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HARMONIZATION OF IMPACT ASSESSMENT REGIMES WITHIN INUIT CLAIMS SETTLEMENT AREAS

A report prepared by
Jim Edmondson

for Inuit Tapirisat of Canada

March 1993

1. INTRODUCTION

The commitment of Canada's Inuit, and of the Inuit Tapirisat of Canada (ITC), to the vital goals of environmental protection and of sustainable development is clear and unequivocal. It is a commitment which Inuit have always forcefully expressed, in speeches, in policy statements, and in land claims and self-government negotiations.

To see these goals accomplished, Inuit have strongly supported the use of, among other things, impact assessment as an integral planning tool in all public decision-making related to developments with environmental impacts, both eco-systemic and socio-economic. They have also insisted that impact assessment be employed as early in planning processes as possible, well before any irreversible decisions are made.

In approaching this issue, ITC has been keenly aware of the myriad of jurisdictional and administrative difficulties complicating the achievement of consistent and effective impact assessment in Canada. As a result, it has given attention to the question of "harmonization" in its discussions with the Federal Environmental Assessment Review Office (FEARO). Of particular concern, in this regard, are the requirements for "harmonizing" the various impact assessment regimes which exercise jurisdiction in Inuit claims settlement areas.

To better understand the issues surrounding harmonization, ITC has undertaken a FEARO-funded research initiative over the past five months. By now, FEARO has received the first report resulting from this initiative. It is primarily descriptive and comparative in nature, focusing upon the impact assessment provisions of the three negotiated Inuit claims settlements in Canada. Its supporting tables compare the main features of the federal assessment regime proposed under the new Canadian Environmental Assessment Act (CEAA) with the three Inuit claims assessment regimes.

The present report is more directly concerned with issues relating to the harmonization or integration of impact assessment regimes. It begins by addressing the question of "harmonizing" assessment procedures among Inuit claims settlements. Next, it turns to the related matter of harmonizing Inuit claims assessment regimes with those operating in other jurisdictions, especially the federal government. This is followed by an examination of some of the implications of the new CEAA regime for the operations of Inuit claims regimes. The paper concludes by briefly outlining additional work which ITC believes should be undertaken in the area of impact assessment.

Like the first report, this one is intended as a policy analysis of certain impact assessment issues. Nothing in it should be construed as a legal opinion.

2. HARMONIZATION OF INUIT CLAIMS IMPACT ASSESSMENT REGIMES

The Inuit Tapirisat of Canada is the national political voice of Canadian Inuit. As a national political organization, it takes its direction on all national initiatives from the six regional Inuit organizations and from Pauktuutit (the Inuit Women's Association), all represented on its Board of Directors.

Over the past few months, ITC leadership and officials have discussed impact assessment matters with regional representatives on a number of occasions, especially at an "Environmental Issues" workshop in Cambridge Bay in January, and at a "Round Table" workshop funded by the Royal Commission on Aboriginal Peoples in Grise Fiord in mid-March. Impact assessment has also been addressed in correspondence and phone conversations with environmental officials working for each of the regional organizations.

As this report's final section will note, Inuit regional organizations have a number of questions and concerns about impact assessment, some of them relating to harmonization and all requiring further clarification and study. But on one issue, the regional organizations have given ITC clear direction, and that relates to the general approach that they favour for working toward resolution of harmonization issues.

Based upon this direction, ITC wishes to report the following: Inuit regional organizations are interested in the possibility of harmonization agreements (or a single over-arching agreement) for Inuit claims assessment regimes or processes. But they have stressed that any work toward harmonization must be initiated and undertaken at the regional level, within the context of particular Inuit claims settlements. As currently conceived, ITC's role in this work would be to act as a co-ordinator or facilitator, where appropriate and as required by the regions.

In taking this position, the regional organizations have simply confirmed that the ultimate authority to make decisions about changes to claims-created institutions and processes lies with them, as signatories to the Inuit claims settlements. If Canada, through FEARO, wishes to pursue the question of harmonization any further, it must first understand that the authority to deal with this matter is located at the regional level.

Just as important, it must recognize that each Inuit claim settlement has its own unique history, and was negotiated and implemented in light of a particular set of circumstances and requirements. Despite their common features, each settlement contains its own configuration of lands and resources management/ownership institutions and processes, with specific patterns of inter-relationship and distributions of powers. Each impact assessment regime is embedded within one of these unique configurations, and by virtue

of this, contains particular institutional and procedural features which may not be found in the other Inuit claims settlements.

It must also be understood that each of the three Inuit claims settlements is at a different stage in its implementation, and accordingly, Inuit organizations operating within them may have differing views as to what needs to be accomplished at this time. In other words, Inuit regions where claims institutions have been functioning for some time may have different priorities regarding impact assessment from regions where such institutions are only now being put into place. And, both these sets of circumstances differ markedly from that of the Labrador Inuit, who haven't yet reached the Agreement-in-Principle stage in their claims negotiations, primarily because of disagreements between Canada and Newfoundland over funding responsibilities.

Recognition must equally be given to the fact that each settlement represents a difficult balance among the interests of a distinct set of stakeholders, and that this particular balance affects the possibilities for changes to a claims agreement. To take one example, changes to the impact assessment regimes in the Inuvialuit and TFN claims settlements require the consent of the federal government and of the Inuit/Inuvialuit. But changes to the Inuit impact assessment regime in the James Bay and Northern Québec Agreement also require consent from the province of Québec and from the Naskapis -- which may be more difficult to achieve.

Of course, the situation for all three settlements may become even further complicated upon the conclusion of transboundary agreements with each other, and with aboriginal organizations representing claims settlements in adjoining or overlapping areas.

