

Audit Summary and Conclusions

INTRODUCTION

This report is the outcome of the first Northwest Territories (NWT) Environmental Audit completed in 2004/05. The “Audit” was conducted pursuant to Part 6 of the Mackenzie Valley Resource Management Act (MVRMA) which requires an evaluation of the status of the environment, the effectiveness of methods to monitor cumulative impacts and 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. While the Inuvialuit Settlement Region (ISR) does not fall under the MVRMA, the ISR was included in the Audit as per the Audit Terms of Reference.

AUDIT OF REGULATORY REGIMES

The major components of the NWT’s regulatory regimes include: land use planning, regulation (i.e., issuance and enforcement of permits and licences) and environmental impact assessment. It is important to note that the Audit of Regulatory Regimes focussed on an evaluation of the *effectiveness* of these major components in protecting the environment from significant impacts, *not their efficiency*. Each of the components is discussed separately in the following sections. We have also provided an overview of the use of traditional knowledge (TK) in regulatory processes.

LAND USE PLANNING

Regional land use planning in the NWT has been in progress since 1984, when the Basis of Agreement on Northern Land Use Planning was signed by the federal and territorial governments, with the participation of the Aboriginal organizations which existed at the time. The MVRMA, enacted in 1998, also established land use planning requirements. Despite these efforts, and requirements under the MVRMA, insufficient progress has been made in developing land use plans in the Mackenzie Valley. Today, less than 1/5th of the area covered by the MVRMA is protected by legally enforceable land use plans. The ISR has had a greater degree of success in developing and implementing its land use planning process.

In the ISR, Community Conservation Plans have been developed for the lands surrounding each of the Inuvialuit communities. Similarly, a comprehensive Land Use Plan consistent with the requirements of the MVRMA has been developed for the Gwich’in Settlement Area. While the Inuvialuit Settlement Region and the Gwich’in Settlement Area have developed land use plans that are playing an important role in identifying and protecting areas of environmental importance, progress in other parts of the NWT has lagged behind.

More than ten years after the signing of the Sahtu Dene and Metís Comprehensive Land Claim Agreement, a functional Sahtu Land Use Plan has not been developed or approved. Progress

has been made in the Dehcho Territory, as evidenced by the recent preparation of a revised draft land use plan and background report. Little to no formal land use planning activity has occurred in the remainder of the NWT.

The lack of land use plans in many areas of the NWT is a significant void that is adding increased complexity and uncertainty to environmental management processes. Land use plans for the remaining portions of the NWT should be developed as soon as possible, with provisions established to honour these plans in areas where land claims have not been settled.

REGULATION

Overall, we found that the MVRMA and ISR regulatory processes are adequately protective of land and water; however, regulatory and institutional gaps are preventing the regulatory system from managing potentially adverse impacts to all environmental components in an integrated manner. These gaps include, to varying degrees: the management of air quality; the management of social and cultural impacts; and compliance and enforcement. In addition, the assessment process for permit and licence applications is complicated by the absence of land use plans, as noted above.

The regulatory regimes of the NWT possess some important and unique attributes that distinguish them from the approaches in use throughout most of Canada. In addition, the MVRMA and ISR regulatory regimes are, to varying degrees, relatively new and they continue to evolve as additional operational experience is obtained. The ISR process has had more time to evolve than that of the Mackenzie Valley. As such, it has progressed beyond many of the initial challenges, frustrations and uncertainty of process being faced in parts of the Mackenzie Valley. Much of the uncertainty of process being experienced is directly related to the absence of settled land claims.

Although they are different and relatively new, the regulatory regimes of the NWT are not substantively more complex than those of other jurisdictions. What is unique is the extent and proactive nature of community involvement, and the degree to which public input can influence the process. This focus on public involvement has provided value to the regulatory regime, but the current method of participation has come with a significant administrative and communication burden for all participants.

One of the most commonly cited and forcefully stated challenges to the NWT regulatory process was the meaningful participation of communities due to capacity limitations. Despite improvements in community involvement and consultation, room for improvement remains. Current consultation practices were found to overload the capacity of local communities to participate in a meaningful manner. Additional community capacity challenges relate to differing expectations for public consultation, effective communication, and management of the consultation process within communities themselves.

A streamlining of the application notifications process is recommended, together with a study of the consultation process to identify those aspects that are working well and those areas that are ineffective and need revision. An evaluation of the capacity of Aboriginal communities to participate in environmental and resource management processes should also be completed. These two activities need to proceed in concert.

