

SUMMARY OF GNWT APPROACH TO REGULATORY IMPROVEMENT

In response to the recent Road to Improvement Report (the McCrank Report) and previous regulatory improvement initiatives, the GNWT is adopting the following approach to furthering regulatory improvement in the NWT.

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, but targeted changes are needed to ensure that the system operates as intended.

Regulatory improvement is an ongoing process; the details of the approach may evolve over time in response to additional research, changing conditions, and engagement with the Federal Government, Aboriginal governments and stakeholders.

In many cases, the proposed GNWT approach has been broadened to include recommendations from previous processes or to more fully address NWT interests. The responses have been grouped into five categories, solely for ease of reference:

- Completing the System;
- Building toward Northern Control;
- Aboriginal Interests;
- Protecting the Environment; and
- Regulatory Process.

COMPLETING THE SYSTEM

Regulatory Structure

The Report recommended two options for a fundamental restructuring of the regulatory system in the NWT. The intent of the restructuring is to enable responsible resource development through an effective regulatory system.

Option 1 recommends that the Mackenzie Valley Land and Water Board (MVLWB) be designated as the only Land and Water Board in the Mackenzie Valley and that the federal government (INAC) recognize the Mackenzie Valley Impact Review Board (MVEIRB) as the final recommending body on those matters within its jurisdiction. Option 2 involves the same components as Option 1, but instead of discontinuing the regional Land and Water Boards would change their role to administrative bodies. Under both Options, the MVLWB would be the final decision-maker

The GNWT response:

- Support the recommendation that the MVLWB have sufficient funding to carry out its responsibilities.
- Propose to explore further the option of INAC recognizing the MVEIRB as the final recommending body on those matters within its jurisdiction.

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- Oppose both 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; but instead;
 - Advocate targeted improvements to the existing system aimed at fully constituting these Northern Institutions of Public Government.

Surface Rights Legislation

The Report recommended (#14) that the federal government should consider some legislative solution to resolve the current difficulty of surface access to land.

The GNWT response:

- Support the full implementation of the settled land claims, including the completion of surface rights legislation.

NWT Cumulative Impact Monitoring Program

The Report recommended (#5) that the federal government should commit to the NWT Cumulative Impact Monitoring Program (CIMP) and commit funds for that purpose.

The GNWT response:

- Acknowledge INAC's first steps in this regard to provide funding of \$900,000 (announced July 2008)
- Support recommendation for the federal government to commit to the NWT Cumulative Impact Monitoring Program.
- Determine adequacy of new federal funding and participate in efforts to ensure CIMP functions as envisioned.
- Review GNWT role in cumulative impacts monitoring processes.

Board Capacity

The Report recommended (#7) that the federal government should ensure that each regulatory body has a structured plan for: (a) orientation; (b) training; and (c) continuing education for each new member that is appointed.

The GNWT response:

- Support this recommendation as a subset of the broader GNWT recommendation on board capacity and funding. Ensuring the existing boards operate at full capacity is the GNWT's proposed alternative to the Report's restructuring options.
- Recommend a review of funding levels for the boards to ensure adequate capacity.

Land Claim Agreements

The Report did not make any direct recommendations on the completion of Land Claim Agreements. However, it does make reference to land claims creating complexity and uncertainty in the regulatory regime (pg 7, 12).

The GNWT response:

- Complete several key pieces of the integrated resource management system including the negotiation of lands, resources, and self-government agreements.

BUILDING TOWARD NORTHERN CONTROL

Board Appointments

The Report recommended (#15) that the office of the Minister of INAC should establish a process that would anticipate board appointments and ensure that the appointments are timely.

The GNWT response:

- Support changes to ensure timeliness of the appointment of members to various Boards.
- Seek a role in INAC's review of the appointment process announced on July 17.
- Seek delegation of the power of appointment (under section 3.1 of the MVRMA) to the GNWT for those board members the GNWT is currently entitled to nominate.

Security Deposits

The Report recommended (#6) that the federal government should initiate a review of its current practices for requiring financial security for mining operations in the North, with a view to establishing these requirements in a more orderly fashion and to eliminate duplication.

The GNWT response:

- Support recommendation for the federal government to initiate a review of its current practices.
- Evaluate progress and assert a more prominent role in discussions with INAC.
- Consider questions including need for a public process, and the appropriate instrument to capture the formulae for calculating deposits.
- Consider whether review should be broadened to include security deposits for oil and gas and pipeline operations in the NWT.

Land Use Plans

The fundamental restructuring options both recommended the completion of Land Use Plans and obtaining their approval from the federal government. The Report also makes a specific reference to promoting the completion of land use plans in all areas as a recommendation (#1).

The GNWT response:

- 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.
- Finalize the GNWT Land Use Framework.

Delegation of Responsibilities

The Report does not provide any recommendations on the delegation of federal responsibilities to the territorial government.

The GNWT response:

- The Federal Government, with the GNWT, should consider additional areas where responsibilities of the Federal Minister under the MVRMA could be delegated to the responsible territorial minister.

ABORIGINAL INTERESTS

Consultation

The Report recommended (#2) that the federal government should give the highest priority to developing and implementing a policy that will clarify its own role, the role of proponents and the role of the regulatory boards, in relation to responding to the requirement for Aboriginal consultation and accommodation.