In the course of its research into the question of harmonization, ITC came across a number of relevant precedents. One is the *January 1992 Memorandum of Understanding on the Environmental Assessment of the Great Whale Project*, which offers a useful model of inter-jurisdictional co-operation. Another model deserving study is the "Development Assessment" chapter of the *Yukon Transboundary Agreement*, which is attached as Appendix C to the *Gwich'in Comprehensive Land Claim Agreement*. Mention might also be made of the range of alternatives proposed in Laurie Henderson's 1992 paper entitled: "*Environmental Impact Assessment: Options for Harmonization*", which was prepared for the Yukon Government's Department of Renewable Resources.

Whether and to what extent any of these models is actually applied is a matter for each of the regional Inuit organizations to decide. More than anything else, this will likely depend upon their judgements as to the urgency of the need to harmonize their claims assessment regimes with other regimes.

Some organizations may choose to address this as part of a broader trans-boundary agreement, while others may elect to deal with harmonization issues as they arise on a

project-by-project basis. Similarly, some may decide to effect harmonization through formal amendments to their settlement agreements and accompanying legislation, while others may rely upon a simple memorandum of understanding. In the same way, some organizations may decide to address harmonization with other claims regimes in conjunction with achieving harmonization with the new federal regime, while others may opt to approach these two issues separately.

Given the range of different options available, it cannot be assumed that each of the regional Inuit organizations will favour the same means for achieving harmonization with other impact assessment regimes. Nor can it be automatically assumed that every organization seeks the same specific features in a harmonization agreement.

If harmonization is to be achieved among assessment processes in Inuit claims settlement areas, the possibility must be accepted that the regional organizations may favour different approaches. The Inuit Tapirisat of Canada could, and may, play a useful role in facilitating harmonization discussions. But again, it must not be presumed from the start that any one approach or any one agreement will suffice to resolve all of the difficulties and concerns at stake in this very complicated area.

3. HARMONIZATION OF NEW FEDERAL IMPACT ASSESSMENT REGIME WITH INUIT CLAIMS ASSESSMENT REGIMES

Consistent with its mandate from the regions, ITC takes no position at the present time on the most appropriate means for achieving harmonization among the new federal assessment regime and the impact assessment regimes operating in Inuit claims settlements.

As with the first harmonization issue, Inuit regional organizations have given ITC clear direction on this matter. Work toward harmonization with the federal assessment regime will be initiated and undertaken at the regional level, in a form and at a pace appropriate to regional circumstances and objectives.

There may be a rôle for ITC to play in this harmonization work, possibly as a facilitator or in an advisory capacity, making use of established contacts and expertise. However, any activities which ITC undertakes on these matters will be carried out in conjunction with, and with the approval of, the Inuit regional organizations.

4. IMPLICATIONS OF CEAA FOR CLAIMS ASSESSMENT REGIMES

ITC wishes to take this opportunity to raise a number of issues identified during the research which we have had undertaken into the Canadian Environmental Assessment

Act (CEAA). These are directed to FEARO in the hope of fostering discussion and necessary clarification of the implications of the new federal regime.

It is recognized that not all of these concerns will be of equal significance in each Inuit claims settlement, and that in fact some may not arise in every settlement. This is to be expected, given the varying circumstances as well as the differences in the assessment regimes operating in each settlement area. Even so, it is also understood that Inuit in each of the claims settlements share certain fundamental interests and concerns regarding impact assessment, and that these provide a starting point for discussion of the implications of the CEAA.

ITC's primary concerns regarding the Canadian Environmental Assessment Act are as follows:

- **Definition of "Environmental Effect":** The CEAA's definition of "environmental effect" (s. 2(1)) encompasses socio-economic effects of a project only indirectly, insofar as they result from environmental changes caused by developments. In the Inuit claims assessment regimes, socio-economic impacts are treated on a par with eco-systemic impacts and equally requiring assessment. What implications will these differing understandings of "effect" have for the work of joint review panels, or of substitutions, or of collaborative arrangements for reviewing transboundary effects?

- **Definition of "Federal Authority":** It appears that a land claims assessment body may be designated by regulation as a "federal authority" for the purposes of the CEAA. What kinds of powers may be exercised by a claims body acting as a "federal authority?" Does this add anything that is not provided for in the substantive provisions of the Act?

- **Definition of "Federal Lands":** Although it is not explicitly stated in the Act, the "Guide to the CEAA" prepared by FEARO (pg. 58) says that federal lands include "those described in a land claims agreement." Does this include lands in a settlement area where both surface and sub-surface title is vested in Inuit organizations? How and to what extent would these lands be considered "federal lands"?

- **Cooperation Among Responsible Authorities and "Jurisdictions":** Whose recommendations will prevail in situations where a claims assessment body co-operates with a responsible authority in conducting a screening or comprehensive study (under s. 12(4) and 12(5))? How will disagreements be resolved?

- **Delegations of Authority:** The Act permits responsible authorities to delegate certain responsibilities to claims assessment bodies, including the design and

implementation of followup programs (s.17.(1)). It would be useful to know what responsibilities and activities are understood to fall within the meaning of "implementation." More specifically, do monitoring programs form part of followup programs? And, what role might Inuit organizations and communities play in this implementation?

• **Discretionary Powers of Minister:** Section 28 of the Act appears to say that the Minister of the Environment (MOE) may order a review of a project occurring in an area under jurisdiction of an Inuit claims assessment body, without obtaining the consent or without even consulting with that body or with an aboriginal organization with authority in the settlement area? Is this an accurate reading of that section?

• **Requirements for Mediators or Review Panel Members:** Sections 30 and 33 set out several requirements which must be met by persons appointed by the MOE to serve as mediators or review panel members. Significantly, there is no requirement for the appointment of aboriginal people or their representatives, even in cases where the project to be assessed will take place in an area with a significant or even a predominantly aboriginal population. Could this be remedied through the passage of appropriate regulations under the authority of the CEAA?

