

6.0 The NWT Audit

6.1 What is the Audit?

The independent environmental audit will evaluate and review at least once every five years:

- *The state (health) of the environment - trends in environmental quality, contributing factors, and the significance of trends;*
- *The effectiveness of the NWT CIMP;*
- *The effectiveness of the NWT's integrated environmental and resource management systems*
- *The response to any recommendations of previous environmental audits.*

This purpose statement is consistent with the Gwich'in and Sahtu land claims agreements, the MVRMA, and the Tłı̄ch̄ Agreement, but flexible enough for an NWT-wide approach. The audit report is to be submitted to the Minister of DIAND, and will be available to the public. Intended to serve as a catalyst for positive change, the initial Audit (currently underway, with expected completion by May 2005) will serve as a foundation for subsequent audits.

A number of more specific *objectives* can be identified for the Audit:

1. To report on trends in environmental quality in the NWT, the factors contributing to the trends, and their significance
2. To provide a critical evaluation of the effectiveness of the NWT CIMP
3. To provide a critical evaluation of the effectiveness of environmental management processes in the NWT and the organizations responsible for cumulative impact assessment and management (e.g., the co-management bodies, federal and territorial government departments)
4. To assess the extent to which the recommendations of previous environmental audits have been addressed
5. To meet obligations under land claim agreements and the MVRMA
6. To provide independent and constructive advice to co-management bodies, government and others to support their work, based on the findings of the audit. These findings may relate to trends in environmental quality, the NWT CIMP, the evaluation of the effectiveness of environmental management processes in the NWT, or a review of responses to previous audits
7. To contribute to the NWT-wide CEAM Strategy and Framework

6.2 Key Requirements – Land Claims and Legislation

Key requirements from the land claim agreements and the MVRMA for the Audit are summarized below. Appendix A provides the relevant excerpts from the Gwich'in, Sahtu and Tłı̄ch̄ agreements relating to cumulative impact monitoring and the audit, as well as Part 6 (Sections 148 - 149 in particular) of the MVRMA. These requirements provide the *minimum* requirements for the Audit.

The land claims and the MVRMA establish a system of integrated land and water management; the decision-making functions (e.g., 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 Tłı̨chǫ agreements require that the implementing legislation provide for periodic, independent, environmental audits that shall be made public, and that the First Nations shall participate in the audit process.

Part 6 of the *MVRMA* outlines the audit requirements. Section 148 (1) states that an environmental audit shall be conducted at least once every five years by an independent person or body appointed by the Minister of DIAND. Under section 148 (2), the Minister of DIAND is responsible for consulting with the GWNT and First Nations on the draft terms of reference for the Audit and for setting the final terms of reference.

As per Section 148 (3) of the *MVRMA*, four key areas to be addressed in the Audit are:

- 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.

A report of the environmental Audit, which may include recommendations, shall be prepared and submitted to the Minister of DIAND, who shall make the report available to the public. The First Nations are entitled to participate in the Audit process.

Section 149 states that, subject to any other federal or territorial law, federal and territorial agencies and departments and *MVRMA* boards are to provide information required by the auditor. Finally, section 150 allows for the development of regulations that may be needed for the implementation of Part 6, including the Audit. As noted above, no regulations have been drafted to date.

6.3 Who Will Conduct the Audit?

The Minister of DIAND may appoint one of the following as the Auditor:

- An individual
- A company, partnership or other organization
- A panel

Section 148 of the *MVRMA* requires the Auditor to be independent. The Working Group has included factors for consideration in assessing the independence of the Auditor in the final Terms of Reference (ToR) for the first NWT Audit (NWT CIMP and Audit Working Group, April 2004). The auditor shall be independent of the federal and territorial governments and of the agencies that exercise jurisdiction over environmental and resource management in the NWT, boards established under the *MVRMA* and the *IFA* or other resource management boards with jurisdiction in the NWT, First Nations, Metis and Inuvialuit governments or organizations in the NWT, industry, 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 the *MVRMA* or the *IFA*, other resource management boards 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 effects assessment and management processes in the NWT (including the NWT CIMP or Audit), within the two-year period prior to the appointment of the auditor.

