

December 10, 2008

# **TERMS OF REFERENCE FOR THE SECOND NWT ENVIRONMENTAL AUDIT**

Prepared by the  
NWT Audit Sub-Committee (sub-group of the NWT Cumulative Impact Monitoring Program  
(NWT CIMP) and Audit Working Group)

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# 1. The Legal Basis for the Audit

Periodic environmental audits in the Mackenzie Valley<sup>1</sup> are required by the Gwich'in, Sahtu and Tlicho final agreements. The requirements under these comprehensive claims are provided for as statutory requirements in Part 6 of the *Mackenzie Valley Resource Management Act* (MVRMA) – Environmental Monitoring and Audit<sup>2</sup>. Part 6 ties the other parts of the MVRMA together through the environmental monitoring and audit functions. Aspects of Part 6 are highlighted as follows:

## *Environmental Monitoring*

- The Responsible Authority (in this case, the Federal Minister or Minister of INAC, as no regulations are yet in place for S. 146) shall “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” (S. 146)
- The Federal Minister “shall carry out the functions referred to in section 146 in consultation with the first nations and the Tlicho Government” (S. 147).

## *Environmental Audit*

- The Minister of INAC is responsible for ensuring that an environmental audit is conducted by an independent body or person at least once every five years (S. 148(1)).
- The Minister of INAC is responsible for fixing the terms of reference for the audit, including the key components of the environment to be examined, after consulting with the Gwich'in, Sahtu and Tlicho First Nations and the Government of the Northwest Territories (GNWT) (S. 148(2)).
- The environmental audit shall include:
  - 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 (S. 148(3)(a));
  - A review of the effectiveness of methods used for carrying out cumulative impact monitoring pursuant to section 146 of the MVRMA (S.148(3)(b));

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1 The Mackenzie Valley is defined in s. 2 of the Mackenzie Valley Resource Management Act as all of the NWT except for the Inuvialuit Settlement Region and Wood Buffalo National Park.

2 Relevant provisions from the MVRMA, including definitions and the full text of Part 6 (Environmental Monitoring and Audit) are reproduced in Appendix 1, in their current form. For clarity, the reader should refer to the specific text of the relevant sections of the MVRMA referenced throughout these Terms of Reference.

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- 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 (148(3)(c)); and
  - A review of the response to any recommendations of previous environmental audits (S.148(3)(d)).
- The audit report, which may include recommendations, shall be prepared and submitted to the Minister of INAC and the Minister shall make the report available to the public (148(4)). The Minister of INAC shall make every effort to ensure that the report is made available to the public as soon as possible after it is submitted by the auditor.
  - The Gwich'in, Sahtu and Tlicho First Nations are entitled to participate in environmental audits in the manner provided by the regulations (148(5)). [Note: in the absence of regulations, the terms of reference define the participation by the Gwich'in, Sahtu and Tlicho First Nations in the audit. The roles defined for the Gwich'in, Sahtu and Tlicho First Nations in the MVRMA are extended to other First Nations and Métis in the NWT and to the Inuvialuit, given the NWT-wide approach to the audit.]
  - The person or body performing an environmental audit is authorized to obtain the information required to conduct the audit from any board established under the MVRMA or from any department or agency of the federal or territorial government, subject to any other federal or territorial law (149).
  - The Governor in Council may make regulations “for carrying out the purposes and provisions” of Part 6 and, in particular, respecting the participation of the Gwich'in, Sahtu and Tlicho First Nations in environmental audits (150). [Note: no regulations have been made pursuant to section 150.]
  - The term “environment”, which is used at several places in section 148 of the MVRMA, is defined in section 2 of the MVRMA as:

“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).”

- The term “impact on the environment” is defined for the purposes of Part 6 of the MVRMA as: “any effect on land, water, air or any other component of the environment, *as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources*” (emphasis added).

