

A Northern Consensus on Completing (not Dismantling) the NWT Regulatory Regime

Summary

Northern organizations—including Aboriginal governments and local leaders, industry associations and developers, the GNWT Executive and MLAs, Board Chairs and staff, and northern NGOs—have voiced common objections to the current MVRMA overhaul process:

- ❖ This process does not respect spirit and intent of land claims agreements/interim agreements or the devolution AIP.
- ❖ The process has undermined and stalled ongoing land claim negotiations – which are already a key source of uncertainty that prevents responsible resource development from proceeding.

Common objections to the Board amalgamation/elimination proposal:

- ❖ The existing system is new and has never been fully implemented; a lot of collaborative effort went into designing it; the regional Boards deserve to be given a chance.
- ❖ Board amalgamation/elimination will reduce community influence over resource development and violate the spirit and intent of land claims (existing and future).
- ❖ There is no evidence that Board amalgamation/elimination will achieve greater certainty or efficiency in resource development. In fact, it will likely create greater uncertainty and conflict with local communities and regional governments.
- ❖ Boards are being unfairly scapegoated for problems with the Mackenzie Gas Project review, which was not even conducted under the MVRMA and did not involve the Boards.

Agreement about what is working in the current regulatory system:

- ❖ The Boards have developed effective systems of collaboration and are making good progress on developing consistent processes, policies, and procedures. The Boards are working with industry to address proponents' concerns.
- ❖ In areas where land claims are settled, the system generally works well.

Agreement about what is not working:

- ❖ The Boards have never been adequately funded to do their jobs, and communities and other public groups have never been adequately funded to participate in the process.
- ❖ Political uncertainty around unsettled land claims and unfinished land use plans mean that ground rules are not in place for Boards to base their decisions on. This can lead to conflict and frustrating paralysis for both industry and communities.
- ❖ There are jurisdictional gaps and overlaps amongst a tangle of federal and territorial agencies, related in part to problems with the devolution process. One key gap relates to social, economic, and cultural impacts, which have few regulatory instruments associated with them.
- ❖ The federal government's failure to implement CIMP has meant that a key piece of the environmental assessment puzzle has been missing. Efficient assessment requires a robust collection of baseline and cumulative effects data.
- ❖ The federal government is the most significant source of delays within the system (both appointments and approvals).

Consensus around key components of a new process:

- ❖ Completion of Land Claim / Self-Government negotiations;
- ❖ Completion and implementation of Land Use Plans;
- ❖ Adequate and stable funding of MVRMA Boards; and
- ❖ Adequate and stable participant funding.

Consensus around guiding principles for a new process:

- ❖ A process to improve the MVRMA must respect not only the letter but the spirit and intent of land claims and self-government agreements.
- ❖ The process requires collaboration, not just ‘consultation’. Aboriginal governments are partners, not just ‘stakeholders’.
- ❖ Respect that the NWT is different and needs made-in-the-NWT solutions. People here do not want the NWT to become Alberta, Yukon or Nunavut.
- ❖ Respect that each region within the NWT must have the opportunity to negotiate and implement its own particular way of managing things.

Purpose of this document

While there is a strong tradition of consensus decision-making in the North, NWT communities and groups are also very diverse and often find it difficult to reach unanimous agreement. It is perhaps remarkable, then, that the responses to AANDC’s *Action Plan to Improve Northern Regulatory Regimes* have been so consistent. Aboriginal governments and local leaders, industry associations and developers, the GNWT Executive and MLAs, Board Chairs and staff, and northern NGOs have all voiced similar objections to this made-in-Ottawa process which does not respect Northern realities, priorities, or rights.

Dennis Bevington, MP for the Western Arctic, aims to counter the federal government’s efforts at dismantling the NWT regulatory regime, by pulling together into a single document the main points of agreement amongst Northerners, and amplifying those messages.

Using statements from various leaders/representatives and quotes from reports issued over the past four years, this document outlines points of agreement under the following categories:

- Objections to the current process;
- Objections to the Board amalgamation/elimination proposal;
- Agreement about what is working;
- Agreement about what is not working; and
- Consensus around key components and guiding principles for a new process.

A complete list of individuals/organizations quoted is included at the end of this document.

Above all, Northerners are opposed to the way AANDC is pursuing *Mackenzie Valley Resource Management Act* (MVRMA) amendments – forcing them upon Northerners without real negotiation and without the consent of either Aboriginal governments / land claimant groups or the GNWT. As Richard Nerysoo (GTC) told AANDC at a meeting in October 2011: “*If you don’t get the process and the objectives correct, it won’t matter what your proposal is. At the end*

of the day, it's important that the Minister is onside with all the parties in agreement on an approach."

Many of the things that are not working about the NWT regulatory regime can be traced back to federal government responsibilities – such as AANDC's failure to fully fund MVRMA implementation, Ministerial delays, unsettled land claims, and unfinished land use plans. While not everyone agrees on all the design elements of an improved regulatory regime, there is broad support for certain key components and principles. These shift the focus from an overhaul of the MVRMA to an overhaul of federal government policies, priorities and attitudes.