6.4 The Initial NWT Environmental Audit

The first NWT Environmental Audit is to be completed by May 2005, early in the first year of the five-year period (2005 through 2010) addressed in this work plan. The process to date and its current status are summarized below. The second audit is expected to be completed during the fourth year of the period addressed in this work plan (i.e., in 2008-09, if a five-year cycle is assumed). It is important to recognize, however, that the process and terms of reference for the second and subsequent audits may differ from the process and terms of reference for the initial Audit. The second and subsequent audits will benefit from the 'lessons learned' during the initial Audit, the recommendations of the initial audit, and any existing evaluations of the initial Audit process (see Section 6.6).

6.4.1 Terms of Reference – Initial Environmental Audit

The NWT Audit is not a traditional financial audit, and as described below, the Auditor will be focussing on environmental and management questions rather than on financial matters. Indeed, the background research conducted on behalf of the Working Group while developing the audit process has indicated that the proposed audit is without parallel in other jurisdictions (GeoNorth 2000, Donihee 2000).

The Working Group has developed and reviewed several drafts of the ToR for the first Audit. The Canadian Institute of Resources Law at the University of Calgary, and a former staff member from the federal Commissioner of the Environment and Sustainable Development (a division of the Office of the Auditor General) have assisted the Working Group with the development of the ToR and the audit process. The audit process was also discussed more generally during regional and community consultations during 2002 – 2003. In March 2003, DIAND formally provided draft ToR and background (process) documents to the Gwich'in, Sahtu, and Tłı̄chǫ First Nations and the GNWT for formal review and comment. Comments from these and other organizations were reviewed at a two-day meeting of the Working Group in December 2003. Subsequently, the Working Group prepared a final revised draft of the ToR dated December 2003. As required by the MVRMA, the ToR were subsequently finalized by the Minister of DIAND in April 2004. A 'request for proposals' was prepared for public tender in early 2004, and the independent Auditor was selected in the fall of 2004.

6.4.2 Process – Initial Environmental Audit

The audit shall include the three components specified by subsection 148(3) of the MVRMA (i.e., environmental trends, cumulative impact monitoring and regulatory regimes). The Auditor will conduct activities to:

- Evaluate information to determine trends in environmental quality, potential contributing factors and the significance of those trends – *how is the 'state-of-the-environment' changing? Why? What do the changes mean?*
- Review the effectiveness of methods used for carrying out the NWT CIMP – *is monitoring being done in an effective and efficient manner, with the involvement of all parties?*

- Review the effectiveness of the regulatory regime – *are environmental and resource management processes working? Are co-management bodies and government regulatory agencies doing their jobs effectively?*
- Review the response to any recommendations of previous environmental audits – *have organizations responded to the recommendations of previous audits? If yes, how? If not, why not?*

The Auditor will endeavor to involve communities in the audit process, and will consider both scientific and traditional knowledge.

The scope and level of detail of the initial audit report will be limited relative to those in subsequent monitoring and audit cycles, as the NWT CIMP will be in the early stages of implementation and is unlikely to have generated any monitoring information. The specific issues to be addressed in the second and subsequent audits will change and evolve over time.

The proposed audit process is based on standard practice for the federal Office of the Auditor General. A two-step approach (Phase 1 – Audit Planning; Phase 2 – Detailed Examination) will be used. 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 and with the intent of the audit as described in the ToR. In order to maintain the Auditor's independence, the ToR does not specify issues that the Auditor *must* examine. The Auditor will use his or her discretion in focusing the Audit, based on experience and consultation. The audit plan will summarize the legal basis for the audit, the audit components and the intent of the audit as described in the ToR. The specific issues and topics that have been selected by the auditor within each component of the audit for investigation and follow-up in the examination phase of the audit will be identified, and the audit methodology described, as will the time lines, key target dates and resources to be used.

