and support mitigative action where necessary. Monitoring is most effective when implemented over a longer time frame, which requires a long term financial commitment.

INAC is working to secure funding on a five year basis, which will include a review that can be linked to the NWT Environmental Audit process, therefore allowing funding to be responsive to NWT CIMP's changing needs. In the interim, INAC supports the program fiscally on a year-to-year basis, subject to available resources.

Shared Lead Recommendations

There are 28 recommendations for which INAC can provide input and direction within the scope of its mandate. The following responses are specific to INAC and pertain to departmental specific activities with respect to addressing or contributing to the recommendations.

Recommendation 1:

The Sahtu Land Use Plan should be completed and approved as soon as possible.

Currently, the Sahtu Land Use Planning Board is working on the second draft of its land use plan with INAC's support. It is expected that there will be at least two more iterations of the Plan before it will be submitted for approval and implementation.

Recommendation 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.

INAC supports the development and approval of LUP's. However, further implementation of this recommendation is dependent in large part on progress at the land claims tables (ie. Dehcho, Akaitcho) as land use planning will proceed in concert with negotiations.

An interim land withdrawal in place through the Dehcho Process and negotiations continue regarding the Dehcho Land Use Plan. In the Akaitcho region, an interim land withdrawal has been negotiated and approval is pending. Land use planning has not been initiated but the Akaitcho Territory Government is developing its overall approach

to conservation and development. Land use planning is in a very early stage for Tłı̄chô lands.

Recommendation 3:

In areas where land use plans have been approved, and in new land use plans, consideration should be given to the identification of maximum development density thresholds.

Although not specifically in INAC's mandate, thresholds and carrying capacity are currently under consideration in the context of the NWT CEAM Strategy and Framework and land use planning. Thresholds have been applied in some circumstances (e.g. Cameron Hills development activity) and are under consideration in others (e.g. seismic work generally and land use planning). However, further analysis is required regarding the fit with regulatory regime and federal policy.

Recommendation 4:

Boards and governments should continue their efforts to educate participants in the requirements of the approvals process.

Education regarding the approvals process is integrated in communication tools developed by governments and boards for use by all parties: these efforts will continue and involve written, verbal and electronic communications.

Recommendation 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.

INAC is aware that GNWT has raised the issue of air quality to the Canadian Council of Ministers of the Environment; however no action has been taken thus far. How INAC will input into this process has yet to be determined.

Recommendation 9:

Regulatory agencies should develop cooperative agreements to optimize the effectiveness and efficiency of inspection activities.

INAC agrees with the intent of this recommendation and there is a high degree of informal cooperation with the intent to maximize efficiency within the enforcement community. Where appropriate, other collaborative efforts and relationships may be developed, subject to operational considerations.

Recommendation 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.

INAC does not agree with this recommendation as federal privacy acts prevent the release of confidential information. INAC does however, make every effort to provide relevant information to the LWB's for the environmental management processes.

Recommendation 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.

INAC will continue to make best efforts to coordinate, collaborate, and share the collection of environmental baseline data, research study reports, and related public information with the LWB's. However, detailed information related to enforcement

activities cannot be shared pending enforcement decisions, court judgements, and/or statute of limitations considerations.

Recommendation 16:

In situations where measures dealing with socio-economic impacts are made in EIA decisions and there is no associated regulation, governments should develop and use policy instruments to facilitate the implementation of the measures.

INAC is in on-going discussions with boards and other agencies respective to socio-economic mandates, policies and implementation mechanisms that could be utilized.

Recommendation 17:

Relevant government agencies need to place increased emphasis on the social, economic and cultural aspects of their mandate during EIA processes.

INAC will continue to work with appropriate organizations to develop policies related to social, economic and cultural considerations. Specifically, INAC will continue to address social, economic and cultural consideration within its mandate as part of the EIS process.

Recommendation 18:

MVEIRB and relevant government agencies should more thoroughly assess climate change impacts, mitigation and adaptation in EAs, where appropriate for the nature of the project.

INAC will continue to address these issues during EAs as required. Further discussions are required to determine how climate change impacts will be incorporated into the Terms of Reference for specific projects. In addition, INAC will continue to support related research and projects within its mandate, where possible.

Recommendation 19:

The MVEIRB should have direct access to relevant government expertise at all stages in the EIA process.

INAC will continue to provide direct technical advice and assistance to boards during the EIA process, subject to resource availability.

Recommendation 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.

INAC supports in principle, to have a Departmental representative present at community hearings and public information sessions subject to resource availability.

Recommendation 21

Nominating parties should submit nominees no later than four months prior to the expiry of a sitting member's term of office.

INAC agrees that nominating parties should submit their nominees to the Minister no later than four months prior to the expiry of a member's term of office. Currently, INAC sends requests for nominating letters eight months in advance of the end of term to assist in facilitating this process.

Recommendation 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.

INAC is not in agreement with this recommendation. The current appointment period for board members is defined by legislation and INAC does not have the intent to modify

legislation at this time. For most boards, membership is already staggered and can be renewed.

Recommendation 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.

