



MVEIRB Response Plan to the Northwest Territories Environmental Audit – December 2005

The Northwest Territories Environmental Audit Report was issued June 23, 2006. The Audit was conducted under the direction of the Minister of INAC and pursuant to Part 6 of the *Mackenzie Valley Resource Management Act* (MVRMA). An Audit must be conducted every five years from the date the Act came into force (December 22, 1998).

An Audit must evaluate the status of the environment, the effectiveness of methods to monitor cumulative impacts and the effectiveness of the regulation of land and water deposits of waste on the protection of key components of the environment from significant adverse impact.

The Inuvialuit Settlement Region (ISR) was included in the Audit to provide coverage of the entire Northwest Territories.

The Part 6 Audit is scheduled to commence in December 2008. In the meantime the Responsible Ministers, MVRMA Boards and other relevant organizations should study the conclusions of the December 2005 Audit Report and formulate plans to respond to the recommendations made by the Auditor.

Summary of Recommendations and Proposed Response			
Number	Recommendation	Comments	Proposed Response
Part A: Audit of Regulatory Regimes			
1	The Sahtu Land-Use Plan should be completed and approved as soon as possible. (Ref: Main Report p. 3-6)	The Review Board, in its Submission, advised the Audit Team on the need for Land Use Plans to help avoid conflicting development proposals within a region and unnecessary referrals to EA. Sufficient funding will be required from INAC for the SLUPB to complete this urgent and high priority task.	The Review Board will provide encouragement to the SLUPB in completing its Land Use Plan.
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. (Ref: Main Report p. 3-7)	While aboriginal groups are a major stakeholder, effective Land Use Planning requires the participation and engagement of all stakeholders including industrial sectors and government as well as aboriginal and non-aboriginal residents of the NWT.	Strongly support the development of Land Use Plans but recommend the involvement of all affected parties in the process.
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. (Ref: Main Report p. 3-9)	It is through the establishment of thresholds that the Board will have a benchmark against which to consider baseline and cumulative effects information when deliberating on the impacts of a proposed development.	Through the NWT Board Forum – provide leadership by bringing the relevant parties together to establish a multi-year action plan and secure the necessary resources to address this recommendation e.g. ESRF Funding Proposal to NEB.

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4	Boards and governments should continue in their efforts to educate participants in the requirements of the approvals process. (Ref: Main Report p. 4-4)		Continue to incorporate stakeholder education and awareness activities in the Board's annual work plans.
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. (Ref: Main Report p. 4-5)	This issue was identified in the Board's Audit submission. Without the establishment of enforceable regulations regarding air quality there is no regulatory instrument to attach recommendations arising from Reports of EA.	Continue to stress the importance of this as a high priority to Canada and the GNWT.
6	The GNWT should conduct an evaluation of the effectiveness and approaches that are being used to prevent or mitigate 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. (Ref: Main Report p. 4-10)	Lessons learned activities are critical for evaluation and improvement of current methods and approaches. This relates to "follow up to Board measures" concerns which the Board raised in its Audit Submission. Unilateral efforts are not as effective (i.e. GNWT by itself) as collective efforts.	Continue to stress the importance of this recommendation as a high priority to Canada and the GNWT. The Review Board will offer advice to assist in developing appropriate and applicable tools
7	The Sahtu LWB should augment its current summary comment tables to include a column that shows how each application review comment has been addressed. (e.g., one consolidated disposition table) (Ref: Main Report p. 4-14)	This is an administrative procedure to improve feedback to the SLWB process participants.	No Review Board response required.

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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 <i>regulatory</i> authorities. As the lead department of MVRMA, INAC should take the leadership role in ensuring this occurs. (Ref: Main Report p. 4-15)	This relates to “follow up to Board measures” concerns which the Board raised in its Audit Submission. Inspection reports should also be placed on the public record unless there is associated enforcement action on-going. As a result of recent improvements in the reporting process has resulted in all inspection reports being sent to LWB and is now publicly available. A further improvement however would be to make the inspection results even more accessible by posting them on their website. Similar access to inspection reports by other regulators should also be made readily available. The Minister of INAC as the federal Minister and the other Responsible Ministers under the MVRMA should provide the leadership and coordination required.	Continue to stress the importance of this recommendation as a high priority to Canada and the GNWT - so that 1) the Review Board can be assured that all of its mitigation measures accepted by the Responsible Ministers for a proposed development are implemented, and 2) the results of the measures are available so their effectiveness can be evaluated for application in future EAs..
9	Regulatory agencies should develop cooperative agreements to optimize the effectiveness and efficiency of inspection activities. (Ref: Main	This is directed at good management of the regulatory inspection system.	No Review Board response required.