This document was created through a literature review of publicly available reports, audits, meeting summaries, media reports, and organizational statements. The document was then sent to all the organizations and representatives quoted in order to get feedback and confirm the accuracy of statements and interpretation.

Background

The *Mackenzie Valley Resource Management Act (MVRMA)*, proclaimed in 1998 and amended in 2005 to incorporate the Tłı̨ch̨o Agreement, establishes an integrated system of land and water co-management in all areas of the NWT except the Inuvialuit Settlement Region (ISR) and Wood Buffalo National Park. The MVRMA was born out of the Gwich'in, Sahtu and Tłı̨ch̨o Agreements. These Agreements provide for regional co-management Boards which develop regional land use plans, carry out environmental assessment and reviews of proposed projects, and regulate the use of land and water for approved projects. The Act also requires the federal government to implement a Cumulative Impacts Monitoring Program (CIMP) for the entire area.

In 2004, the Joint Examination Project (JEP) was initiated in order to identify areas of inconsistency between the three Agreements and the MVRMA. The project was a collaboration between the Gwich'in, Sahtu and Tłı̨ch̨o organizations, the GNWT, and the federal government. The JEP process was collaborative rather than 'consultative', which contrasts sharply with the current MVRMA amendment process. The Parties spent two years hashing out a detailed set of recommendations based on consensus. Issues that could not be resolved were documented but did not result in recommendations. The JEP produced a report in 2006. Inexplicably, the report was shelved by the federal government with no follow-through. AANDC is now distributing the JEP report as a basis for current 'consultations'. According to a lawyer for the Tłı̨ch̨o, Arthur Pape, who participated in the original JEP process, this is inappropriate:

"AANDC has said that the report is background for this process. It was not written for such a purpose. It was written some time ago, and some of the recommendations may be outdated or no longer appropriate. I don't think the JEP report can be made the subject of decisions by the GoC alone. It was not developed for AANDC to take and go off and do its own thing. It needs to be considered by the five parties and there needs to be agreement on what to do next."

(excerpt from Oct 2011 meeting notes)

The Gwich'in, Sahtu and Tłı̨ch̨o Agreements provide for independent, periodic environmental audits to review the MVRMA. Environmental Audits have been conducted in 2005 and 2010.

In the fall of 2007, without bothering to issue a formal response to the first Audit, the federal government commissioned Neil McCrank (former Chair of the Alberta Energy and Utilities Board) to conduct another review. No terms of reference for McCrank were made public.

Many Aboriginal governments and interested organizations shared their views and participated in a March 2008 workshop with Mr. McCrank, hoping that he could be a catalyst for real improvement. The McCrank Report, released in May 2008, echoed many of the 2005 Audit's recommendations, but also contained an entirely new proposal to dramatically "restructure" the regional Boards, meaning they would either be eliminated or turned into purely administrative bodies. McCrank's rationale was twofold:

- a) having Boards for each of the four regions "creates complexity and a lack of understanding"; and
- b) it is impossible to generate "sufficient skill and expertise" to populate multiple sets of Boards with competent Board members and staff.

McCrank couched his 'restructuring' proposal within a framework that would require land use plans to be completed first, and would make the amalgamated Mackenzie Valley Land and Water Board (MVLWB) the final decision-making authority (rather than the Minister). McCrank claimed that the completion of land use plans could replace regional co-management boards as a way of ensuring local input. Neither of these accompanying conditions have been carried forward into the current MVRMA amendment process.

In May 2010, Minister Strahl responded to the McCrank report by announcing an *Action Plan to Improve Northern Regulatory Regimes*. The first component of the Action Plan would introduce legislation to create a new NWT Surface Rights Board as a binding arbitrator of disputes between landowners and holders of surface and subsurface interests. Relatively little attention in the North has been paid to this proposal, perhaps because it is separate from the MVRMA and because few details have been released. Much more controversy has been generated about the second component: amendments to the MVRMA, including Board 'restructuring'.

AANDC claims that neither Board amalgamation/elimination, nor any of the other proposed MVRMA amendments require negotiated consent from Aboriginal groups, only 'consultation'. AANDC has separated these into two different streams of 'consultation'. Board amalgamation/elimination issues are to be discussed exclusively with John Pollard, appointed as the Minister's 'Chief Federal Negotiator' (a misnomer given the absence of negotiations). Pollard is tasked with both designing the board 'restructuring' and developing a 'one-board' framework for land claims negotiations going forward. Pollard is 'consulting' with Aboriginal groups in settled and unsettled regions, the Boards themselves, and the GNWT, who are all lumped together as 'stakeholders'. According to a memo from Pollard, disseminated widely on January 6, 2012, Canada plans to announce its decision to proceed and have the MVRMA amendments drafted by 'Spring 2012'.

Objections to the current process

- ❖ This process does not respect spirit and intent of land claims agreements/interim agreements or the devolution AIP.