## 2. Independence of the Auditor

The independence of the auditor, as required by subsection 148(1) of the MVRMA, is an essential feature of the environmental audit. This independence must be ensured through the process for selecting the auditor and also during the audit process itself. The selection of the auditor shall be guided by the following requirements:

- The auditor shall be independent of:
  - The federal and territorial governments;
  - Boards established under land claim agreements in the Mackenzie Valley, the MVRMA and the Inuvialuit Final Agreement (IFA), and other resource management boards with jurisdiction in the NWT;
  - First Nations, Métis and Inuvialuit governments and organizations in the NWT;
  - Industry in the NWT; and
  - Other organizations that participate in their own right in environmental and resource management processes in the NWT.
- To ensure that the principle of independence is adhered to, the audit shall not be undertaken by or under the direction of any individual who has been a direct employee of a department or agency of the federal or territorial governments that has jurisdiction relating to environmental and resource management in the NWT; a board or agency established under land claim agreements in the Mackenzie Valley, the MVRMA or the IFA; a resource management board with jurisdiction in the NWT; an Aboriginal government or organization in the NWT; or a private contractor with direct involvement in the development of cumulative impact monitoring or cumulative effects assessment and management in the NWT (including the NWT CIMP or Audit), within the two-year period prior to the appointment of the auditor.

- Individuals shall not be disqualified from serving as an auditor or serving as a member of a group or panel that undertakes an audit because of any status or entitlement conferred on that individual under any agreement between a First Nation and Her Majesty in right of Canada for the settlement of a claim to lands.

The auditor's independence while conducting the audit is ensured by provisions in the terms of reference that address the contractual relationship between the auditor and INAC (s. 11) and that specify the role for the Audit Sub-Committee (s. 9). The terms of reference also give the auditor the authority to exercise his/her independent judgment throughout the audit process. In particular, following his/her consideration of comments from the Audit Sub-Committee, the auditor shall make the final determination regarding:

- The specific issues and topics<sup>3</sup> to be examined within each component of the audit identified in subsection 148(3) of the MVRMA;
- The audit criteria;
- The observations (i.e., findings), recommendations and conclusions to be included in the final audit report; and
- The audit methodology.

The terms of reference for the audit are intended to provide procedural and substantive guidance regarding the audit process, without compromising the independence of the auditor. It is also recognized that the terms of reference should not be interpreted or applied in a way that would unduly constrain the auditor from making necessary adjustments to the audit process, in consultation with the Audit Sub-Committee (see below, s. 9), in response to unforeseen circumstances.

### 3. Intent of the Audit

The environmental audit is intended to:

- Comply fully with the legal requirements for environmental audits under Part 6 of the MVRMA and pursuant to the Sahtu, Gwich'in and Tlicho final agreements;
- Use the MVRMA framework as the basis for a territory-wide environmental audit that includes both the Mackenzie Valley (MV) and the Inuvialuit Settlement Region (ISR);
- Act as a catalyst for change, by providing specific, practical and constructive recommendations for improvements to environmental and natural resource management in the MV, in the ISR and throughout the NWT;
- Lay the foundation for subsequent environmental audits in the MV, in the ISR, and throughout the NWT by describing baseline environmental conditions, identifying priority issues, highlighting

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<sup>3</sup> The specific 'issues and topics' examined by the auditor are sometimes referred to as 'lines of inquiry'.

opportunities for improvement, considering the issues and solutions put forward in response to the recommendations from the first audit, and suggesting how performance indicators could be developed to support ongoing monitoring and periodic audits;

- Reflect the intent of comprehensive land claim agreements and governments in the NWT to ensure sustainability and to protect and conserve wildlife and the environment for present and future generations that are embodied in land claim agreements in the NWT;
- Consider impacts on the environment, including biophysical impacts and impacts on wildlife harvesting, and on the social and cultural environment, and on heritage resources;
- Focus on specific issues and topics, within each component of the audit as identified in subsection 148(3) of the MVRMA, that are relevant to decision-makers and other interested parties involved in environmental and resource management in the NWT;
- Focus on specific issues and topics, within each component of the audit as identified in subsection 148(3) of the MVRMA, that are likely to result in recommendations that can be implemented by decision-makers and others involved in environmental and resource management in the NWT; and
- Result in data, analysis, discussions, conclusions and recommendations that can be applied distinctly to the MV, to the ISR, and to the NWT as a whole.