• **Joint Reviews:** Sections 40-42 specify a number of requirements which must be met by any joint review or other form of co-operation between the federal government and other "jurisdictions", like claims assessment bodies. There seems to be little recognition that claims bodies may also have certain procedural requirements -- set out in claims agreements, statutes or operating procedures -- which must be reflected in any agreement on joint action. What happens if these requirements conflict with or are not satisfied by the federal requirements just mentioned? How will such situations be remedied?

• **Substitutions:** Sections 43-45 address situations where the MOE may, under certain conditions, approve an assessment to be undertaken by a "substitute," such as a federal authority under another Act or a land claims assessment body. To what extent might the Minister be prepared to modify or even waive these requirements in recognition of the procedural requirements binding on claims assessment bodies, or of the unique circumstances existing in Inuit claims settlement areas?

• **Reviews of Projects with Transboundary Effects:** Sections 46-48 vest the MOE with discretionary power to refer projects with transboundary effects for mediation or panel review, where alternative arrangements with other jurisdictions cannot be negotiated. This may not give adequate recognition to the special status of claims assessment bodies, which exercise constitutionally protected powers and responsibilities in relation to the assessment of projects occurring within their

settlement areas. To what extent does this status place limitations upon the Minister's ability to proceed unilaterally in the manner outlined in the CEAA?

• **Regulatory Powers of Minister of the Environment:** Under s. 58(1)(e), the MOE is empowered to recommend members to land claims assessment bodies, in order to facilitate the substitutions mentioned above. It is not clear whether, in making these recommendations, the Minister is required to comply with provisions in claims agreements respecting the composition and ratios of representation for members on claims assessment bodies. What is intended here?

• **Regulatory Powers of Governor-in-Council:** Section 59(a) empowers the Governor-in-Council to make regulations respecting procedures, requirements and time limits for the conduct of joint panel reviews under the Act. What happens if these regulatory requirements conflict with the procedural requirements binding on claims assessment bodies? How would such conflicts be resolved?

Two final ITC concerns relate not so much to the CEAA itself, as to the relationship between its provisions and those of the constitutionally protected Inuit land claims agreements:

• **Legal Priority of Land Claims Agreements:** Each of the three negotiated Inuit land claims agreements is a constitutionally protected "modern treaty", within the meaning of Section 35 of the Constitution Act, 1982. Each stipulates that its provisions, and those of its enabling legislation, will prevail to the extent of conflict or inconsistency with federal, provincial or territorial laws applying in the particular claims settlement area. In each agreement, recognition is given to the application of general laws within the settlement area, subject to the provisions of the Agreement, including those relating to impact assessment.

It is not clear to ITC that the new Act gives sufficient recognition to the constitutionally protected powers of the impact assessment regimes created through the Inuit claims settlements. At certain points in the preceding discussion, we have questioned whether the application of the proposed federal regime to claims settlement lands is as straightforward as the Act appears to envision. At the very least, we believe that much more analysis and discussion is necessary in this complex area.

• **Amendment of Land Claims Agreements:** Amendment of the provisions of any of the three existing Inuit land claims agreements is carried out in accordance with procedures formally specified in the agreements. The whole issue of amending land claims agreements is very complex, and requires further legal analysis. For now, ITC simply wants it understood that any changes to Inuit land claims agreements, in

relation to impact assessment or to other provisions, require the co-operation and consent of their signatories, including the Inuit regional organizations.

5. FUTURE ITC WORK ON IMPACT ASSESSMENT

As has been stressed throughout this report, it is not within ITC's present mandate to make proposals or to take the lead in negotiations directed towards harmonizing either the assessment regimes within Inuit claims settlements or these regimes with the new federal assessment regime. Any activities by Inuit in these areas will be initiated by the six regional organizations, and assistance from ITC will be provided at the request of the regions.

As noted in our February 17 funding proposal to FEARO, however, ITC does envision a significant role for the national office in two different areas relating to impact assessment.

For one thing, ITC intends to continue to be involved in the ongoing interjurisdictional work surrounding the development of various sets of regulations under the Canadian Environmental Assessment Act. This will require our continued participation in the activities of the Regulatory Advisory Committee and its related working groups, and may also include our involvement in administrative and procedural harmonization talks with various jurisdictions. This particular rôle for ITC has been approved by the regional organizations.

ITC's aim, in undertaking these activities, will be to promote and protect certain national interests common to all Inuit in Canada. These interests are rooted in the fundamental interests and concerns regarding the environment and impact assessment which are shared by all Canadian Inuit.

Of course, each of the regional Inuit organizations plays its part in protecting these interests. But there is also a crucial need for political action at the national level, and this is the responsibility of ITC. In this regard, it is particularly important for us to ensure that national standards and procedures relating to impact assessment are applied consistently and fairly throughout Canada, and that Inuit in each of the different claims settlement areas benefit from them equally. ITC seeks to make sure, as well, that any such standards are as strong and of as high a quality as possible.

ITC also sees a valuable rôle for the national office in facilitating and promoting the exchange of information and views on impact assessment among the Inuit regions. In stating their requirements, the regional organizations have repeatedly stressed the need for more information, especially with regard to the new federal impact assessment process. Without such information, they have difficulties in making informed decisions

about the desirability of, and most appropriate means for harmonizing their claims assessment regimes with those of other jurisdictions.

It is with this in mind that ITC has proposed convening a "round table" conference on impact assessment matters, in its funding submission to FEARO. Although assessment issues have been raised peripherally in other meetings, Inuit have so far not had the opportunity to meet for discussions exclusively devoted to impact assessment.

Clearly, one of the primary concerns at such a conference would be the implications of the new federal assessment regime. But it would also provide a valuable forum for Inuit regional representatives to exchange views and information about their experiences in implementing and administering the claims' environmental assessment regimes. The orientation of the proposed meeting will be practical, and it will be geared toward officials actually involved in the conduct of impact assessments within Inuit claims settlement areas.

