

2.0 Land Claims, Self-Government and Legislative Requirements

2.1 Unsettled Land Claims in the Mackenzie Valley

The Working Group has developed the NWT CIMP and Audit without prejudice to land claim and self-government negotiations and discussions currently underway in the southern NWT. The Governments of Canada and the NWT are currently engaged in land claim and self-government discussions and negotiations with the Akaitcho Territory Government, the Deh Cho First Nations, the Northwest Territory Metis Nation (formerly the South Slave Metis Tribal Council), and the North Slave Metis Alliance. In developing the NWT CIMP and Audit, the Working Group has recognized that interest in community-based monitoring is generally high throughout the NWT, but that some unsettled claims areas do not accept the application of the *MVRMA*. Therefore the participation of regional or other organizations in the development and implementation of the NWT CIMP and Audit is without prejudice to their positions regarding any land claim and self-government agreements that may be negotiated. The *MVRMA*, including Part 6, may be amended to reflect the outcomes of these processes. It is possible that implementation of Part 6 of the *MVRMA* will require the amendment or development of legislation, regulations, and policy. The Deline, Tulita, and Beaufort Delta self-government negotiation processes may also have implications for the implementation of the NWT CIMP and Audit.

The outcomes of land claim and self-government processes in the NWT are likely to have implications for the implementation of the NWT CIMP and Audit; certainly, the NWT CIMP and Audit will have to respect how the negotiated outcomes of each of these processes addresses cumulative impact monitoring and auditing on a regional basis.

2.2 Inuvialuit Settlement Region

The *Inuvialuit Final Agreement (IFA)* came into effect in 1984, and does not specifically address cumulative impact monitoring and auditing. The *MVRMA*, and its provisions relating to cumulative impact monitoring and environmental auditing, does not apply to the Inuvialuit Settlement Region. Section 4 of the *IFA* states that the Inuvialuit are entitled to the rights and benefits of other citizens under any legislation, and that “where restructuring of the public institutions of government is considered for the Western Arctic Region, the Inuvialuit shall not be treated less favourably than any other native groups or native people with respect to the governmental powers and authority conferred on them.” From an environmental management perspective, a territory-wide approach to cumulative impact monitoring and auditing is desirable.

The Inuvialuit have participated on the Working Group from the outset; after discussions with representatives of the Inuvialuit and co-management bodies, DIAND and the Inuvialuit Game Council, with the support of the Working Group, agreed in April 2002 that the Inuvialuit Settlement Region would be included in the implementation plans for the NWT CIMP and Audit. A Memorandum of Understanding was signed in November 2003. Inuvialuit participation in the NWT CIMP and Audit shall be without prejudice to the Inuvialuit Final Agreement or the Beaufort-Delta self-government process.

2.3 Requirements under the MVRMA

Key requirements from the land claim agreements and the *MVRMA* for the NWT CIMP and Audit are summarized below. Appendix A provides the relevant excerpts from the Gwich'in, Sahtu and Tłı̄chǫ agreements relating to cumulative impact monitoring and the Audit, as well as Part 6 (Sections 146-149 in particular) of the *MVRMA*. These requirements provide the *minimum* requirements for the NWT CIMP.

The land claims and the *MVRMA* establish a system of integrated land and water management; the decision-making functions (i.e., land use planning, land and water regulation, environmental assessment) within the system are to be supported by information to be provided by the NWT CIMP and Audit. The Gwich'in, Sahtu and Tłı̄chǫ agreements require that the implementing legislation provide for a method of monitoring the cumulative impact of land and water uses on the environment in the Mackenzie Valley.

Part 6 of the *MVRMA* outlines the cumulative impact monitoring requirements. Sections 145 and 146 state that a Responsible Authority (RA) shall collect and analyze both scientific and traditional knowledge in order to monitor the cumulative impact of land and water uses and deposits of waste on the environment in the Mackenzie Valley. The Gwich'in, Sahtu and Tłı̄chǫ agreements and the *MVRMA* (S. 147) require the federal government to consult with First Nations in carrying out the monitoring function; if a board or agency carries out the function, the First Nations are entitled to participate in that work (the manner of this participation will be specified in regulations).

Section 148 (3) specifies four key areas to be addressed in the Audit:

- An evaluation of the 'state of the environment',
- A review of the effectiveness of cumulative impact monitoring,
- A review of the effectiveness of the regulation of land and water uses and environmental assessment, and
- A review of the response to recommendations of any previous environmental audits.

Section 149 of the *MVRMA* states that, subject to any other federal or territorial law, federal and territorial agencies and departments and *MVRMA* boards are to provide the RA with the information it requires to monitor cumulative impacts and with information required by the auditor. Section 150 allows for the development of regulations that may be needed for the implementation of Part 6, including First Nations participation, designation of a Responsible Authority, and the collection and analysis of data and information, including scientific and traditional knowledge. As noted above, no regulations have been drafted or promulgated to date, and the members of the Working Group or its successor organization, the Responsible Authority, will re-examine the guiding principles and content of the regulations once implementation of the NWT CIMP and Audit has begun.