## **4. Components of the Audit**

The audit shall include the four components specified by subsection 148(3) of the MVRMA (i.e., evaluation of information in order to determine environmental trends; effectiveness of methods for cumulative impact monitoring; review of the effectiveness of regulatory regimes; and review of response to any recommendations of previous environmental audits).

### ***4.1 Audit of Environmental Trends***

Section 148(3)(a) of the MVRMA states that the audit shall include:

“an evaluation of information, including information collected or analyzed under section 146, in order to determine trends in environmental quality, potential contributing factors to changes in the environment and the significance of those trends;“

Further, Section 146 states:

“The responsible authority shall, subject to the regulations, 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”.

- In conducting the audit of environmental trends as required by paragraph 148(3)(a) of the MVRMA, and in accordance with the NWT-wide approach to the audit, the auditor shall evaluate relevant information in order to determine:
  - Trends in environmental quality in the MV, the Inuvialuit Settlement Region (ISR), and the NWT as a whole;
  - Potential contributing factors to any changes in the environment; and
  - The significance of trends that have been identified.

In determining trends in environmental quality, contributing factors, and the significance of trends, the auditor shall use available information, including information provided in the first environmental audit (2005), and comment on changes in methods and analysis, including available data, since the release of the first audit. Sources of referenced data must be clearly identified.

- In determining trends in environmental quality and the significance of these trends, the auditor should make reference to the Valued Components identified in the ‘Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit’.<sup>4</sup>
- In determining potential contributing factors to changes in the environment, the auditor may identify and comment on contributing factors to change that may originate outside the Mackenzie Valley, the ISR and the NWT, and may comment on means to influence those changes.
- The auditor shall consider the significance of trends in environmental quality in terms of the effects of such trends on:
  - The health of the land, water, air or any component of the biophysical environment,
  - Heritage resources, or

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<sup>4</sup> The NWT CIMP and Audit Working Group has prepared a ‘Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit’ (February 2002 [Updated June 2007], which summarizes the state of knowledge (baseline conditions, trends, current monitoring) and identifies key monitoring indicators. Further revisions to the content of the report will be undertaken during the implementation of the NWT CIMP.

- The social, cultural or economic well-being of the NWT, including the effects of such trends on wildlife harvesting.
- In determining the significance of trends in environmental quality, the auditor shall consider the implications of those trends for environmental, social, economic, and cultural sustainability and for future generations.
- The auditor shall provide recommendations about the relative importance or priority that should be assigned to trends in environmental quality and factors contributing to those trends from the perspective of protecting the environment from significant adverse impacts.

## ***4.2 Audit of Cumulative Impact Monitoring Methods***

Section 148(3)(b) of the MVRMA states that the audit shall include:

“a review of the effectiveness of methods used for carrying out the functions referred to in section 146”

Further, Section 146 states:

“The responsible authority shall, subject to the regulations, 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 auditor shall:

- Conduct the audit of cumulative impact monitoring as required by paragraph 148(3)(b) of the MVRMA and in accordance with the NWT-wide approach to the audit, reviewing the effectiveness of methods that are used for carrying out the functions referred to in section 146 of the MVRMA and similar functions within the ISR and the NWT as a whole.
- Review the methods used in the Mackenzie Valley, the ISR and the NWT as a whole for collecting and analyzing 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.
- The auditor’s analysis should include a statement on the adequacy of existing data relating to cumulative impacts, as well as the effectiveness of current methods used to collect or analyze such data. The focus should be on key components of the environment identified through INAC’s (as the Responsible Authority) consultation with first nations and the Government of the NWT (As per S. 148 (2) of the MVRMA). These might include Valued Components in the

'Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit'.<sup>5</sup>

- Where changes to methods for collection and analysis of data have taken place since the first audit was completed, the auditor shall include a statement as to whether, in his or her opinion, these changes constitute improvements to the effectiveness of monitoring cumulative impacts in the NWT.
- In addition, the audit should include recommendations on ways to further improve cumulative impact monitoring / carrying out the functions referred to in section 146 of the MVRMA and similar functions in the ISR and the NWT as a whole<sup>6</sup>, noting the rationale for such improvements and the outcome that the proposed improvement would likely achieve. .