Summary of Recommendations and Proposed Response			
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	Report p. 4-16)		
10	LWBs should ensure that permit and license 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. (Ref: Main Report p. 4-17)	This relates to “follow up to Board measures” concerns which the Board raised in its Audit Submission.	Continue to stress the importance of this as a high priority to INAC and the LWBs and offer input to regulators when drafting terms and conditions as it relates to the findings of Reports of EA.
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. (Ref: Main Report p. 4-18)		No Review Board response required.
12	INAC and LWBs should collaborate on the collection and sharing of information required for licensing, inspection and enforcement activities, without compromising potential prosecutions. (Ref: Main Report p. 4-18)		No Review Board response required.
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. (Ref: Main Report p. 4-19)		No Review Board response required.

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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. (Ref: Main Report p. 5-8) See also Recommendation 16	This relates to “follow up to Board measures” concerns which the Board raised in its Audit Submission. At issue also is the Review Board’s interpretation that there are other mechanisms besides authorizations, licenses or permits RMs can use to implement the Board’s recommended measures.	For future EAs and EIRs the Review Board will require a Follow Up program where appropriate for measures, as provided for by the MVRMA, rather than rely on RMs to institute monitoring and evaluation processes on their own.
15	The MVEIRB should continue to develop tools for completing social and cultural impact assessment, and monitor developments in this area and other jurisdictions. (Ref: Main Report p. 5-9) See also Recommendation 17		Finalize the Board’s Guidelines on Socio-economic Impact Assessment including “tool kits” to assist EIA participants.
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. (Ref: Main Report p. 5-9)	At issue is the Review Board’s interpretation that there are other mechanisms besides authorizations, licenses or permits RMs can use to implement the Board’s recommended measures.	Encourage and support resolution in on-going discussions with RMs.
17	Relevant government agencies need to place increased emphasis on the social, economic and cultural aspects of their mandates during EIA processes. (Ref: Main Report p. 5-9)		Encourage and support on-going discussions with RMs. Finalize the Board’s Guidelines on Socio-economic Impact Assessment.
18	The MVEIRB and relevant government agencies should more thoroughly assess climate change		Initiate discussions with RMs to support this

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	limits, mitigation and adaptation in EAs, where appropriate for the nature of the project. (Ref: Main Report p. 5-10)		recommendation. Terms of Reference for an EA will include the proposed development's contribution to climate change and impacts of climate change on the development.
19	The MVEIRB should have direct access to relevant government expertise at all stages in the EIA process. (Ref: Main Report p. 5-11)		Encourage and support on-going discussions with RMs. MVEIRB will continue to adapt processes to allow for more open dialogue (eg technical scoping sessions, IRs) between government experts, interveners, developers and the Board.
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. (Ref: Main Report p. 5-11)	This recommendation is in response to concerns raised by various stakeholders about the lack of government in some EAs and associated hearings etc. Departments meanwhile were concerned about perceptions of interference and best use of limited staff resources.	Encourage and support on-going discussions with RMs on identified topic areas. May require different types of skill sets or knowledge level in different parts of an EA. ie Scoping vs technical vs public hearing
21	Nominating parties should submit nominees no later than four months prior to the expiry of a sitting member's term of office. (Ref: Main Report	The following five recommendations reflect the considerable frustration all NWT	Encourage and support in on-going discussions with INAC officials.

Summary of Recommendations and Proposed Response			
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	p. 6-2) <u>See also Recommendations 22 to 25</u>	resource management Boards expressed to the Audit team regarding the Board member appointments process.	
22	INAC should complete its work with Boards on developing a better defined and transparent appointments process from the soliciting of nominees through to the 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. (Ref: Main Report p. 6-3)		Encourage and support in on-going discussions with INAC officials.
23	INAC should streamline the appointments process and commit to completing the process within two months of a nomination being submitted. (Ref: Main Report p. 6-3)		Encourage and support in on-going discussions with INAC officials.
24	To the extent possible, the minister of INAC should provide nominating parties with clear rationale for the rejection of nominees. (Ref: Main Report p. 6-4)		Encourage and support in on-going discussions with INAC officials.
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. (Ref: Main Report p. 6-4)	This issue was raised through the Board's Audit submission.	Continue to encourage and support through the Round 2 MVRMA Amendments process.
26	Similar to the MVEIRB, other Boards should prepare guidance regarding the job functions and expectations of Board members. This guidance	The Review Board's work in this regard is seen as an example for other Board's to follow.	No Review Board response required.