The GNWT response:

- Support the recommendation to develop and implement an Aboriginal consultation and accommodation policy to determine the roles for the Government of Canada, the proponents and the regulatory boards, and further broaden the policy to include consideration of the role of the GNWT role.
- Continue to participate in processes with federal government, boards, and industry that clarify who will fulfill the duty in a given case.
- If required, consider engaging with Aboriginal groups with a goal of avoiding duplication between consultative processes.
- This work must be responsive to ongoing refinement of the duty by the courts.

Impact Benefit Agreements

The Report recommended (#3) that the federal government should give priority to developing an official policy on the purpose, scope and nature of Impact Benefit Agreements in the North.

The GNWT response:

- Determine the extent of the issue and the status of INAC policy development.
- Support concept of creating additional certainty for proponents on Impact and Benefit Agreements.

Free Entry System

The Report recommended (#8) that the federal government should consult with all interested stakeholders and develop a policy on the free entry system.

The GNWT response:

- A review is required to determine where inconsistencies lie and the most appropriate method (eg Policy or legislation) for addressing these inconsistencies.
- Support changes to ensure that mineral exploration is consistent with legal obligations to Aboriginal people.

Community Capacity

The Report did not make any direct recommendations relating to community capacity.

The GNWT response:

- INAC must make additional participant or intervener funding available to Aboriginal organizations and communities to deal with environmental assessments and regulatory applications for larger scale projects.

PROTECTING THE ENVIRONMENT

Environmental Standards: Water Quality and Effluent Standards

The Report recommended (#10) that the federal government should, as a priority, in consultation with the Boards under the Mackenzie Valley Resource Management Act, develop standards for water and effluent and the Minister should direct the Boards to use those standards.

The GNWT response:

- Support the development and implementation of appropriate territorial standards regarding the respective regulation of water quality, effluent, air quality and emissions, and environmental effects monitoring in the NWT.

Triggers for Environmental Assessment

The Report recommended (#11) that the federal government should address the issue of the Environmental Review process and consider providing legislative amendments to the MVRMA that set out the criteria that triggers more extensive review levels.

The GNWT response:

- Support investigating whether the triggers for environmental assessment and environmental impact review can be clarified without amendment of the settled land claims, and if so, determine the appropriate mechanism for the clarification (e.g. guidelines or legislation).

Enforcement

The Report recommended (#12) that the federal government and the appropriate regulatory bodies should develop an understanding (MOU) concerning the issue of implementation and enforcement of recommended and accepted conditions.

The GNWT response:

- Support the concept of clarifying overlapping mandates and responsibility for implementation and enforcement of recommendations arising from the regulatory process.
- Further analysis required to determine the full extent of the gaps, and to determine the appropriate instrument(s) to address those gaps.

Environmental Agreements

The Report recommended (#4) that the federal government should identify the gaps in existing legislation and regulations that should be filled in order to protect all elements of the natural environment, to the extent required by the principles of sustainable development, and give priority to the development of the necessary statutes and regulations in order to progressively eliminate the need for ad hoc environmental agreements on a project-by-project basis.

The GNWT response:

- Support the recommendation to identify gaps, collaboratively with the federal government, in existing legislation and regulations that should be filled to protect the natural environment and reduces the need for ad hoc environmental agreements.

REGULATORY PROCESS

Performance Measures - Timelines

The Report recommended (#9) that the federal government and the appropriate regulatory authorities should develop performance measures that result in effective timelines from the receipt of the application to disposition. The Report notes that this may involve different timelines, depending on the scope and complexity of the application.

The GNWT response:

- Support the development of performance measures that result in effective timelines from the receipt of the application to disposition, including timelines for the ministerial decision-making processes.

NWT Environmental Audit

The Report recommended (#13) that the Minister of INAC should commission a second environmental audit of the Northwest Territories in accordance with S.148(1) of the MVRMA and/or order a specific review of the MVRMA.

The GNWT response:

- Support the initiation of a second environmental audit pursuant to section 148 of the MVRMA.
- The audit should include the regulatory regimes of both the Mackenzie Valley and the Inuvialuit Settlement Region, and be used as an opportunity for a more comprehensive look at improvements to the system.

Minister's Directives

The Report recommended (#16) that the federal Minister should clarify some issues involving the regulatory boards or the regulatory process by exercising his/her authority under the MVRMA.

The GNWT response:

- Support the recommendation, for the federal Minister to clarify some issues involving the regulatory boards or the regulatory process by exercising his/her authority under the MVRMA, subject to agreement on areas that would most benefit from Ministerial policy directives.
- Changes to the MVRMA should not be ruled out, and consideration should be given to allowing policy directives to the MVEIRB.

Ministerial Review Under S. 130 & 135 of the MVRMA

The Report recommended (#17) that the federal Minister (INAC) should develop a protocol on the review and disposition relating to S.130 (MVRMA) decisions.

The GNWT response:

- Clarification of the ministerial decision-making process under sections 130 and 135 of the MVRMA is required. Further analysis is required on the best mechanism to achieve this objective.
- There should be particular emphasis on shortening and providing greater certainty with regard to timelines for Ministerial decision-making.

Major Projects Office

The Report recommended (#18) that the federal government should explore a made-in-the-North equivalent of the MPMO that would be a single point of entry and assist in coordinating federal departments and the GNWT, as well as liaise with the regulatory bodies for all projects, major and minor.

The GNWT response:

- Oppose creation of a northern “satellite” office of the MPMO.
- Consent to the exploration of the concept of a MPMO for the north, to the extent that it is tailored to northern needs and complements the GNWT’s devolution “partnership approach” to future large projects and future rapid increases in the level of resource development.