### **4.3 Audit of Regulatory Regimes**

Section 148(3)(c) of the MVRMA states that the audit shall include:

“a review of 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”

- In conducting the audit of regulatory regimes as required by paragraph 148(3)(c) of the MVRMA, and in accordance with the NWT-wide approach to the audit, the auditor’s review should aim to assist those who perform environmental regulatory functions in the NWT to improve their methods.
- In reviewing the effectiveness of regulatory regimes in the MV, the ISR and the NWT as a whole, the auditor shall consider the effectiveness of:
  - Bodies and processes created pursuant to land claim agreements in the MV, the MVRMA, and the Inuvialuit Final Agreement<sup>7</sup>
  - Departments, agencies and processes of the Government of Canada and the Government of the Northwest Territories.

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5 The NWT CIMP and Audit Working Group has prepared a 'Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit' (February 2002 [updated June 2007]), which summarizes the state of knowledge (baseline conditions, trends, current monitoring) and identifies key monitoring indicators. Further revisions to the content of the report will be undertaken during the implementation of the NWT CIMP.

6 This would include the NWT Cumulative Impact Monitoring Program, and other monitoring activities / 'similar functions' within the ISR and the NWT as a whole.

7 The Audit Sub-Committee will assist the auditor in identifying these bodies.

- In reviewing the effectiveness of regulatory regimes in the MV, the ISR and the NWT, as a whole:
  - The auditor shall consider the extent to which these regimes achieve an integrated approach to environmental and resource management that is capable of protecting key components of the environment from significant adverse impacts.
  - In identifying 'key components of the environment' for the purposes of the audit of regulatory regimes, focus should be on key components of the environment identified through INAC's (as the Responsible Authority) consultation with First Nations and the Government of the NWT (as per S. 148 (2) of the MVRMA). These might include those identified as Valued Components in the 'Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit'.<sup>8</sup>
  - When considering the protection of key components of the environment from significant adverse impacts, the auditor shall consider impacts on:
    - land, water, air and any component of the biophysical environment,
    - heritage resources,
    - wildlife harvesting, and
    - the social, and cultural and economic well-being
- The auditor shall consider the recommendations made in reports issued subsequent to the last audit that assess the NWT environmental management and regulatory regime, and the responses, additional information available, or actions that have been taken by organizations as a result.

#### ***4.4 Response to Initial Environmental Audit Recommendations***

Section 148(3)(d) of the MVRMA states that the audit shall include:

“a review of the response to any recommendations of previous environmental audits”

- The second NWT Environmental Audit shall include a review of the response to any recommendations of previous environmental audits, as per section 148(3)(d) of the MVRMA. The first NWT Environmental Audit was submitted to the Minister of INAC in December 2005 and contained 50 recommendations, and included a Supplementary Report on the Status of the Environment.
- The auditor shall determine what, if any, action(s) have been taken in response to recommendations made in the first NWT Environmental Audit and the Supplementary Report on the Status of the Environment.

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<sup>8</sup> The NWT CIMP and Audit Working Group has prepared a 'Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit' (February 2002 [updated June 2007]), which summarizes the state of knowledge (baseline conditions, trends, current monitoring) and identifies key monitoring indicators. Further revisions to the content of the report will be undertaken during the implementation of the NWT CIMP.

- If, in the opinion of the auditor, a response to the recommendations in the first NWT Environmental Audit to date is inadequate, the auditor may consider this in his/her recommendations.
- In evaluating the response to the recommendations of the first NWT Environmental Audit, the auditor may consider intended actions disclosed to the auditor during the second audit, as well as the clarity and relevance of the initial recommendation(s). Consideration shall be given to the time that has elapsed since the initial recommendation.