- Gabrielle Mackenzie Scott, Tłı̨chǫ Government (Oct 2011): *“the GoC thinks it has consulted and can do catch-up afterward, and this is not good enough. If my elders were here, they would ask you, “Who do you think you are?” My ancestors are rolling in their graves.”*
 - Bob Bromley, MLA (Feb 2012): *“First Nations signed claims agreements because regional boards gave the assurance of regional and local control. That was the deal. ...Meanwhile, we’re talking devolution. This government agreed to create mirror legislation replicating whatever regime exists at the time of transfer. You’d think that in good faith the federal government would seek our consent and include us as equal partners in any move to change the law we will inherit.”*
 - Frank Andrew, Sahtu Grand Chief (CBC report, Oct 2008): *“Andrew said the current regulatory process was agreed to in the land-claim agreements and any changes would require going back to the negotiating table.”*
 - Michael Miltenberger, GNWT Minister (May 2011): *“this process is driven by the federal government. They’ve, for the most part, treated the GNWT as just another stakeholder...There’s been no significant reply to our response to the McCrank Report ...Here we are in this Assembly trying to find out what the federal government’s up to. They haven’t told us clearly... We are concerned that they’re going to do things that are not going to be in our best interest as a territory.”*
 - Peter Bannon, GNWT (Oct 2011): *“the GNWT is not happy with the approach taken by AANDC, as the GNWT is also being marginalized in this process... Five years of monthly meetings and many drafts led to the creation of the MVRMA and all parties were involved. Comments were exchanged and shared, and now we are facing a new process, with little engagement and little cooperation with the original parties.”*
- ❖ The process has undermined and stalled ongoing land claim negotiations – which are already a key source of uncertainty that prevents responsible resource development from proceeding.
- Steve Ellis, Akaitcho (Oct 2011): *“The biggest issues happening with the MVRMA are happening in the unsettled areas. The Dehcho and Akaitcho have not received any communication from Canada on how Canada would like to engage with us; we have not been formally approached.”*
 - Dehcho First Nations report (June 2011): *“Canada continues to refuse to negotiate anything related to the management of lands and resources pending the completion of the federal review of the MVRMA by John Pollard...it is not in the interests of the DFN to be drawn into a new, parallel negotiating process [with Pollard].”*
 - Jake Heron, NT Métis Nation (Oct 2011): *“It’s very frustrating when you are at the table and you think you’re involved, only to find out that your interests are not being considered seriously.”*

- Bob Bromley, MLA (Feb 2012): *“Regional First Nation governments may now wonder what the Crown’s promises are worth. The Akaitcho and Dehcho might ask how long covenants under their settlements would last.”*
- Alternatives North (May 2011): *“the current review threatens to undermine and subvert the force of existing settlements, which can be expected to destroy confidence in the claims process among Aboriginal peoples negotiating or waiting to negotiate new settlements. The federal government should be seeking to improve, not confirm, its poor reputation for honouring promises.”*

Objections to the Board amalgamation/elimination proposal

- ❖ The existing system is new and has never been fully implemented; a lot of collaborative effort went into designing it; the regional Boards deserve to be given a chance.
 - 2010 NWT Environmental Audit (March 2011): *“Decision makers in the Mackenzie Valley are being asked to proceed in the absence of some or all of the *integrated* elements, using a system that has not yet been fully implemented as designed.”*
 - Willard Hagen, MVLWB (Oct 2011): *“It’s not broken, it’s incomplete”*
 - Steve Ellis, Akaitcho (Oct 2011): *“The MVRMA doesn’t need to be fixed, it needs to be completed.”*
 - Gabrielle Mackenzie Scott, TG (Oct 2011): *“Our key message to AANDC is that there is nothing wrong with the system, and it needs time to grow and improve.”*
 - GNWT (March 2009): *“[We] oppose both [of McCrank’s] options with regard to restructuring the land and water boards on the basis that the existing system is relatively new, needs to be fully implemented and given an opportunity to function as intended”*
 - Bob Bromley, MLA (Feb 2012): *“The federal government’s proposal to collapse the regional land and water boards into one big board is disturbing, unnecessary and possibly unconstitutional. .. a single board does nothing to meet the real problem, failure of implementation.”*
- ❖ Board amalgamation/elimination will reduce community influence over resource development and violate the spirit and intent of land claims (existing and future).
 - Richard Nerysoo (CBC story, Jan 2012): *“The fact is that we reject that idea and recognize the need for us to respect the regional land claim agreements and the boards and agencies that were established under these new modern-day treaties”*
 - Rick Meyers, on behalf of MAC, PDAC, NWT/NU Chamber of Mines (Nov 2011):

[in response to Q: So, you agree that land and water boards would be protected under land claim agreements?] “We agree that ... what has come out in the Mackenzie Valley Resource Management Act is fundamental to the land claims agreements. Yes, we do.”