Such a conference would, ITC believes, go a considerable way towards remedying the current confusion and lack of information about impact assessment. It may also assist Inuit regional and national representatives in clarifying their common concerns, and in formulating joint strategies to pursue their objectives in relation to impact assessment.

	CEAA REGIME	EARP REGIME
1. SCOPE		
	Environmental assessment of a project is required before a federal authority exercises a power or performs a duty or function listed in s.5. These include: project proponency; financial assistance; administration & disposition of federal lands; and, issuing a project approval under a federal authority specified in the "law list" (s.59(f)). The actual scope of an assessment will be set by the responsible authority or the Minister of the Environment (MOE).	The Environmental Assessment and Review Process(EARP) Guidelines apply to any project proposal that: is undertaken by an "initiating department"; may have an environmental effect on an area of federal responsibility; for which Canada commits itself financially; or, is located on lands(including the offshore) administered by Canada.
2. STANDARDS/OBJECTIVES		
	The general purposes of the CEAA are set forth in s.4. These include: ensuring that environmental effects of projects are carefully considered before they are allowed to proceed; promoting sustainable development; ensuring that projects in Canada or on federal lands don't have adverse effects outside the jurisdictions where they are located; and, involving the public in environmental assessments.	The EARP is considered a self-assessment process, where the "initiating" department shall as early in the planning process as possible & before irrevocable decisions are made, ensure that the environmental implications of all proposals for which it is the decision making authority are fully considered. Where they are significant, it shall refer the proposal to the MOE for a public panel review.
3. SCREENING		
3.1 Institution or Body Responsible for Screenings	Screenings are conducted by a "responsible authority" as defined in s.11 of the CEAA.	Screenings/initial assessments are conducted by initiating departments, with "the decision making authority for a proposal".
3.2 Membership of Screening Body	No membership requirements.	No membership requirements.
3.3 Project Referrals	Screenings are conducted internally by the responsible authority, and not referred to an independent body.	Screenings are conducted internally by the initiating department, and not referred to an independent body.
3.4 Screening Criteria	Responsible authority(s) will screen all projects not appearing in the comprehensive study and the exclusion lists. Every screening must take into account the list of factors in s. 16(1) of the CEAA. Scope of these factors determined by the responsible authority.	Initiating departments are to screen all projects for which they have decision making authority.

	CEAA REGIME	EARP REGIME
3.5 Exemption, Mandatory Review and other Lists	Regulations developed under s.59 of the CEAA will create: a "comprehensive study list" of projects and classes of projects requiring a comprehensive study; an "exclusion list" of projects and classes of projects not requiring assessments; and, a "law list" of federal Acts and regulations conferring powers and duties on federal authorities the exercise or performance of which in relation to a project triggers an environmental assessment.	Together with the Federal Environmental Assessment Review Office(FEARO), initiating departments are supposed to develop lists of projects : (a) automatically excluded from the process(because they have no adverse environmental effects), and (b) automatically referred to the MOE for panel review(because they would have significant adverse effects). Also with FEARO, departments are to set written procedures for screenings.
3.6 Requirements for Public Involvement	Responsible authorities may involve the public in screenings, where this seems appropriate or where required by regulations. A public registry shall be established by the authority containing all relevant records relating to each project assessment.	No formal requirement for involving public in screenings. Where a proposal causes significant public concern, it shall be referred to the MOE for a panel review. Initiating departments are to inform the public after screening decisions under s. 12 & 13, and before mitigation or compensation measures are implemented under s. 14. The public must also have an opportunity to respond to this information.
3.7 Time Limits on Screenings	No time limits stipulated for screenings.	No specific time limits specified for screenings.
3.8 Powers of Screening Body(s)	No formal powers to subpoena witnesses or information. Under s.17(1), responsible authorities may delegate responsibilities to claims assessment bodies, including any part of a project screening, preparation of a screening report, or design and implementation of a followup program.	No formal powers to subpoena witnesses or information.
3.9 Class Screenings	The Canadian Environmental Assessment Agency may, on request of responsible authority and where it seems appropriate, use a screening report as a model in conducting screenings of other projects within the same class. Where a resp. authority uses or permits the use of a class screening report, it shall make adjustments necessary to take into account local circumstances and any cumulative effects.	No provision for class screenings.

	CEAA REGIME	EARP REGIME
3.10 Joint Screenings	Under s.12(4), where another jurisdiction like a claims assessment body has similar responsibilities relating to a project, a responsible authority may co-operate with it in conducting a screening.	No explicit provision for co-operation with other jurisdictions in conducting joint screenings of projects.
3.11 Report from Screening Body	Responsible authority considers recommendations of report.	Responsible authority considers recommendations of screening report.
3.12 Decision Regarding Screening Report	Responsible authority may: approve project subject to mitigation measures; not allow the project to proceed; or, send the project to the Minister of the Environment (MOE) for referral to either a mediator or panel review.	Initiating department may: approve project subject to mitigation measures; refer project to MOE for panel review; or, require project to be modified or abandoned.
4. REVIEWS		
4.1 Comprehensive Studies	For projects described in comprehensive study (c.s.) list, responsible authority must either ensure c.s. is conducted, or send to MOE for referral to mediator or panel. Every c.s. must take account of factors listed in s. 16(1) and (2). A responsible authority may cooperate with another "jurisdiction" in conducting a c.s., or delegate responsibility to it for doing so. In responding to a c.s., the MOE will either refer project back to the responsible authority for action, or refer it to mediator or review panel.	No provision for comprehensive studies to be conducted.
4.2 Mediation	Where appropriate, MOE will refer project in whole or in part to a mediator.	No provision for referral of project proposal to mediation.
4.3 Referrals for Review	Where appropriate, MOE will refer project in whole or in part to a review panel.	Where referred by department, the MOE will ensure that project is subject to a panel review.
4.4 Membership of Review Panels	No specific provisions concerning size or composition of review panels. MOE will consult with responsible authority in appointing panel members, according to criteria in s.33(1)(a). No explicit provision for aboriginal representation.	No specific provisions concerning size or composition of review panels. MOE appoints panel members, according to criteria in s.22. No explicit provision for aboriginal representation.