Summary of Recommendations and Proposed Response			
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	should be provided to nominating organizations. (Ref: Main Report p. 6-4)		
27	With full support from INAC, the Boards should lead the development and implementation of comprehensive training for Board members. (Ref: Main Report p. 6-5)		Continue to support advancement of this initiative through the NWT Board Forum and through Strategic and Business Planning. Assist in identifying common areas of interest for training opportunities with other Boards
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. (Ref: Main Report p. 6-6)	This recommendation applies to the implementation of Part 4 of the MVRMA governing Land and Water Boards.	No response required by the Review Board.
29	Consideration should be given to extending the preliminary screening review timeframe beyond the current 42 days to facilitate community input. (Ref: Main Report p. 6-7)		Support this proposal as it would provide more time to allow the Review Board to consider whether or not to exercise its discretion pursuant to s.126(3) of the MVRMA.
30	Prior to the submission of REAs, the MVEIRB should provide opportunities for Responsible Ministers to review and comment on proposed mitigation measures. (Ref: Main Report p. 6-10)	This comment reflects an issue that has been recommended by INAC officials for some time. The Review Board has spent considerable time examining this process option. In the spring of 2006 the Review Board rejected	The Review Board has advised INAC that this will not be an effective approach but rather the processes already available should be pursued more diligently e.g. active engagement in the Board's EA

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		<p>this option. A major concern is the possibility that stakeholder attention will be diverted to the “draft mitigation measure” review phase of the EA rather than continue to be more equally engaged throughout the issues scoping, DAR, IR and hearing phases of the project where issues are meant to be identified and resolved if possible. The Board is concerned that the introduction of a “circulation of draft measures” step would “hijack” the Board’s EA process.</p>	<p>process, a more expedient “consult to modify” process, acceptance by INAC of the Board’s mandate for mitigation of social and economic impacts of proposed developments. The Review Board will reexamine the way it drafts measures, for example, greater use of requests to clarify evidence and/or mitigation options with RMs..</p>
31	<p>INAC should develop and implement procedures to encourage a more transparent and accountable post-REA process. (Ref: Main Report p. 6-10)</p>	<p>The Review Board has issued its Reference Bulletin to explain how it will approach the Post REA consultation process. It encourages an open and transparent process {however for that part of the process in the Ministers’ control the same openness and transparency does not apply}.</p>	<p>This recommendation will be encouraged and supported. Further, the Review Board will review its Reference Bulletin on Post REA Consult to Modify process with a view to enhancing the consultation with parties to an EA during that process. This may not increase the transparency however by more actively engaging the parties it will increase the accountability of RMs to</p>

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			explain and respond to questions regarding proposed modifications to the Board's recommended measures.
32	The next NWT audit should evaluate whether adequate firewalls exist between the different mandates of regulatory authorities, particularly within INAC and the GNWT. (Ref: Main Report p. 6-12)	This is an issue which has been raised by the Review Board in discussions with the Audit Team. The legal risk that may arise from INAC and other RMs exercising multiple roles as decision maker, expert advisor and intervener in the Board's processes can be minimized by establishing appropriate protocols governing how they participate in each instance.	The Review Board will develop a Guidance Document regarding decision maker, expert advisor and intervener protocols in collaboration with RMs and prior to the next NWT Audit commencing (i.e. prior to December 2008).
33	Government departments should identify and evaluate mechanisms to optimize the use of existing technical expertise, including collaborative measures between various levels of government. (Ref: Main Report p. 6-12)	This recommendation is directed at good management practice.	No response is required by the Review Board.
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 resource management processes. The findings and recommendations of this evaluation should be	Capacity at the community level to participate in the Board's EIA process in a timely and effective manner continues to be problematic. In particular the capacity to collect, validate and interpret TK with respect to a	Support and encourage as a high priority to strengthen the EIA and regulatory process. ie continue the Review Board's efforts in obtaining participant funding for aboriginal organizations (and others).