- Gary Bunio, MGM Energy (Up Here report, Oct 2008): *“MGM Energy Corp... has been the most active explorer for oil and gas in the NWT since it was formed in early 2007. Gary Bunio, MGM’s chief operating officer, says the system isn’t perfect but he isn’t whining about it either, and he sees no point in any restructuring option that would require existing land claims to be amended. ‘I don’t think it would do any good,’ Bunio says. ‘Those agreements have been too hard fought. Besides, it isn’t any harder to drill a well in the territories than in Alberta. It just takes more planning and consultation.’”*
- Roger Odgaard, Norman Wells Land Corporation (CBC report, Oct 2008): *“That’s what the [land] claims did was bring the land and the industry back to the people, now the McCrank report wants to take it away again. It’s already too easy for industry to come in and do what they want.”*
- GRRB/GLUPB (Oct 2008): *“It is difficult to imagine implementation of this proposal without it resulting in a reduction of the ‘influence’ of Aboriginal peoples. The regional offices of the Land and Water Boards provide community member access to participate in project specific regulatory decision-making.”*
- Dehcho First Nations (June 2009): *“DFN do not agree with the solutions proposed by McCrank, as they effectively diminish Aboriginal decision-making and participatory roles in the regulatory regime.”*
- Alternatives North (May 2011): *“We are not convinced this is a useful initiative and that it is probably contrary to the spirit and intent, if not the letter, of the Aboriginal claims and self-government agreements. We do not support a merger.”*
- ❖ **There is no evidence that Board amalgamation/elimination will achieve greater certainty or efficiency in resource development. In fact, it will likely create greater uncertainty and conflict with local communities and regional governments.**
 - Arthur Tobac, former Chief of Fort Good Hope (CBC report, March 2012): *“Now in the past, most of the assurances that our people had, or the comfort zone that we had, we established through the Sahtu Land and Water Board. As long as they were in place most of our people were comfortable that somebody was looking out for our interests, but in recent months we hear talk that Sahtu Land and Water Board might not be in place any longer. This whole fracking brings about a whole lot of questions and that brings about a whole lot of uncertainty...”*
 - George Barnaby, SLWB (March 2008): *“Mr. Barnaby argued against centralization saying, ‘there is nothing but trouble there.’”*
 - Rick Meyers, on behalf of MAC, PDAC, NWT/NU Chamber of Mines (Nov 2011):

“We supported most of the recommendations because they pointed towards streamlining the regulatory process, but the fact that he talked about restructuring boards took us a little bit by surprise. We really didn't expect that to happen... If you had asked us 10 years ago whether we thought the boards needed restructuring and other streamlining, if you like, we would have said yes. But in the last decade or so, the boards have taken a much more professional approach. They've improved their capacity technically and professionally; they've developed environmental policies and guidelines for industry that have helped industry; and they've worked with industry, government, and the aboriginal groups.”

- Alternatives North (May 2011): *“There is no factual or statistical evidence to suggest that the main problem with the resource management system in the NWT is too many regional land and water boards. Although Mr. McCrank reached this faulty conclusion, he presented no clear evidence to support it....”*
- ❖ Boards are being unfairly scapegoated for problems with the Mackenzie Gas Project review, which was not even conducted under the MVRMA and did not involve the Boards.
 - Richard Nerysoo, GTC (Oct 2011): *“In regard to the public criticism of working in the North, I think a lot of this comes from the JRP process, and the perception that the JRP process came out of the MVRMA. Publicly, this has not been debunked. The MGP should have gone through the Boards and the MVRMA; it didn't and people don't always understand this.”*
 - Alternatives North (May 2011): *“these reviews focused not on typical problems that arise, but rather on ways to streamline the land and water regime for the Mackenzie Gas Project (MGP).”*
 - Willard Hagen, MVLWB (Up Here report, Oct 2008): *“Show me where we have ever held up the process? We are now into assessing our fourth diamond mine [De Beers' Gahcho Kué project]. A lot of the problems are perceived and are with the Joint Review Panel, which has nothing to do with us.”*

Agreement about what is working

- ❖ The Boards have developed effective systems of collaboration and are making good progress on developing consistent processes, policies, and procedures. The Boards are working with industry to address proponents' concerns.
 - Six *Standard Procedures and Consistency Working Groups* with members from all four Boards began work in January 2008. So far, they have completed: a draft policy/guidelines on public engagement for applicants & license/permit holders; waste management plan guidelines; and a policy on water and effluent quality management.
 - 2010 NWT Environmental Audit (March 2011): *“We saw many positive steps by the Land and Water Boards (LWBs)...focusing on providing consistency and clarity in the*

LWB decision making process, while maintaining respect for the cultural and geographic differences that underlay the initial decision to create a regional board system in the MVRMA.”

- Ethel Blondin-Andrew, SSI (Oct 2011): *“all the boards interact with each other; this works.”*
 - Alternatives North (May 2011): *“The McCrank review does not recognize, but should take into account, the on-going work of the Mackenzie Valley Land and Water Boards through the Standard Procedures and Consistency Working Groups”*
 - Tom Hoefler, NWT/NU Chamber of Mines (Oct 2011): *“The mining industry is undertaking the following measures to help fill the gap: ... Continued cooperation and collaboration, for example with the NWT Board Forum; Participating in initiatives with the boards geared towards greater efficiency.”*
- ❖ In areas where land claims are settled, the system generally works well.
- 2010 NWT Environmental Audit (March 2011): *“we observed far fewer criticisms of the system of land and water management in areas where Land Claims have been settled.”*
 - Willard Hagen, MVLWB (Oct 2011): *“The MVRMA can and does work in regions where land use is certain and the claims are complete.”*
 - Mike Peters, CAPP (Oct 2011): *“now that there are settled land claims, the story moving forward will be very different...with higher bargaining power now, communities can get more out of their arrangements with industry. The land corporations have done some good work in standardizing access agreements.”*
 - Zabey Nevitt, MVLWB (Oct 2011): *“It is interesting to note that since the Review Board was established, there have been a disproportionately low number of EAs in regions with settled claims (6) compared to non-settled claims (53).”*