	CEAA REGIME	EARP REGIME
4.5 Guidelines for Preparation of EIS	No specific provisions dealing with guidelines for preparation of Environmental Impact Statement (EIS).	Panel issues guidelines to proponent for preparation of EIS.
4.6 Criteria	MOE will consult with responsible authority in fixing scope of the review, and terms of reference for the panel. In conducting review, panel must consider the factors set out in s.16(1) and (2).	MOE consults with Minister of initiating department in setting terms of reference/scope of panel review. Review must examine environmental effects of project and directly related social impacts of these effects. Where approved by MOE and initiating Minister, review may include general socio-economic effects & technology assessment of and need for project.
4.7 Requirements for Public Involvement in Reviews	Mandatory requirement for public hearings, subject to panel's terms of reference and any relevant regulations. Exceptions may be made where public disclosure of information would cause harm to a witness (see s.35(3)). Canadian Environmental Assessment Agency will maintain a public registry relating to the review.	Panel is required to hold public hearings, and to inform the public of its review--incl. allowing it access to and time to examine and comment on information relating to the review.
4.8 Time Limits on Reviews	No specific time limits placed on reviews.	No specific time limits placed on reviews.
4.9 Powers of Review Body	Review panel has power to subpoena witnesses, information and other things.	Panel doesn't have power to subpoena witnesses and information.
4.10 Report of Review Body	Report of review panel submitted to the MOE and to the responsible authority. MOE shall make report available to the public.	Panel report is submitted to the MOE and the Minister of the initiating department, who then make it public.
4.11 Decision by Minister or by Responsible Authority	In responding to a report from a mediator or review panel, or to a comprehensive study, the responsible authority has several alternatives: (a) allow project to proceed, subject to mitigation, where project isn't likely to have significant adverse impacts, or where these can be justified, or (b) not permit project to proceed, where, taking into account mitigation, its adverse impacts cannot be justified.	Initiating departments, together with other relevant government bodies, decide whether and to what extent panel recommendations shall be put into effect prior to authorizing project to proceed.
4.12 Response to Decision by Minister or Responsible Authority	Not applicable.	Not applicable.

	CEAA REGIME	EARP REGIME
4.13 Project Approval	Responsible authorities shall not exercise powers or perform functions/duties listed in s. 5 relating to a project, unless it has been subject to a screening and/or a comprehensive study, mediation or panel review. The CEAA doesn't empower responsible authorities to issue a specific certificate or license stipulating the conditions of a project approval.	Guidelines Order makes no provision for initiating department to issue a specific certificate or license setting out the conditions of a project approval.
4.14 Wildlife Compensation	No provisions specifically dealing with issues of wildlife compensation.	No provisions specifically dealing with issues of wildlife compensation.
4.15 Special Requirements and Regimes	No reference to special regimes.	No reference to special regimes.
5. RESOURCES		
5.1 Funding for Members of Assessment Bodies	Expenses will be borne by the Ministry of the Environment.	FEARO makes contractual arrangements for the services of members of review panels.
5.2 Staff and other Resources	Staff and other resources will be provided by the MOE. The Canadian Environmental Assessment Agency will be the responsibility of the MOE. The Agency will, where appropriate, make use of services & facilities of federal departments, boards and agencies.	FEARO provides panels with support staffs, and any logistical and administrative services they may need in their review and public information activities. Initiating departments meet their own costs incurred in fulfilling the requirements of the EARP process.
5.3 Intervenor Funding	The MOE may establish a participant funding program to assist public participation in mediations & panel reviews.	No provision made for intervenor funding.
6. FOLLOWUP		
6.1 Implementation	Responsible authorities will implement conditions of project approval through mechanisms provided by relevant legislation, i.e. licenses and permits.	Initiating departments are to ensure that conditions of project approval are incorporated into the design, construction and operation of projects, and that suitable implementation programs are established. In general, implementation occurs through mechanisms provided by relevant legislation.
6.2 Mitigation	Under s.37(2), responsible authorities must ensure implementation of any mitigation measures required as conditions of project approval.	Mitigation measures are implemented, where required as conditions of project approval.

6.3 Monitoring	Responsible authorities shall design and implement "follow-up" programs to monitor implementation of mitigation measures for a project and to verify accuracy of project assessment.	Initiating departments and proponents are required to carry out appropriate post-assessment monitoring, surveillance and reporting programs.
6.4 Enforcement	In general, enforcement of conditions of project approval will rely upon existing mechanisms (i.e. penalties for non-compliance) provided by relevant legislation. Where an assessment is being conducted of a project with transboundary impacts, the MOE may by order prohibit a project from proceeding until it is completed (s.50(1)).	Enforcement of conditions of project approval relies on existing mechanisms (ie penalties for non-compliance) provided by relevant legislation.
7. LINKS WITH OTHER ASSESSMENT PROCESSES		
7.1 Joint Panel Reviews	Under s.40(1)-(3), the MOE may negotiate agreements with other "jurisdictions," incl. claims assessment bodies, to conduct joint panel reviews of projects.	Where appropriate, FEARO is to negotiate provincial or territorial participation in federal public reviews, federal participation in provincial reviews, or participation in other co-operative arrangements.
7.2 Terms and Conditions of Joint Reviews	Any joint review must consider the factors listed in s.16(1)-(2), and satisfy the requirements of s.41: MOE must appoint or approve Chair; MOE must fix or approve terms of reference; panel must have subpoena powers; review must provide for public participation	No explicit terms and conditions which must be satisfied by a joint review or other inter-jurisdictional arrangement.
7.3 Transboundary Assessments	Under s.46-48, the MOE may refer a range of different projects with transboundary effects for review by a mediator or panel. Before such a referral, the MOE will seek to reach agreement with the relevant "jurisdictions", incl. claims assessment bodies, on an alternative way to conduct an assessment of a project's transboundary effects.	No explicit provision for assessments of projects with transboundary impacts.