In general, Boards are functioning effectively; however, the ability of the Boards to exercise their responsibilities and issue licences and permits in a timely and effective manner has been hampered by delays in a complicated and protracted nomination and appointment process.

Boards are not providing sufficient information to monitor their performance. Reporting has focused on fiscal matters with limited performance and accountability information being provided. Board effectiveness may also be constrained by the limited training/orientation provided to Board members.

Streamlining of the nominations and approvals process, better Board accountability reporting and additional training and support to Board members is required to address these deficiencies.

A major gap in the regulatory system is the failure of either Canada or the Government of the Northwest Territories (GNWT) to accept responsibility for the protection of air quality throughout the whole of the NWT. As a consequence, air quality impacts associated with activities in the NWT remain, with few exceptions, largely unregulated.

A second shortcoming in the regulatory regimes of the NWT is the absence of clear regulatory tools to assess and mitigate social, economic and cultural impacts from development. Although a variety of non-regulatory approaches are being used, we heard from many interested parties that such impacts are not being addressed to the same extent as biophysical impacts. While we agree, we were unable to determine if this has resulted in significant adverse impacts that can reasonably be addressed by an environmental management regime. Nonetheless, there is a clear need for action on a wide array of social and cultural issues. We believe that responsibility for addressing these issues rests primarily with government agencies that have health and social service mandates.

INAC, in its role as lead inspection and enforcement agency for regulatory instruments issued in the ISR and under the MVRMA, has developed an inspection process using a sound risk assessment approach, with inspection frequencies found to be adequate. Based on the information presented to the Audit team, the inspection and enforcement regime generally appears to be playing its intended role (i.e., to ensure that permit and licence conditions are enforced). However, in some circumstances uncertainty existed with respect to the enforceability and responsibility for enforcement of permit and licence conditions among INAC, GNWT, DFO, and Environment Canada. This has led to gaps in the development of permit and licence conditions and in the monitoring and enforcement of land use permits, water licences and wildlife management.

Resolution of these gaps is needed to improve the regulatory framework.

ENVIRONMENTAL IMPACT ASSESSMENT

We found the Environmental Impact Assessment (EIA) regime to be protective of the environment within a consultative process. Initial proposal screening occurs through the regulatory framework and allows for input from all potentially affected parties. We found that where potentially significant impacts or public concerns were identified, these concerns were assessed in an appropriate manner, with the system deferring to a conservative approach in the event of uncertainty. Decisions have generally been protective, with the decision-making processes evolving in a positive direction. The Mackenzie Valley Environmental Impact Review Board (MVEIRB) has taken a leadership role in developing tools to ensure the effectiveness of the system.

Notwithstanding the above, concerns were expressed about the timeliness of EIA processes. We were also informed that the number and nature of proposals being referred to Environmental Assessment was inappropriate. Data suggests that the time taken by the MVEIRB to develop Reports on Environmental Assessment (REA) is reasonable. The data also suggest that the number of projects referred to Environmental Assessment is not unwarranted and is reflective of the rights conferred under the MVRMA for the public to cite their concerns for proposed projects.

TRADITIONAL KNOWLEDGE

Historically, traditional knowledge was not used in the regulatory process. This is changing with most process participants appearing to recognize TK as a potentially important source of information for decision-making. The use of TK was apparent in all stages of NWT environmental management processes. For example, TK has played an important and, in some cases, central role in NWT land use planning, where this planning has taken place. It has also been used as the basis for decisions during regulatory processes and genuine efforts are being made to ensure that it is considered during Environmental Assessments.

Despite clear evidence that efforts are being made to use TK in environmental decision-making, numerous challenges to the process were identified. Increased emphasis needs to be placed on documenting TK and ensuring that it is passed between generations. Participants in the environmental management regime should be given the training necessary to ensure they have the capacity to collect and use TK effectively. Further, the expectations of all parties should be clearly stated in processes involving the exchange of TK.

AUDIT OF THE CUMULATIVE IMPACT MONITORING PROGRAM

In 1992, the Government of Canada committed to the Gwich'in that a method to monitor cumulative impacts would be provided. Since then, similar commitments have been made to the Sahtu, Tlicho and, through the MVRMA, to all residents of the Mackenzie Valley. Despite years of planning, a Cumulative Impact Monitoring Program (CIMP) has not yet been implemented and limited regional/territorial environmental baseline and cumulative impact data are available to decision makers.