Agreement about what is not working

- ❖ The Boards have never been adequately funded to do their jobs, and communities and other public groups have never been adequately funded to participate in the process.
- MVLWB report (May 2011): *“in the 2010–2011 fiscal year, the MVLWB received a 30 percent cut to its budget, while applications for mining and oil and gas activity increased.”*
- Alternatives North (Aug 2008): *“[McCrank] fails to deal with or recognize the real bases of the problem of capacity, namely, the failure of the federal government to*

adequately fund the co-management bodies and the absence of a participant funding program.”

- 2010 NWT Environmental Audit (March 2011): *“The general consensus among respondents to the 2010 NWT Audit was that INAC has not made available sufficient, timely participant funding to Aboriginal organizations and communities to deal with EIA and regulatory applications.”*
- Richard Edjericon, MVEIRB (Oct 2011): *“As we speak, the Federal government is thinking of more ways to make it difficult for the Boards to do their jobs, without asking us what we think needs to be done to make the system work. They might be passing Crown consultation along to our Boards as well. ... We are doing the best we can, and we’ve been taking a look at our own processes to make them better, but we continue to lose funding and capacity. We want to fix the system and move forward.”*
- ❖ **Political uncertainty around unsettled land claims and unfinished land use plans mean that ground rules are not in place for Boards to base their decisions on. This can lead to conflict and frustrating paralysis for both industry and communities.**
 - Bob Overvold, Sahtu Land Use Planning Board (March 2010): *“To attempt to achieve an efficient regulatory regime without a land use plan in place is to my mind probably impossible.”*
 - 2010 NWT Environmental Audit (March 2011): *“Unsettled land claims lead to uncertainty about land tenure and the amount of time it takes to navigate what has become perceived as a politicized regulatory process...Our findings are supported by recent Fraser Institute...surveys of mining and oil and gas companies... In the NWT, disputed Land Claims was the most negatively rated policy factor... The absence of land use plans creates uncertainty for applicants and developers. It also adds to the workload of LWBs and the MVEIRB and the complexity of decisions they are asked to make... the larger question of whether areas are too sensitive for certain types of development is most appropriately dealt with within land use planning... 14% of oil and gas companies surveyed... and 47% of mining companies cited uncertainty concerning which areas will be protected as wilderness, parks, or archaeological sites as a strong deterrent or reason not to invest in the NWT.”*
 - Tom Hoefler, NWT/NU Chamber of Mines (Oct 2011): *“A lot of the issues and challenges faced by industry are the same ones facing communities and Aboriginal governments and organizations – unresolved land claims, incomplete LUPs...”*
 - Steve Ellis, Akaitcho (Oct 2011): *“Being in an unsettled claim area is the crux of the dysfunction.”*
 - Jen Morin, CPAWS-NWT (March 2008): *“Land claims are not fully settled and this has created conflict. Even in the Sahtu region where there is a settled claim, prospecting*

permits have been issued against the wishes of the Sahtu people – land use plans would help resolve these conflicts.”

- ❖ There are jurisdictional gaps and overlaps amongst a tangle of federal and territorial agencies, related in part to problems with the devolution process. One key gap relates to social, economic, and cultural impacts, which have few regulatory instruments associated with them.
 - 2010 NWT Environmental Audit (March 2011): *“Boards also struggle with implementing a decision making process which calls for consideration of impacts on the “...social and cultural environment or on heritage resources” but which largely restricts available regulatory instruments to mitigate any impacts found to a limited subset (land and water) of the biophysical environment.”*
 - MVLWB report (May 2011): *“With respect to issues that lie outside the Boards’ jurisdiction, a number of foundational pieces or system gaps/ weaknesses must be addressed in order to finish the system. Some of these issues are: .. clarification of jurisdiction and implementation of authorities for wildlife and air quality...”*
 - Gordon Peeling, MAC (March 2008): *“‘Orphan measures’ are a concern, as some areas are not clearly covered by legislation or regulation.”*

- ❖ The federal government’s failure to implement CIMP has meant that a key piece of the environmental assessment puzzle has been missing. Efficient assessment requires a robust collection of baseline and cumulative effects data.
 - 2010 NWT Environmental Audit (March 2011): *“INAC has not fulfilled its mandate under the MVRMA to implement an effective Cumulative Impact Monitoring Program (CIMP). CIMP has been chronically underfunded and underresourced. Community capacity building and environmental monitoring programs are largely occurring on a one-off basis. The lack of progress in implementing CIMP has hindered land use planning and the ability of MVRMA Boards, regulators and the public to properly assess the cumulative impact context within which project-specific decisions need to be made.*
 - GRRB/GLUPB (Oct 2008): *“often there is not enough information provided by the proponent to complete the process in a timely manner. Sufficient baseline data built up through an effective CIMP program may help remedy this issue.”*
 - MVLWB report (May 2011): *“a number of foundational pieces or system gaps/ weaknesses must be addressed in order to finish the system. Some of these issues are: .. full implementation of the Cumulative Impact Monitoring Program (CIMP)...”*

- ❖ The federal government is the most significant source of delays within the system (both appointments and approvals).