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IMPACT ASSESSMENT PROCESSES AND INUIT LAND CLAIM SETTLEMENTS IN CANADA

A report prepared by
Jim Edmondson

for Inuit Tapirisat of Canada

March, 1993

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Preface:

This report is part of a larger research initiative currently being undertaken by the Inuit Tapirisat of Canada (ITC), with funding from the Federal Environmental Assessment Review Office (FEARO). It describes and compares the essential features of the impact assessment regimes established in each of the Inuit land claims settlements in Canada, as well as the principal points of contact between these regimes and the federal assessment and review process.

This research project is being carried out within the broader context of ITC's consultation and research activities relating to the passage of the new Canadian Environmental Assessment Act and its accompanying regulations. It arose out of Inuit concerns regarding the implications of the implementation of the Act's proposed assessment regime *vis-a-vis* the corresponding regimes of the Inuit land claims settlements.

In order to clarify some of these issues, we received funding from the Federal Environmental Assessment Review Office (FEARO), and retained Jim Edmondson to prepare this report. The central focus of Edmondson's report is a comparison of the impact assessment regimes created under the Inuit claims settlements, and identifying the main points of contact between these regimes and the new CEAA assessment regime.

This report assembles much information in a simple and accessible way. We believe it will be a useful addition to the development of Inuit self-government and resource management.

Peter Usher
Research Director
Inuit Tapirisat of Canada
March 1993

1. INTRODUCTION

This paper focuses upon three Inuit claims settlements -- those of the Tungavik Federation of Nunavut in the eastern NWT, of the Northern Québec Inuit under the James Bay and Northern Québec Agreement, and of the Inuvialuit of the western Arctic under the Inuvialuit Final Agreement. Since the Labrador Inuit claim is still in its early stages, no analysis is provided here.

The terms of the contract under which this report was undertaken did not provide for visits to the communities where the offices of the six Inuit regional organizations are located. As a result, it is based upon phone interviews with environmental officials from these organizations, supplemented by research in Ottawa, and conversations with federal and territorial/provincial government officials. A variety of documents have also been consulted, including materials provided by Inuit regional organizations and claims negotiating bodies, FEARO and other government agencies and departments, and by the Inuit Tapirisat of Canada.

The research for this project began with a detailed examination of the text of the *Canadian Environmental Assessment Act*, and of the three Inuit settlement agreements, with particular attention to their impact assessment provisions. This was followed by a close analysis of several pieces of federal and provincial "enabling" legislation, required to give effect to the claims agreements. Next, a literature survey was done of relevant books and articles dealing with the history, implementation and current status of the Inuit claims settlements, again with a focus on their treatment of environmental regimes. A number of legal and jurisdictional questions arose out of this reading, which led the researcher to some of the recent Supreme Court and Federal Court rulings on jurisdictional matters relating to environmental assessments.

At this point, several lengthy phone conversations were held with environmental officials of regional Inuit organizations to help fill in the details on the implementation and the subsequent operations of the three claims assessment regimes. The conversations were supplemented by documents(like Annual Activity Reports and Operating Procedures) which several of these officials graciously provided. Finally, to gain a clearer sense of the broader institutional context within which the claims assessment regimes operate, interviews were held with several federal and territorial government officials involved in lands and resource management, and impact assessments.

This report briefly addresses certain legal and jurisdictional issues, and legal experts were consulted during its research. However, it must be stressed that the report does not purport to offer a legal opinion or a legal analysis. Rather, it seeks to describe and compare the impact assessment regimes in the three Inuit claims settlements in as clear and as non-technical a fashion as possible. Until now, such an analysis has not been available to those with an interest in Inuit land claims and environmental assessment, and it is hoped that the report is of use to both lawyers and non-lawyers alike.

Although efforts were made to keep the text simple, some passages in the report are quite detailed and complex. To assist readers, two tables are appended to the report, which compare the three Inuit claims assessment regimes with the one proposed under the CEAA, and the CEAA regime with the older federal assessment process operating under the 1984 Guidelines Order. Several charts are also provided, graphically depicting the general outlines of the processes described in the body of the paper. In addition, a bibliography lists the different materials consulted in the course of preparing this report.

2. BACKGROUND

There are four different Inuit claims settlement areas in Canada. In the two completed claims settlements, the Western Arctic/Inuvialuit and the James Bay and Northern Québec claims, environmental assessment regimes have been established and operating for several years. The third claims settlement, that of the Tungavik Federation of Nunavut, was ratified just a few months ago by Inuit of the eastern NWT, and its impact assessment provisions will not go into effect for some time. Negotiations on the Labrador Inuit claim are still in the early stages, so Labrador Inuit traditional lands will continue to be subject solely to federal and provincial environmental assessments.

The three claims impact assessment regimes all share some fundamental features and objectives. Each is part of a broader management system created under the claims settlement to administer land and resource use throughout the settlement area. Each guarantees a role for Inuit on joint management bodies, mandated to assess the environmental and socio-economic impacts of development projects proposed for the settlement area. Each gives Inuit a say in determining whether or not developments shall proceed in the area, and under what terms and conditions.

Finally, each regime is guided by principles of great significance to Inuit, notably: the preservation and protection of the environment; the protection of wildlife, habitat and aboriginal harvesting activities; the protection of Inuit people and communities from the

impacts of development; and, the involvement of Inuit in managing and making decisions about developments proposed for their settlement area.

All three Inuit claims settlements were negotiated, and in the cases of the JBNQA and the IFA, implemented, during a period when federal responsibilities relating to environmental assessment were defined in a series of Cabinet directives. These culminated in the *Environmental Assessment Review Process Guidelines Order* of 1984. Accordingly, the environmental assessment provisions in each settlement assume the existence of the framework set out most fully in the federal Guidelines Order.