Summary of Recommendations and Proposed Response			
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	acted on. (Ref: Main Report p. 6-13) See also Recommendation 42.	proposed development is particularly lacking.	
35	INAC should review the November 2004 Supreme court ruling and assess whether there are many 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 act. (Ref: Main Report p. 6-15) See also Recommendation 36	This refers to the Haida and Taku River Supreme Court of Canada ruling regarding the Crowns obligations to meet s.35 requirements of the <i>Constitution Act</i> .	The Review Board will continue to respond to invitations to discuss and advise on proposed approaches being considered by INAC
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. (Ref: Main Report p. 6-15)	This need is being actively addressed by INAC through discussions with MVRMA Boards regarding its April 2006 presentation to the NWT Board Forum entitled "Consultation and Accommodation: An Interim Approach to Managing Crown Obligations in the Northwest Territories".	Review Board shall encourage and actively participate in collaborative efforts by MVRMA Boards and INAC to ensure s.3 MVRMA and s.35 <i>Constitution Act</i> obligations of the crown are met; so long as the independence of the Board as an Administrative Tribunal is preserved. The Review Board will also produce its own guidance document regarding its consultation obligations.
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	The Review Board has recognized this issue and is addressing it, in small part at least, by regularly traveling to communities for issues scoping sessions (and hearings)	The Review Board will examine this issue with other MVRMA Boards. Leadership on this issue should come through the NWT Board Forum

Summary of Recommendations and Proposed Response			
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	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 project). (Ref: Main Report p. 6-16)	rather than requiring community representatives to travel to Yellowknife, maximizing e-mail and internet communication methods so not to flood community fax machines, etc.	and be assigned to the MVLWB to coordinate. Associated capacity issues, however, are beyond the Board mandate and resources.
38	INAC should investigate approaches that could be used to ensure funding is capable of responding to changes in workload. (Ref: Main Report p. 6-17) <u>See also Recommendation 40</u>	The NWT EIA and regulatory system is significantly under funded at present. The current INAC initiative through the NWT Board Forum to promote improved Strategic and Business Planning will clarify the extent of the gap in funding that currently exists.	The Review Board has submitted a Funding Options Paper to INAC identifying options to address the funding shortfall for the Review Board. Further discussion with INAC will be undertaken to find long term solutions to this pressing issue. In the short term, ad hoc stop gap measures will continue to be required.
39	A participant funding program should be established for Environmental Assessments and regulatory processes involving public hearings under the MVRMA. (Ref: Main Report p. 6-18)	The Review Board has submitted a proposal with its 2006/07 Business Plan to establish a Participant Funding Program in support of the Board's EA process. No decision has been made on the Board's submission however INAC HQ has advised that a policy paper is being developed to examine the feasibility of a Participant Funding Program that would apply to all	Board and staff will continue to stress the importance of a participant funding program and respond to INAC on the details of a proposed program if and when forthcoming from INAC. MVEIRB will continue to identify the need and estimate amounts required for a Participant Funding program

Summary of Recommendations and Proposed Response			
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		three northern Territories.	for all EAs.
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. (Ref: Main Report p. 6-19)	The NWT EIA and regulatory system is significantly under funded at present. The current INAC initiative through the NWT Board Forum to promote improved Strategic and Business Planning will clarify the extent of the gap in funding that currently exists.	The Review Board has submitted a Funding Options Paper to INAC identifying options to address the funding shortfall for the Review Board. Further discussion with INAC will be undertaken to find long term solutions to this pressing issue. In the short term, ad hoc stop gap measures will continue to be required.
41	MVEIRB's TK in EIA guidelines should be reviewed in the environmental management process to assess their broader applicability. (Ref: Main Report p. 7-17)		The Review Board is prepared to facilitate or assist such discussions through the NWT Board Forum.
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 the environmental decision-making. (Ref: Main Report p. 7-18)	Capacity at the community level to participate in the Board's EIA process in a timely and effective manner continues to be problematic. In particular the capacity to collect, validate and interpret TK with respect to a proposed development is particularly lacking.	Encourage as a high priority to strengthen the EIA and regulatory process. However the Review Board has no mandate or resources to support implementation of this recommendation.
43	All Boards and government agencies involved in environmental management should ensure that		Review Board will review its training needs and address