- 2010 NWT Environmental Audit (March 2011): *“The vast majority of MVRMA applications are processed in a timely manner. EA timelines are comparable to project timelines established under the government of Canada’s Major Project Management Office initiative. Where Ministerial Decisions are made, this step often adds significant time to the EA process...The post-REA consultation and ministerial decision phase accounts for, on average, 50% of total elapsed EA time”*
- Richard Nerysoo, GTC (Oct 2011): *“the delays are directly caused by government – primarily departmental and ministerial delays... We set timelines; will the GoC do the same? We maintain our side of the process; will the GoC do the same?”*
- Vern Christensen, MVEIRB (March 2008): *“there must be a big capacity problem within INAC given the problems with timely appointments, Section 35 consultation, and the apparent departmental inability to address social-cultural concerns.”*
- Jen Morin, CPAWS-NWT (March 2008): *“Appointments to the Sahtu Land Use Planning Board have been delayed and currently the Board does not have quorum so progress cannot be made.”*
- Vern Christensen, MVEIRB (Oct 2011): *“There are a number of things out of the Board’s control, such as ministerial decision-making, and there seems to be no clarity or accountability at that end of the process.”*
- NWT Chamber of Commerce (May 2009): *“The Office of the Minister of INAC should establish a process that would anticipate board appointments and ensure that the appointments are timely.”*
- GNWT (March 2009): *“[We] support changes [northern control of appointments] to ensure timeliness of the appointment of members to various Boards. There should be particular emphasis on shortening and providing greater certainty with regard to timelines for Ministerial decision-making.”*

Consensus around key components and guiding principles for a new process

Key components

The 2010 NWT Environmental Audit highlighted some recurring issues related to federal government responsibilities that cannot be ignored if the NWT regulatory regime is to undergo real improvement. Four of the Audit’s most widely supported recommendations are included below, followed by supportive statements by a variety of Northern organizations.

The overarching recommendation of the 2010 NWT Audit is that a number of foundational issues need to be resolved in an expeditious manner... foundational challenges reported in the 2010 NWT Audit are not new. They have been previously identified to various degrees in one or more of the following reports: 2005 NWT Audit, the Auditor General of Canada Audits of 2005 and 2010 and the 2008 Road to Improvement Report (the McCrank Report). They are:

- *Completion of Land Claim/Self-Government negotiations;*
- *Completion and implementation of Land Use Plans; ...*
- *Adequate and stable funding of MVRMA Boards, including funding for improvement initiatives and variable workloads; and,*
- *Adequate and stable funding to facilitate the full participation of Aboriginal organizations and communities.*

❖ Completion of Land Claim / Self-Government negotiations

- Zabey Nevitt, MVLWB (Oct 2011): *“Boards are part of a larger picture, and ownership and access is not consistent across the NWT. We won’t have a full picture or a complete system until the land claim issues are settled and those regions can establish their own Boards.”*
- Philip Bousquet, PDAC (March 2008): *“PDAC believes there are several important items to be addressed ... settle land claims...”*
- Tom Hoefler, NWT/NU Chamber of Mines (Oct 2011): *“[among the mining industry’s key recommendations:] ‘Settle the unresolved land claims’”*
- GNWT (March 2009): *“Complete several key pieces of the integrated resource management system including the negotiation of lands, resources, and self-government agreements.”*
- Standing Committee on Aboriginal Affairs and Northern Development (Dec 2010): *“Given the overwhelming evidence provided to the Committee on the benefits that settled comprehensive land claims and self-government agreements can have in facilitating economic development, the Committee recommends: **That the Government of Canada work in partnership...to expedite the resolution of all outstanding land claims and self-government agreements in the northern territories.**”*

❖ Completion and implementation of Land Use Plans

- Mike Peters, CAPP (Oct 2011): *“CAPP supports the land use planning process, and knowing where not to go.”*
- NWT Chamber of Commerce (May 2009): *“NWT Chamber of Commerce, through a joint initiative with the NWT and Nunavut Chamber of Mines and the NWT Construction Association, presented 13 priorities for regulatory reform in the Northwest Territories to members of the legislative assembly: 1. Completing Land Use Plans...”*
- Zabey Nevitt, MVLWB (Oct 2011): *“Land use planning is key. We need to find a way to put in place small scale targeted land use planning in pressure areas such as Drybones and Thelon, so that developers and others have certainty.”*

- GNWT (March 2009): *“Continue to support the priority completion of draft land use plans and the development of Land Use Plans in all other areas of the Mackenzie Valley.”*
- Standing Committee on Aboriginal Affairs and Northern Development (Dec 2010): *“the Committee has received many comments from witnesses on the increased clarity and efficiency that can be achieved through the completion of land use plans.”*