The proposed implementation of the Canadian Environmental Assessment Act seems likely to bring about significant modifications in this federal framework. Particularly important, in this respect, may be changes in the extent of federal jurisdiction over impact assessments in claims settlement areas, as well as in the possibilities for co-operation between federal and claims-mandated assessment bodies.

Recognition of these potential changes raises a number of concerns and questions about the future operations of Inuit claims assessment regimes. These are partly jurisdictional, arising from the claims processes' status as constitutionally protected components of "modern treaties", under section 35.3 of the Constitution Act, 1982. Applications of federal jurisdiction, including the CEAA, on Inuit settlement lands are thus legally bound to recognize and come to terms with the authority of claims assessment regimes. The concerns are also practical, and flow from the desire of Inuit to avoid the duplications of effort and waste of resources already caused by parallel and overlapping assessment processes.

Such considerations suggest that there is a need for Inuit and the federal government to carefully consider the linkages between these two different kinds of environmental assessment processes. In recognition of this, ITC has undertaken, with FEARO funding, a project of research and regional consultations on environmental assessment. The primary focus in this initial stage of the project is on comparing the impact assessment regimes created under the Inuit claims settlements, and identifying the main points of contact between these regimes and the new CEAA assessment regime.

3. ENVIRONMENTAL ASSESSMENT REGIME IN THE TUNGAVIK FEDERATION OF NUNAVUT CLAIM SETTLEMENT

3.1 Context

The development impact review regime for the TFN claim settlement will be created according to the terms of the *Agreement between the Inuit of the Nunavut and the Crown in Right of Canada*. This Agreement was ratified by a majority of Inuit voters in a Nunavut-wide referendum last fall, and now awaits the approval of the federal Cabinet. Once this is forthcoming, enabling or "settlement" legislation will be passed by Parliament to give the TFN Agreement the force of law.

The TFN Agreement will be a land claims agreement "within the meaning of Section 35 of the Constitution Act, 1982", and as such will be constitutionally protected. As stipulated in Article 2, its provisions will prevail to the extent of any inconsistency or conflict with federal, territorial or local laws applying in the Nunavut Settlement Area. Similarly, the terms of the settlement legislation will take priority in case of conflict or inconsistency with other laws of general application.

Article 10 of the TFN Agreement states that several public land and resource management institutions, including the Nunavut Impact Review Board, are to be established within two years of the date of its ratification. Federal and territorial government legislation will set out the substantive powers, functions, objectives and duties of the management institutions. Such legislation may also "consolidate or reallocate the functions" of these institutions, and may "enable the consolidation" of their hearings. At the same time, the Agreement places important limitations upon the scope of this legislation. For example, a discrete development impact review function must be preserved, and there can be no altering the key requirement that all projects shall be subject to an impact review prior to issuing them any necessary approvals (see s. 10.6.1 for other limitations).

Along with the other management regimes created under the TFN Agreement, the development impact review process will exercise authority over the whole Nunavut Settlement Area. This encompasses the mainland of the eastern NWT, the High Arctic Islands, and islands in Hudson Bay (see Article 3 of the Agreement for greater detail), and extends to surface and sub-surface lands, waters and marine areas. It also applies to the Outer Land Fast Ice Zone (see Article 3). Crucially, the regime's jurisdiction will apply equally to both Inuit and Crown Owned Lands within this area. As specified in the Agreement, Inuit Owned Lands will consist of some 136,000 square miles held in fee simple, of which title to 14,000 square miles will include surface and sub-surface ownership. These lands will not be considered "Lands Reserved for Indians" within the meaning of s. 91(24) of the Constitution Act, 1867.

Until this regime is put into effect, the federal government will continue to be responsible for conducting environmental and development impact reviews in the Settlement Area. This responsibility flows from the fact of its ownership of and predominant jurisdictional authority

over the lands, waters and resources in the Area. A strong federal presence will continue after the implementation of the TFN Agreement, since title to most of the non-Inuit Owned Lands will remain with the federal Crown, and Canada will still exercise legislative authority over lands and waters. This situation is expected to gradually change as more jurisdictions are devolved and title to Crown lands is eventually transferred to the territorial government of the proposed new Nunavut territory

3.2 Impact Review Regime (General Features)

The central institution in the impact review regime to be implemented in the Nunavut Settlement Area will be the Nunavut Impact Review Board (NIRB). As set out in the TFN Agreement, this Board is intended to be an independent decision making body with sufficient resources and authority to enable it to operate separately from both government departments and Inuit institutions. The NIRB will be a joint management body, with equal representation of Inuit and government appointed members. In addition, it is to be an institution of public government, one of several closely integrated institutions which will make up the lands and resources management system for the Settlement Area.

The NIRB will have nine members, one of whom will be the chairperson. Four of these members will be nominated by a Designated Inuit Organization (still to be defined) and appointed by the Minister of DIAND. The other four will be appointed by government, two by federal Minister(s) and two by territorial government Ministers including the Minister of Renewable Resources. The chairperson will be appointed by the Minister of DIAND in consultation with the territorial government, and on the basis of nominations from the other Board members. As circumstances require, other members may be named to the Board in the manner and ratio described above.

If authorized by legislation, the NIRB may create panels to do its work, consisting of at least two Board members and with equal representation from Government and Inuit nominees. The Board may also be authorized by law to delegate any or all of its powers to such a panel or panels.

A crucial feature of this impact review regime is the relationship between the NIRB and the Minister(s) of departments responsible for approving the development projects subject to review. As defined in Article 12, "the Minister" could be either each territorial and federal government Minister responsible for authorizing projects to proceed, or a single Minister designated by each government to be responsible for NIRB. The TFN Agreement is unique for the degree of detail in which this relationship is spelled out, and consequently, its level of complexity. As shown in sections 3.4 and 3.5, a range of possible responses and courses of

action is open to both the assessment body(s) and the Minister(s) at each stage in the review process.