Summary of Recommendations and Proposed Response			
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	relevant staff members are capable of understanding basic principles of TK collection and use. Training should be provided to individuals that lack this capacity. (Ref: Main Report p. 7-18)		them on an on-going basis.
44	Regional Aboriginal leadership should develop guidance that clearly defines expectations regarding the collection, release and use of TK. (Ref: Main Report p. 7-19)	Additional clarification and elaboration by Aboriginal organizations regarding the collection and use of TK will be helpful to EIA and regulatory process participants. It is important to clarify what TK must be restricted and what TK is not so restricted that it cannot be considered as evidence by an Administrative Tribunal like the Review Board.	Qualified support by the Review Board. Board is prepared to provide information to Aboriginal organizations as to the importance of TK and how TK can be managed by the Review Board in its EIA processes.
45	The Participants in the system should review the issues associated with the compensation and acknowledgement related to the collection of original TK. (Ref: Main Report p. 7-20)		No Review Board response required.
46	Efforts to collect and use TK should include gender-specific considerations. (Ref: Main Report p. 7-22)		When the Review Board next reviews its TK Guidelines it will evaluate the guidance provided in respect of gender-specific considerations. Additional elaboration may be appropriate at that time.
47	INAC should establish and support forums for	Professional development and	Review Board should support

Summary of Recommendations and Proposed Response			
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	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. (Ref: Main Report p. 7-22)	training regarding the use of scientific and/or traditional knowledge will improve the quality of information provided to the Review Board in its EIA processes.	and encourage initiatives in this regard.
48	Verification of TK used in environmental decision-making should be carried out in a respectful matter. (Ref: Main Report p.7-23)	Respect is an issue which is addressed in the Board's recently published TK Guidelines.	When the Review Board next reviews its TK Guidelines it will evaluate the guidance provided regarding verification of TK to ensure the appropriate respectful approaches continue to be promoted.
Part B:	Cumulative Impact Monitoring Program		
49	The CIMP Working Group should make the development and implementation of a detailed, operational work plan which clearly defines 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. (Ref: Main Report p. 8-8)	INAC, as the lead federal department under the MVRMA, and the CIMP Working Group should prepare the necessary plans and secure the necessary resources.	As primary users of cumulative effects information, the NWT Board Forum should provide leadership and oversight regarding the development and implementation of those plans through a regular reporting and feedback mechanisms established with INAC for that purpose.
50	Given that CIMP activities will extend in perpetuity, a source of long-term, stable funding	The Board has no mandate or capacity to fund the CIMP	Review Board should encourage and support however

Summary of Recommendations and Proposed Response			
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	will be required, with periodic reviews to account for changing program needs. (Ref: Main Report p. 8-9)	however the Board will benefit from the improved quality of relevant information on which to assess impacts of proposed developments.	no response is required.
Part C:	Status of the Environment		
N/A	This section of the Audit Report provides an assessment of Valued Components in the environment in terms of current conditions and trends; including information gaps that should be addressed to provide a better basis for assessing current status and trends. (Ref: Main Report p. 9-1)	This is the first somewhat comprehensive assessment of the current condition and trends regarding Valued Components in the Environment; including social and economic components. The effort made with this first Five Year Audit represents the beginning of what could become an excellent reference for the Board in its deliberations with respect to impacts on valued components by individual specific proposed developments.	The Review Board will encourage this 5 year snapshot of Valued Components to become more comprehensive and in-depth.
Part D:	Considerations for Future Audits		
N/A	The Audit Terms of Reference and available resources should be aligned with the expected outcomes. The duration of the Audit should allow sufficient time for multiple contacts with each of the interested parties. Future Audits would benefit from heightened awareness of the Audit well in advance of its implementation. Audit Steering	The NWT Audit results from the evaluation and feedback mechanism built into Part 6 of the MVRMA to assist the Boards (and stakeholders) in improving the quality and efficiency of resource management decision making	1) The Review Board will encourage the necessary advance planning and the allocation of sufficient time and funding by INAC and/or the GNWT for future Audits. Note: The next Five Year Audit

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	Committee support to the logistics of the Audit should be strengthened. (Ref: Main Report p. 10-1)	processes over time.	<p>is scheduled to commence in <u>December 2008.</u></p> <p>2) The Board will promote a greater role for the NWT Board Forum in monitoring the implementation of the NWT Audit recommendations and raising the profile of the NWT Audit as a valuable and timely evaluation mechanism for the MVRMA and ISR EIA and regulatory regimes.</p>