The audit plan provides the basis for the Auditor to undertake a more detailed examination of a few issues during Phase 2. The Auditor will review available information, request information to fill gaps, and conduct site visits, interviews, and meetings with various parties. The Auditor will document observations, conclusions and recommendations, supported by assembled evidence, for inclusion in final audit report. It will describe the Auditor's observations, conclusions and recommendations, and the extent to which they apply distinctly to the Mackenzie Valley, to the ISR, and to the NWT as a whole. The Auditor shall circulate drafts of all or part of the final report to parties that may be 'directly affected' by it, to ensure accuracy of statements of facts and assumptions, and to provide an opportunity to discuss the information prior to its submission to the Minister of DIAND. The Audit Sub-Committee (see below) will also have an opportunity to comment on the final draft of the final audit report. The Minister of DIAND will make the final audit report available to the public as soon as possible after it is received.

The Working Group has established an 'Audit Sub-committee'. Its' role will be to respond to requests for assistance from the auditor, and provide comments to the auditor during the course of the audit work, as outlined in Section 9 of the Terms of Reference for the NWT Environmental Audit. The development of the roles and responsibilities of the Audit Sub-Committee is ongoing (NWT CIMP and Audit Working Group, February 2004).

6.5 NWT Environmental Audit – Work Plan Tasks

Tasks for the Audit process are described below. The *MVRMA* states that an audit is to be conducted "at least once every five years; this work plan advocates commencement of the second audit in 2008 with completion by March 31, 2009. This will allow recommendations and

“lessons learned” to be incorporated into the planning stages of Work Plan preparation for the second 5-year period, i.e., 2010-2015.

6.5.1 Task 7: Follow-up to the Initial Audit

Following the completion of the initial audit, DIAND and the Working Group/CIMP Coordinators (subsequently the RA/Secretariat) will need to follow-up on the recommendations / findings of the audit. This may include meetings with government organizations (Aboriginal, federal and territorial), co-management bodies, communities, ENGOs, industry and other stakeholders to talk about the audit, the implications of its findings, and ‘lessons learned’. (Years 1 & 2)

- **Key outcome/deliverable: follow-up discussions amongst all parties on the findings of the initial audit and ‘lessons learned’**

6.5.2 Task 8: Preparation for the Second Audit

DIAND will plan the second (and subsequent) audits, including the development of Terms of Reference (ToR), in consultation with First Nations, the Inuvialuit, the GNWT, other federal agencies, co-management boards, and other interested parties, in fulfillment of the requirements of Section 148(2) of the *MVRMA*. The process used for the initial audit will likely serve as the starting point for setting the Terms of Reference for the second audit. In developing the ToR for the second audit, however, the Minister will also need to consider the ‘lessons learned’ from the initial Audit, any relevant recommendations from the initial Audit process, and any existing evaluations of the initial Audit process (see Section 6.6). The Minister of DIAND will select the Auditor in accordance with the process developed. (Year 3)

- **Key outcomes/deliverables:**
 - **A framework and organizational structure, including a terms of reference and budget for conducting the second independent Audit, developed in consultation with stakeholders.**
 - **Appointment of the auditor for the second Audit**

6.5.3 Task 9: Conducting the Second Audit

This task has four components:

- Completion of the second audit
- Liaison Between the Auditor and the Working Group/CIMP Coordinators
- Consultation, Communication and Reporting
- Audit management

Completion of the Second Audit

The second NWT Environmental Audit will be conducted in Year 4. A two-phase approach similar to that for the initial audit may be used.