The absence of systematic approaches to identify, evaluate and respond to regional/territorial cumulative effects was identified as one of the most common reasons that projects are referred to Environmental Assessment. Regulatory decision-makers lack the tools necessary to make informed planning and approval decisions based on the regional/territorial cumulative effects of projects. This gap is tied directly to the absence of land use plans and a fully implemented CIMP.

While a lengthy planning process for implementation of the CIMP has taken place, work remains. The identification and implementation of specific monitoring needs requires further detail and long term funding has not been secured.

A detailed operational plan for the CIMP needs to be finalized, funded and implemented. This should be an immediate priority.

TRENDS AND STATUS OF THE ENVIRONMENT

A major component of the Audit was the evaluation of information on the environment in order to assess trends in environmental quality, potential contributing factors to changes in the environment and the significance of those trends. This review focused on seven major environmental components:

- atmospheric environment (including air quality, climate and climate change);
- freshwater aquatic environment;
- marine environment;
- terrestrial environment;
- permafrost, ground ice and snow;
- human health; and
- socio-economic and community wellness.

The valued components (VCs) identified in the INAC report, *A Preliminary State of Knowledge of Valued Components for the NWT Cumulative Impact Monitoring Program and Audit* were selected as a starting point for the Status of the Environment assessment. Key indicators of change for the selected VCs were then identified and carried forward through the study.

For each of the key indicators, available data were analyzed and assessed to identify: trends; potential contributing factors to any changes in the environment; the significance of any trends identified; the likely impact of the trends; activities to mitigate the factors/emissions that are causing the observed trends; and, data gaps.

Overall, environmental quality in the NWT was found to be favourable for most components. In some cases it was difficult to determine the current condition of an environmental component or evaluate trends due to a lack of adequate baseline data. However, where data were sufficient, several instances of unfavourable conditions and deteriorating trends were identified. The two most disturbing of these are: the recent large decreases recorded for the size of caribou herds that Aboriginal people living in the NWT rely on as a major source of subsistence; and, the need for action in the area of socio-economics and community wellness. With respect to the latter, while traditional economic indicators show that the NWT population and economy are growing, there is no commensurate progress in community wellness with numerous measures of social well-being being found to be less favourable than national comparisons. The social problems identified appear even more pronounced in the NWT smaller communities and are more associated with the Aboriginal population. This situation requires action by government agencies that have health and social service mandates.

Looking forward, climate change is expected to have a profound effect on the Canadian North. The potential effects extend to all components of the environment ranging from: loss of permafrost conditions in some parts of the NWT; increased erosion of river banks and shorelines; reduction in the Arctic ice fields; changes in vegetation coverage and animal habitat; increased mobility of nutrients and organic and inorganic contaminants; and, changes in the quality and availability of traditional foods. Additional research is required in a number of areas to improve the understanding of the effects of climate change on all components of the environment.

INTEGRATION

By definition, the integration of the NWT's regulatory regimes requires that all of their components be fully operational; the absence of a single component has the potential to diminish the ability of the total system to adequately protect the environment.

At the time of the Audit, two major components in the NWT's environmental management regimes had not yet been fully implemented: enforceable land use plans had been established in the ISR and a small portion of the Mackenzie Valley and limited progress had been made on the Cumulative Impact Monitoring Program.

While both of these gaps constrain the performance of the system, we believe that the lack of land use plans is the more critical. These plans should reflect northern and Aboriginal values with respect to how lands and lives are to be impacted through development. In the absence of land use plans, regulatory and EIA Boards are being asked to make fundamental value

decisions on a project-by-project basis. This has created uncertainty in the process for communities, developers, Boards and government and represents a critical stumbling block in efforts to meet the objectives of the MVRMA. Once land use plans are developed and administrative issues resolved, Boards will be in a better position to more effectively address their mandates under the MVRMA.

In summary, the regulatory system is generally addressing the management of environmental issues with several noted exceptions. In this regard, resolution of issues associated with air and enforcement should be relatively straightforward. Resolution of social and cultural impacts, however, may be significantly more challenging and beyond the scope of the NWT's environmental management regimes. The absence of the CIMP, while providing challenges, does not have the same impact on the system as the lack of land use plans. The results of the environmental trends analysis can be used to prioritize responses to deficiencies in the system.