## 5. Duties of the Auditor

- In addition to fulfilling the requirements of section 148 of the MVRMA, the auditor shall conduct an environmental audit according to these Terms of Reference, as fixed by the Minister of INAC (as the Responsible Authority) for the NWT as a whole.
- In undertaking his/her audit evaluation and review of the matters specified in these Terms of Reference for the Second NWT Environmental Audit, and matters included in the audit through the exercise of the auditor's independent judgment, the auditor shall make observations, undertake analysis, reach conclusions and, where appropriate, make recommendations.
- In undertaking the Second NWT Environmental Audit, the auditor shall consider scientific knowledge and traditional knowledge (which includes historical knowledge and the knowledge of current users on the land), as available and appropriate, in all aspects of the audit.
- The auditor shall comply with any applicable protocols and guidelines that may exist regarding the confidentiality, ownership, crediting of sources and dissemination of all knowledge (traditional or scientific) reported in the audit.
- The auditor shall conduct the audit in a manner that is sensitive to the cultural diversity of the NWT.
- The auditor shall, pursuant to section 149<sup>9</sup> of the MVRMA conduct interviews and site visits, review relevant documents and data, and solicit submissions from the Audit Sub-Committee and other interested parties during the audit (See Section 8 'Information Management' below). The Audit Sub-Committee will facilitate the auditor in these regards to the extent operationally possible (See Section 9 'Audit Sub-Committee' below).
- The auditor may request any available information that the auditor determines is necessary in order to conduct the audit. The procedure for requesting information is set out below in Section 8.1.

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9 S. 149: "Subject to any other federal or territorial law, a responsible authority or a person or body who performs an environmental audit may obtain, from any board established by this Act or from any department or agency of the federal or territorial government, any information in the possession of the board, department or agency that is required for the performance of the functions of the responsible authority or person under this Part."

- The auditor shall consider all comments and information submitted to him/her during the course of the audit.
- The auditor shall submit periodic progress reports to the Audit Sub-Committee and shall be available to meet with the Audit Sub-Committee to discuss these reports.
- The auditor may undertake other functions that he/she deems necessary to discharge his/her responsibilities pursuant to the requirements of the MVRMA and the terms of reference for the audit.
- During Phase 1 of the audit ('Audit Planning', see Section 6 below), the auditor will develop a plan for the audit examination itself (Phase 2, see Section 7 below).

## **6. Phase 1 of the Audit - Audit Planning**

### ***6.1 Description of Phase 1***

- Phase 1 of the audit consists of the development of a plan for the examination phase of the audit (Phase 2) that is consistent with the statutory requirements for the audit and guided by the intent of the audit as described in these Terms of Reference.

### ***6.2 Development of the Audit Plan for the Examination Phase of the Audit***

- The auditor shall develop the audit plan for the examination phase of the audit taking into account comments from the Audit Sub-Committee or from first nations, the Tlicho Government or the Government of the Northwest Territories (as provided for in sections 147 and 148 of the MVRMA, in the absence of regulations, and by any similar provisions in the ISR).

### ***6.3 Audit Plan***

- The audit plan shall:
  - Summarize the legal basis for the audit, the audit components and the intent of the audit as described in the terms of reference;

- Identify the specific issues and topics that have been selected by the auditor within each component of the audit (see Section 4 above) for investigation and follow-up in the examination phase of the audit;
- Identify the audit criteria to be applied in the examination phase of the audit;
- Describe the audit methodology, including any assumptions on availability of data and access to personnel, to be used in the examination phase of the audit;
- Identify time lines, key target dates and resources to be used;
- Present and discuss any initial observations, conclusions and recommendations that the auditor is considering for further follow-up in the examination and reporting phase of the audit; and
- Include any other information that the auditor considers to be appropriate.

#### ***6.4 Distribution of the Audit Plan***

- The auditor shall present the audit plan to the Audit Sub-Committee at the end of Phase 1 of the audit. The auditor shall consider comments from the Audit-Sub-Committee when finalizing the audit plan.
- The auditor shall make the audit plan available to interested parties on request.