❖ Adequate and stable funding of MVRMA Boards

- Gordon Peeling, MAC (March 2008): *“Boards should be properly resourced, and there should be permanent mechanisms to fund the Boards, and to nurture, train and support them.”*
- James Caesar, Vice Chair SSI (March 2008): *“The co-management boards need adequate funding and resources to deal with the provisions stated in the comprehensive land claims.”*
- GNWT (March 2009): *“The overall approach is to complete and provide adequate capacity to the integrated system of land and water regulation envisioned by the parties to the land claim agreements. Extensive restructuring is not required at this time...Recommend a review of funding levels for the boards to ensure adequate capacity.”*
- MVLWB report (May 2011): *“Further provision for access to incremental funding, on an as-required and as-demonstrated basis, for projects and programs that result from forced growth, unanticipated projects and other non-core activities is required.”*
- Standing Committee on Aboriginal Affairs and Northern Development (Dec 2010): *“Recommendation 30: That the Government of Canada work closely with territorial governments, local communities and Aboriginal organizations to resolve issues of funding by the end of the 2010-2011 fiscal year, to ensure adequate support for the increasingly demanding requirements of regulatory co-management boards in the North.”*

❖ Adequate and stable participant funding

- Bob Bromley, MLA (Feb 2012): *“fund First Nation governments and community participation to meet constitutional consultation requirements”*
- Alternatives North (May 2011): *“We cannot accept the inertia of the federal government in establishing a proper and adequate participant funding program for all phases of the environmental management system. Participant funding for environmental assessments under the MVRMA should match the right to participant funding enjoyed by Canadians for federal environmental assessment in all the provinces... there is little to be gained by short-changing public and community*

involvement at various stages of the environmental management system. Northerners have for too long been excluded from decision-making about our resources and the pace of development.”

Guiding Principles

- ❖ A process to improve the MVRMA must respect not only the letter but the spirit and intent of land claims and self-government agreements.
 - Richard Nerysoo, GTC (Oct 2011): *“This is a modern treaty signed between parties, and all parties are equal in this process. Whenever there are changes to be made to negotiated institutions, the Government of Canada (GoC) cannot conduct its own review... the objectives of the Land Claim Agreements (LCAs) cannot be undermined.”*
 - Gabrielle Mackenzie-Scott, TG (Oct 2011): *“The Tłı̄chô Government will not agree to changes to the system that will inhibit its ability to make strong and balanced development decisions...”*
 - NWT Board Forum (Sept 2008): *“critical to success of the dialogue [is]: Recognition and respect for the Aboriginal rights entrenched in land claim and self-government settlements that underpin self-determination of resource development and management across the NWT. In this spirit, any options for changes to the regulatory systems established pursuant to those agreements shall require the approval of the parties to those agreements.”*
- ❖ The process requires collaboration, not just ‘consultation’. Aboriginal governments are partners, not just ‘stakeholders’.
 - Ethel Blondin-Andrew, SSI (Oct 2011): *“We were equal partners in the legislation, and should be equal partners in the review and any amendments.... Consultation is not good enough; what has to occur is collaboration...”*
 - Gabrielle Mackenzie-Scott, TG (Oct 2011): *“The GoC or the GNWT can’t change the system on their own; it is not their system to change without the other parties involved...”*
 - Violet Camsell-Blondin, WLWB (March 2008): *“Any amendments to the MVRMA would require all parties to agree. All parties need to accept co-management. We’re here to stay and want to be partners through increased communication and collaboration.”*
 - Steve Ellis, Akaitcho (Oct 2011): *“There will be serious consequences for Canada if they do not properly consult with the unsettled claim groups and if Canada disregards our concerns. We are not an NGO, or a stakeholder; we are working towards being a legal entity and we need to be at the table.”*

- MVEIRB (Sept 2008): *“While the MVRMA is federal government legislation it did arise from land claims and in partnership with the GNWT. As a result, any restructuring or change to the legislation will need the concurrence and collaboration of all MVRMA Partners.”*

- ❖ Respect that the NWT is different and needs made-in-the-NWT solutions. People here do not want the NWT to become Alberta, Yukon or Nunavut.
 - MVLWB (May 2011): *“the Mackenzie Valley regulatory regime is effectively a “negotiated” regime, making the “spirit and intent” of the land claims a fundamental underpinning of the system. It is different than other regulatory regimes in Canada, and it is different by design.”*

 - Alternatives North (May 2011): *“the governance and regulatory system has evolved in the NWT as a result of constitutionally entrenched land claims agreements. Communities, Aboriginal governments, and the public hold substantive powers, largely in the absence of devolution and revenue-sharing arrangements with the territorial government, to ensure that local people have a strong say in the scale and pace of resource development and overall economic development.”*

- ❖ Respect that each region within the NWT must have the opportunity to negotiate and implement its own particular way of managing things.
 - NWT Environmental Audit (March 2011): *“consistency and clarity in the LWB decision making process, while maintaining respect for the cultural and geographic differences that underlay the initial decision to create a regional board system”*

 - Don Balsillie, Akaitcho (Oct 2011): *“The Akaitcho position is that we want the opportunity to discuss the legislation that is most appropriate to be implemented in our region, rather than following a “cookie cutter” approach.”*