INAC has, in partnership with the boards, developed in April 2007, “A General Orientation Binder for New NWT Board Members” (see recommendation 27 below).

Recommendation 27

With full support from INAC, the Boards should lead the development and implementation of comprehensive training for Board members.

INAC has been working with the boards to assess their training requirements. The implementation of recommendations contained in the report entitled “NWT Boards Training Needs Assessment and Key Considerations for the Development of an Orientation Binder” are being addressed. The Northern Board Training Initiative Steering Committee continues work on a business plan and financial estimates for a Northern Board Training Initiative.

Recommendation 28

INAC should work with Boards to develop and implement a public accountability reporting process with clearly identified standards, including performance relative to s. 58 of the MVRMA.

INAC along with the NWT Board Forum has worked to develop guidance documents, and templates related to board strategic planning issues and their respective roles and responsibilities. A ‘how-to’ workbook on strategic planning has been developed. These documents will be used to assist boards in implementing results-based reporting. INAC

and the boards also worked together to carry out an environmental scan and workload-driver analysis, resulting in a report entitled “Environmental Scan and Workload Analysis for the NWT Board Planning Process”.

Recommendation 29

Consideration should be given to extending the Preliminary Screening review timeframe beyond the current 42 days to facilitate community input.

INAC has no current plans to amend the Mackenzie Valley Land Use Regulations to extend the Preliminary Screening review timeframe beyond the current 42 days at this time.

Recommendation 33

Government departments should identify and evaluate mechanisms to optimize the use of existing technical expertise, including collaborative measures between various levels of government.

INAC seeks opportunities to collaborate with other organizations for board submissions, technical expertise and external consultants.

Recommendation 37

Notwithstanding the outcome of Recommendation 36, Boards should 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/license 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).

INAC supports this recommendation (refer to NR11).

Recommendation 41

MVEIRB's TK in EIA Guidelines should be reviewed by all participants in the environmental management process to assess their broader applicability.

INAC has reviewed and provided comments on the MVEIRB's Traditional Knowledge (TK) guidelines.

Recommendation 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.

INAC will continue to support Aboriginal communities in their efforts to collect and compile TK to support environmental decision-making on a case-by-case basis, subject to availability of resources.

Recommendation 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.

INAC will continue to support increased awareness regarding the collection and application of TK, subject to available resources.

Recommendation 45

The participants in the system should review the issues associated with the compensation and acknowledgement related to the collection of original TK.

INAC has no immediate plans to review the issues associated with compensation and application of original TK. The MVEIRB has developed TK guidelines that could be utilized.

Recommendation 46

Efforts to collect and use TK should include gender-specific considerations.

INAC supports the intent of this recommendation.

Recommendation 48:

Verification of TK used in environmental decision-making should be carried out in a respectful manner.

INAC supports the intent of this recommendation.

Recommendation 49:

The Working Group should make the development and implementation of a detailed, operational work plan, which clearly identifies and addresses monitoring needs, an 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 reviews and amendments as operational experience is obtained.

The NWT CIMP addresses land and water usage, waste disposal, and affects on the environment of the NWT. The program, based in land claims and legislation, follows a community-based approach to monitoring the human and biophysical aspects of the environment. A draft Five-Year Work Plan and Operational Plan for the NWT CIMP and Audit prepared by the Working Group outlines the steps necessary to fully implement the program.

Other Agency Lead Recommendations

Seven of the 50 recommendations fall outside the scope of INAC's mandate, the following are observations and/or status updates made on the recommendations.

Recommendation 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.

As part of the larger group of departments and agencies that participate in development scenarios, INAC will continue to review, support and comment on materials and approaches developed by various parties, including the GNWT and the MVEIRB to ensure the effectiveness of protocols and performance measures, where appropriate.

Recommendation 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 (eg. one consolidated disposition table).

INAC supports the SLWB in the implementation of this initiative, where appropriate.

Recommendation 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.

As the land and water manager, INAC supports the need to have comprehensive instructions for proponents. For example, INAC is studying water standards and options and will review conclusions and recommendations with key clients and organizations. The development of standards will facilitate the implementation of this recommendation. (See also the NRII).

Recommendation 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.

INAC is an active participant in ongoing discussions with the MVEIRB on recommended EA measures and improved government implementation and follow-up.

Recommendation 15:

The MVEIRB should continue to develop tools for completing social and cultural impact assessment, and monitor developments in this area in other jurisdictions.

INAC has reviewed the MVEIRB's socio-economic guidelines and is participating in ongoing discussions. The Department has also participated, without prejudice, in MVEIRB's training workshops regarding the socio-economic guidelines.

Recommendation 30

Prior to the submission of REAs, the MVEIRB should provide opportunities for Responsible Ministers to review and comment on proposed mitigation measures.

INAC has recommended to the MVEIRB that Responsible Ministers should have an opportunity to review and comment on the proposed mitigation measures prior to finalizing the REA.

Recommendation 44

Regional Aboriginal leadership should develop guidance that clearly defines expectations regarding the collection, release and use of TK.

INAC agrees that the creation of TK guidance documents would be helpful to provide clarity to all TK activities.