## **7. Phase 2 of the Audit - Audit Examination and Reporting**

### ***7.1 Description of Phase 2***

- During Phase 2 of the audit, the auditor shall:
  - Conduct a detailed examination of specific issues and topics that were identified in the audit plan for each component of the audit;
  - Determine the observations, conclusions and recommendations to be included in the final audit report;
  - Assemble the detailed evidence required to support these observations, conclusions and recommendations; and
  - Prepare the final audit report and submit it to the Minister of INAC.

## ***7.2 Content of the Final Audit Report***

- The final audit report shall:
  - Provide a brief discussion of the context for the audit, including the basis for the audit in land claim agreements and in the MVRMA;
  - Summarize the intent of the audit as specified in the terms of reference;
  - Describe the components of the audit;
  - Identify the specific issues and topics that were investigated within each component of the audit and the criteria that were applied;
  - Describe the audit process and methodology;
  - Describe the auditor's observations, conclusions and recommendations;
  - Explain the extent to which these observations, conclusions and recommendations apply distinctly to the MV, to the ISR, and to the NWT as a whole; and
  - Include any other information and discussion that the auditor considers to be appropriate.

## ***7.3 Opportunity for Comment on Drafts of the Final Audit Report***

- The auditor shall circulate drafts of all or part of the final audit report to parties that may be 'directly affected' by the final audit report.
- Parties considered 'directly affected' by the final audit report are:
  - Parties that are referred to in drafts of the final audit report in connection with observations, conclusions or recommendations; and
  - Parties that may be significantly affected by the observations, conclusions or recommendations contained in drafts of the final audit report.
- The auditor shall provide the Audit Sub-Committee with an opportunity to comment on the final draft of the final audit report in its entirety and may ask for comments from the Audit Sub-Committee on earlier drafts of the final audit report. The Audit Sub-Committee will have up to 45 days to provide comments directly to the Auditor.

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- Draft copies of all or part of the final audit report that are circulated for comment are to be treated as confidential.
  - The auditor shall establish specific confidentiality requirements and procedures to ensure, to the extent possible, that the confidentiality of drafts is respected.
- The opportunity for the Audit Sub-Committee or 'directly affected parties' to comment on drafts of all or part of the final audit report is intended to:
  - Ensure, to the extent possible, that there is no disagreement over statements of fact and assumptions that are included in the final audit report;
  - Provide directly affected parties with advance notice of observations, conclusions and recommendations that may be included in the final audit report that relate specifically to them; or
  - Provide directly affected parties with an opportunity to offer suggestions regarding the substance and wording of the auditor's draft observations, conclusions and recommendations.
  - Any directly affected parties will have up to 45 days to comment on the draft audit report or applicable recommendations, and may request more time within reason. The decision on any extension of time is at the discretion of the auditor.
- Once the auditor has received and considered comments on drafts of all or part of the final audit report, the auditor has full and unfettered authority to determine the content of the final audit report.
- The auditor shall treat as confidential any comments that he/she receives on drafts of all or part of the final audit report.

#### ***7.4 Submission and Dissemination of the Final Audit Report***

- The final audit report shall be submitted by the auditor to the Minister of INAC.
- The Minister shall make the final audit report available to the public as soon as possible after the auditor has submitted it<sup>10</sup>.

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10 The Government of Canada requires translation into French before release of published reports, including the audit report

## **8. Information Management**

### ***8.1 Requests for Information by the Auditor***

- In exercising his/her powers to collect information pursuant to section 149 of the MVRMA and subject to any other federal or territorial law, the auditor may request information required to perform the environmental audit functions from any board, department or agency.
- In undertaking these requests, the auditor shall provide a written outline of the information that is requested or the topic on which information is required, specifying a reasonable timeframe in which to provide the information as appropriate.
- If a board, department or agency does not have the requested information or cannot release that information subject to an identified federal or territorial law, the auditor may request a written response within a specified time. The auditor may also request that this response include an explanation of the reason why the requested information cannot be provided.
- In addition, the auditor may ask that if the board, department or agency is unable to provide the requested information, that other possible sources of relevant information to address the original intent of the request be identified.