 - Sam Gargan, DFN (Oct 2011): *“Dehcho First Nations asserts that any amendments to the MVRMA must be facilitated through the Dehcho Process. Failure to do so prejudices the Dehcho process and undermines the relationship between the Dehcho and the Government of Canada.”*

 - George Barnaby, SLWB (March 2008): *“the process in place now is based on community control, and we should always keep that as the main thing. All of the Boards work for their region, and Boards reflect local knowledge.”*

List of organizations and representatives quoted in this document, with sources

Organization	Representative	Source	Date
Akaitcho Territory Government	Steve Ellis	MVRMA Amendment	Oct 2011
	Don Balsillie	Workshop hosted by AANDC	

Alternatives North	--	Response to the McCrank Report	Aug 2008
	--	Letter to AANDC re: List of Issues for Consideration	May 2011
Canadian Association of Petroleum Producers (CAPP)	Mike Peters	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
Canadian Parks and Wilderness Society-NWT Chapter (CPAWS-NWT)	Jen Morin	Northern Regulatory Improvement Initiative Workshop with Mr. McCrank	March 18-19, 2008
Dehcho First Nations (DFN)	Sam Gargan, Grand Chief	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
	--	"Dehcho Resource Management Authority and MVRMA: A Backgrounder"	June 2009
	--	Dehcho Process Report	June 2011
Fort Good Hope	Arthur Tobac, former Chief	CBC North Radio special report	March 1, 2012
Government of the Northwest Territories	Executive	Report: "Approach to Regulatory Improvement"	March 2009
	Peter Bannon, consultant	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
	Bob Bromley, MLA	Member Statement in the Legislative Assembly	Feb. 14, 2012
	Michael Miltenberger, Minister	Hansard, Legislative Assembly	May 17, 2011
Gwich'in Renewable Resources Board (GRRB) & Gwich'in Land Use Planning Board	--	Joint Response from the Gwich'in Settlement Area to the McCrank Report	Oct. 23, 2008
Gwich'in Tribal Council (GTC)	Richard Nerysoo, President	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
		CBC article: "Feds to start talks on merging NWT regulatory boards"	Jan. 7, 2012
Mackenzie Valley Environmental Impact Review Board (MVEIRB)	Richard Edjericon, Chair	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
	Vern Christensen, Executive Director		
	--	Letter to INAC re: Response to McCrank Report	Sept 25, 2008
Mackenzie Valley Land & Water Board (MVLWB)	Willard Hagen, Chair and CEO	Up Here Business article by Darren Campbell: "Road Map to Nowhere"	Oct 2008
		MVRMA Amendment Workshop hosted by AANDC	Oct 2011

	Zabey Nevitt, Executive Director	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
	--	Perspectives on Regulatory Improvement in the Mackenzie Valley	May 18, 2011
MGM Energy	Gary Bunio, COO	Up Here Business article by Darren Campbell: “Road Map to Nowhere”	Oct 2008
Mining Association of Canada (MAC)	Gordon Peeling	Northern Regulatory Improvement Initiative Workshop with Mr. McCrank	March 18-19, 2008
	Rick Meyers	Transcript from federal Standing Committee on Natural Resources	Nov. 2, 2011
Norman Wells Land Corporation	Roger Odgaard	CBC article: “Sahtu leaders leery of McCrank report”	Oct 1, 2008
Northwest Territories Métis Nation (NTMN)	Jake Heron	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
NWT Board Forum	--	Letter to INAC re: Response to McCrank Report	Sept 24, 2008
NWT Chamber of Commerce	--	Press release: “NWT Chamber presents priorities for regulatory reform to MLAs”	May 2009
NWT/Nunavut Chamber of Mines	Tom Hofer	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
Prospectors & Developers Association of Canada (PDAC)	Philip Bousquet	Northern Regulatory Improvement Initiative Workshop with Mr. McCrank	March 18-19, 2008
Sahtu Land & Water Board	George Barnaby	Northern Regulatory Improvement Initiative Workshop with Mr. McCrank	March 18-19, 2008
Sahtu Land Use Planning Board	Bob Overvold	Presentation to Standing Committee on Aboriginal Affairs and Northern Development (Dec 2010 Report)	March 30, 2010
Sahtu Secretariat Inc.	Ethel Blondin-Andrew, Chair	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
	Frank Andrew, Grand Chief	CBC article: “Sahtu leaders leery of McCrank report”	Oct. 1, 2008
	James Caesar, Vice-Chief	Northern Regulatory Improvement Initiative Workshop with Mr. McCrank	March 18-19, 2008
SENES Consultants	--	2010 NWT Environmental Audit	March 2011
Standing Committee on Aboriginal Affairs and Northern Development	--	“Northerners’ Perspectives for Prosperity” - Report	December 2010

Tłı̄chǫ Government	Gabrielle Mackenzie-Scott	MVRMA Amendment Workshop hosted by AANDC	Oct 2011
	Arthur Pape, lawyer		
Wek'eezhii Land & Water Board	Violet Camsell-Blondin, Chair	Northern Regulatory Improvement Initiative Workshop with Mr. McCrank	March 18-19, 2008