- **Key outcome/deliverable: completion of the second NWT environmental audit**

Liaison Between the Auditor and the Working Group/CIMP Coordinators

The Auditor will be independent of all bodies, including the NWT CIMP and Audit Working Group (and subsequently, the Responsible Authority). The information generated by the NWT CIMP will be an important resource for the independent auditor, and the Working Group / CIMP Coordinators (subsequently the RA and Secretariat) will provide their full support to the Auditor. The Audit Sub-Committee will have a key role in this regard. The Working Group/CIMP Coordinators (subsequently the RA and Secretariat) will follow the intent of Section 149 of the *MVRMA* in providing the Auditor with all requested information. The Working Group (RA) will not have special status in the Audit process. The auditor will likely make constructive recommendations to the Working Group regarding the NWT CIMP, and these will need to be taken into account. The relationship between the NWT CIMP and the NWT Audit is discussed in Section 1.5, above.

- **Key outcome/deliverable: effective communication and information sharing between the Auditor and the NWT CIMP and Audit Working Group / CIMP Coordinators (RA/Secretariat), to facilitate the most effective use of the available information in the Audit process.**

Consultation, Communication and Reporting

Consultation, communication and reporting processes include reports issued by the auditor during the course of the audit, any interviews that may be conducted by the auditor, public information sessions.

- **Key outcome/deliverable: a strategy for consultation, communications, and reporting that will address the expectations of the parties with an interest in the Audit process and findings.**

Audit Management

The Auditor will be active for a period of approximately one year in the fourth year of the five-year cycle. The facilities and staff needed to support the Auditor will vary depending on the nature of the individual/ organization selected by the Minister to conduct the Audit (see Section 6.3 above).

The Auditor will be responsible for the day-to-day management of the Audit, and may sub-contract aspects of the work. DIAND will designate an official from within the department to manage the contract with the Auditor and to serve as a contact person within the Government of Canada. This official will be separate from and independent of the DIAND staff involved in the design or implementation of the NWT CIMP, and will assist the Auditor with obtaining documents, arranging interviews and meetings, and audit logistics.

- **Key outcome/deliverable: ongoing management of the Audit process by the Auditor**

6.5.4 Task 10: Follow-up to the Second Audit

Following the completion of the second audit, the RA/Secretariat will need to follow-up on the recommendations / findings of the audit. This may include meetings with government organizations (Aboriginal, federal and territorial), co-management bodies, communities, ENGOs,

industry and other stakeholders to talk about the audit, the implications of its findings, and 'lessons learned' (Year 5).

- **Key outcome/deliverable: follow-up discussions amongst all parties on the findings of the second audit and 'lessons learned'**

6.6 Evaluation Tools and Mechanisms – NWT Audit

Neither Section 148 of the *MVRMA* nor the final draft Terms of Reference (April 2004) explicitly describe a mechanism for independent evaluation of the effectiveness of the Audit process itself. That is, 'who will audit the audit?' It is possible that evaluation of the audit could be achieved at least in part through the review of the responses to any recommendations of previous environmental audits (*MVRMA*, S. 148 (3)(d)). Since the audit will be a public process, consultation and comment on the auditing process and the Auditor's reports may also provide some evaluative feedback. These consultations will provide an opportunity for stakeholders to provide their comments on the effectiveness of the audit process, and the activities of the Auditor. Any groups established to advise the Auditor may also provide evaluative feedback. As noted above, the Auditor will provide their report to the Minister of DIAND for tabling in Parliament (this procedure is also followed by the boards established under the *MVRMA*, as directed in S. 28 of the *MVRMA*).

However, these options may not provide a sufficient level of 'independence' or structure for the evaluation of the Audit process itself. It may be desirable to develop a mechanism whereby an independent organization would 'audit the Audit' process.

6.7 NWT Audit – Proposed Budget

A total of \$1.1 million is needed during this five-year budget cycle. This total includes \$75,000 for Year 1 and \$50,000 in Year 2 for follow-up to the initial Audit; \$250,000 in Year 3 for preparatory activities for the second Audit; \$625,000 in Year 4 to conduct the second Audit; and \$100,000 in Year 5 for follow-up to the second Audit. As noted above, this work plan assumes that the second Audit will occur four years after the first, i.e., largely in the 2008-09 fiscal year.