### ***8.2 Audit Working Papers***

- The term “audit working papers” refers to the material prepared by, collected by or submitted to the auditor during the course of both phases of the audit, with the exception of material that is prepared by the auditor for distribution to the general public and material that is already in the public domain.
- It is important to ensure, to the extent possible under applicable privacy and access to information legislation, that audit working papers are kept confidential so as to allow for information to be freely given to the auditor to ensure a full and effective audit for the purposes intended in the legislation and agreements.
- The auditor shall manage the audit working papers in accordance with the confidentiality and management of information provisions specified in the audit contract and in accordance with applicable professional standards.
- During the course of the audit, the auditor shall determine the extent to which any audit working papers require confidentiality and shall ensure that the appropriate level of confidentiality for audit working papers is maintained.

- The auditor shall have ownership and custody of the audit working papers, and shall exercise control and confidentiality over the audit working papers, during the audit and after the completion of the audit.
- It is acknowledged that the audit working papers shall be subject to, and managed in accordance with, applicable privacy and access to information legislation.

## 9. Audit Sub-Committee

- An Audit Sub-Committee that takes direction from, and reports to, the NWT Cumulative Impact Monitoring Program (NWT CIMP) and Audit Working Group shall be established for the Second NWT Environmental Audit.
- Membership of the Audit Sub-Committee shall consist of one representative from each of the following:
  - Gwich'in Tribal Council
  - Sahtu Secretariat Inc.
  - Tlicho Government
  - Dehcho First Nations
  - North Slave Métis Alliance
  - Northwest Territory Métis Nation
  - Inuvialuit Game Council
  - Akaitcho Territory Government<sup>11</sup>
  - Government of the Northwest Territories (Dept. of Environment and Natural Resources)
  - Government of Canada (Indian and Northern Affairs Canada)
- The Audit Sub-Committee may seek expert advice and assistance from non-members.
- To facilitate audit functions addressed in Part 6 of the MVRMA and this Terms of Reference in a reasonable and timely manner, the Audit Sub-Committee or its members, in consultation with their organizations, shall:
  - Prepare the revised Terms of Reference for the second NWT Environmental Audit, to be finalized by the Minister of INAC or his designate;
  - Assist the auditor in obtaining information, including information on how each member's representative organization responded to the findings/recommendations of the first NWT Environmental Audit (2005) and the Supplementary Report on the Status of the Environment;

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11 The Akaitcho Territory Government is not currently participating in the NWT Audit development process; however, it has a standing invitation to participate or observe without prejudice to land claim or self-government negotiations

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- Assist the auditor in identifying interviewees and arranging interviews within their organization;
  - Provide comments to the auditor regarding the development of the audit plan, including the identification of specific issues and topics to be examined within each component of the audit and the selection of audit criteria;
  - Review periodic progress reports submitted by the auditor and meet with the auditor, as appropriate, to discuss these progress reports;
    - Discuss with the auditor any adjustments to the audit process that may be required as a result of unforeseen circumstances;
    - Provide comments to the auditor concerning the process of each regional organization or government for incorporating traditional knowledge in the audit;
  - Promote awareness of the Second NWT Environmental Audit to ensure that interested parties and the general public in the NWT have opportunity to provide input during the audit process. This will be undertaken according to an agreed upon Communications Plan that addresses protocols and products;
  - Maintain the confidentiality of the audit process, and audit materials, as appropriate ;
  - Provide other assistance it can as appropriate in order to facilitate the work of the auditor, with the support of a secretariat.
- INAC shall provide secretariat services, communications and other technical support, and financial resources to support the operations of the Audit Sub-Committee.
  - The Audit Sub-Committee shall be dissolved once the audit has been completed.

## 10. Timing and Budget

- The auditor shall complete the audit by December 31, 2010.
- The audit shall be deemed to be complete when the final audit report has been submitted to the Minister of INAC.<sup>12</sup>.
- The auditor shall ensure that the total cost of the audit is within the approved amount based on the auditor's proposal.

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Translation of the audit document will be done by the Government of Canada, following submission to the Minister, and before release to the public.

## **11. Administration of the Audit Contract**

- INAC shall designate an official to administer the contract with the auditor.
- INAC shall designate an official to serve as a contact person, in order to respond to requests for information from INAC. The INAC contact person shall be separate from the NWT CIMP coordinators, from other INAC staff involved in the design and implementation of the NWT CIMP and the Audit, and from INAC staff with regulatory responsibilities.

## **Appendix 1: Excerpts from the Mackenzie Valley Resource Management Act**

***Mackenzie Valley Resource Management Act (MVRMA) : An Act to provide for an integrated system of land and water management in the Mackenzie Valley, to establish boards for that purpose and to make consequential amendments to other Acts (proclaimed December 22, 1998)***

### ***Definitions, Section 2:***

“environment” means 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).

“harvesting,” in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

“heritage resources” means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

“Mackenzie Valley” means that part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by Yukon, on the north by the Inuvialuit Settlement Region, as defined in the Agreement given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act*, and on the east by the Nunavut Settlement Area, as defined in the *Nunavut Land Claims Agreement Act*, but does not include Wood Buffalo National Park of Canada.

### ***Additional definitions - Part 5, Section 111***

“impact on the environment” means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

### ***Part 6 - Environmental Monitoring and Audit***

**145.** The definitions in this section apply in this Part.

“impact on the environment” has the same meaning as in Part 5.

“responsible authority” means the person or body designated by the regulations as the responsible authority or, in the absence of a designation, the federal Minister.

**146.** The responsible authority shall, subject to the regulations, 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.

**147.** (1) A responsible authority that is a minister of the Crown in right of Canada shall carry out the functions referred to in section 146 in consultation with the first nations and the Tlicho Government.

(2) Where a responsible authority is other than a minister of the Crown in right of Canada, the Gwich'in and Sahtu First Nations and the Tlicho Government are entitled to participate in the functions referred to in section 146 in the manner provided by the regulations.

**148.** (1) The federal Minister shall have an environmental audit conducted at least once every five years by a person or body that is independent.

(2) The federal Minister shall, after consulting the Gwich'in First Nation, the Sahtu First Nation, the Tlicho Government, and the territorial government, fix the terms of reference of an environmental audit, including the key components of the environment to be examined.

(3) An environmental audit shall include

(a) an evaluation of information, including information collected or analyzed under section 146, 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 the functions referred to in section 146;

(c) a review of 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; and

(d) a review of the response to any recommendations of previous environmental audits.

(4) A report of the environmental audit, which may include recommendations, shall be prepared and submitted to the federal Minister, who shall make the report available to the public.

(5) The Gwich'in and Sahtu First Nations and the Tlicho Government are entitled to participate in an environmental audit in the manner provided by the regulations.

**149.** Subject to any other federal or territorial law, a responsible authority or a person or body who performs an environmental audit may obtain, from any board established by this Act or from any department or agency of the federal or territorial government, any information in the possession of the board, department or agency that is required for the performance of the functions of the responsible authority or person under this Part.

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**150.** The Governor in Council may, after consultation by the federal Minister with affected first nations and the Tlicho Government and the territorial Minister, make regulations for carrying out the purposes and provisions of this Part and, in particular, regulations

(a) respecting the collection of data and the analysis of data so collected and scientific data, traditional knowledge and other information, for the purposes of section 146;

(b) designating a person or body as the responsible authority for the purposes of this Part; and

(c) respecting the manner of participation of the Gwich'in and Sahtu First Nations and the Tlicho Government in the functions of a responsible authority that is not a minister of the Crown or in an environmental audit.

Note: As of December 2008, no regulations have been drafted or promulgated under Part 6 of the MVRMA.