In fulfilling its mandate, the Board will be responsible for three related sets of activities -- screening, reviews, and monitoring. Each of these general functions will be carried out in close co-operation with several other joint management institutions, responsible for land use planning, and water and wildlife management. The level of detail in the Agreement on NIRB's relationships with these bodies is more extensive than in the other settlement Agreements and is summarized in section 3.8.

Two other aspects of the TFN assessment provisions should be noted:

- the attention given to the NIRB's linkages with federal assessment panels. Federal panels conducting reviews in the Settlement Area will be subject to a number of formal requirements, including a substantial degree of co-operation with NIRB(see section 3.5).

- the extent of NIRB's involvement (and that of Inuit organizations) in the implementation, enforcement and monitoring of the terms and conditions specified in its project certificates(see section 3.7).

3.3 Objectives/Criteria/Standards

The TFN Final Agreement provides few specific criteria or standards to guide the work of the proposed impact review regime. This leaves the NIRB and the responsible Ministers with considerable discretion in evaluating and in making recommendations and decisions about development projects.

The only reference to general standards is in section 12.2.5, which states the "primary objectives" of NIRB. There are two such objectives: (1) "to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area" and (2) "to protect the ecosystemic integrity of the Nunavut Settlement Area". The NIRB is also required to consider the "well-being" of Canadians outside of Nunavut.

The other most explicit statement of criteria occurs in regard to screening decisions by NIRB (s.12.4.2). The Board is directed generally to determine that a review is necessary when a project may have or will cause: significant adverse effects on the eco-system, wildlife or Inuit harvesting; significant adverse socio-economic effects on northerners; significant public concern; or, technological innovations for which the effects are unknown. As well, the Board

is directed to determine that a review is not required when a project is unlikely to cause significant public concern, and when its' effects aren't likely to be significant, or when adverse effects are highly predictable and mitigable.

The Final Agreement requires that ecosystemic and socio-economic effects of projects be given equal consideration in impact assessments. For the purposes of the assessment regime, they are regarded as closely connected and equally requiring impact assessment. Socio-economic impacts are to be studied insofar as they result directly from projects, and not simply, as in the proposed CEAA regime, as consequences of environmental changes caused by developments.

The NIRB has substantial discretion to establish its own by-laws and rules of procedures. However, in its rules for public hearings, the Board is directed to "emphasize flexibility and informality"-- by allowing evidence that wouldn't normally be admissible, by giving due weight to the tradition of Inuit oral communications and decision making, and by giving full standing to a DIO.

The only other direction provided to the Board is found in Schedule 12-1 of the Agreement, which lists several types of project proposals exempt from screening. Yet, even these projects may be referred to the NIRB, if there are concerns about their cumulative impacts. The TFN Agreement contains no inclusion or mandatory review list similar to the ones in the James Bay and Northern Québec Agreement, which specify types of projects automatically subject to a panel review.

One other potentially significant provision deserves mention. According to s.12.12.4, no term or condition contravening standards set by any federal or territorial environmental or socio-economic legislation may be imposed "pursuant to this Article".

3.4 Screening

All proposals for development projects taking place in the Nunavut Settlement Area are to be screened by NIRB, to determine their impact potential and accordingly, whether they require further review either by NIRB or by a federal assessment panel. As specified in the Agreement, all referrals for screening will be transmitted to the Board from the Nunavut Planning Commission (NPC).

Apart from the criteria already noted (s.12.4.2), NIRB screenings are subject to certain mandatory time constraints. Where licensing authorities are legally bound to make a decision within a set period, screenings must be scheduled so as to allow them to meet that time

requirement. Otherwise, screenings must occur within 45 days, unless the Minister approves a longer period.

There is no mandatory requirement for NIRB to hold public hearings in relation to project screenings, nor does the Agreement require that public notice be given or comments allowed during the screening or on the screening report. Similarly, the Agreement makes no mention of the use of either class screening reports or of comprehensive studies as an alternative to screening.

After screening a proposal, there are several options open to the NIRB in making its recommendations to the relevant Minister:

- the proposal doesn't require a review, and NIRB may recommend terms and conditions for its approval;
- the proposal requires review by NIRB or by a federal panel, and the Board may recommend issues to be considered;
- the proposal requires further clarification by the proponent; or
- the potential adverse impacts of the proposal require that it be abandoned.

Similarly, in responding to the Board, there are several alternatives open to the Minister in making his or her decision:

- where no review is recommended, the proposal will be dealt with under appropriate legislation, unless the Minister sees the need for a review;
- where a review is recommended, the Minister shall refer the proposal to a federal panel or to NIRB for a review of both socio-economic and eco-systemic impacts, or where it isn't in the national or regional interest shall refer the proposal back to the proponent either to be abandoned or modified and resubmitted to the NIRB;
- where further clarification is recommended, the Minister shall return the proposal to the proponent and inform it accordingly; and
- where project modification or abandonment is recommended , the Minister shall consult with NIRB and then either inform the proponent that the proposal must be modified or abandoned, or refer the project for review if this appears to be in the national or regional interest.

3.5 Reviews

NIRB Reviews

In referring a proposal to NIRB for review, the Minister may highlight certain issues or concerns which should be considered during the review. However, this does not limit the scope of any review that the Board undertakes. Upon receipt of a project referral, the NIRB shall solicit appropriate advice and then prepare guidelines to direct the proponent in developing an impact statement. General information requirements for such a statement are listed in section 12.5.2, and include "purpose and need for the project" and "anticipated ecosystemic and socio-economic impacts."

There is no mandatory requirement for the NIRB to hold public hearings during a review. Instead, the Board enjoys the discretion to conduct reviews using any means it considers appropriate, including public hearings. To meet its responsibilities, it is also given the power to subpoena witnesses, documents and things. The Agreement doesn't establish specific time frames for the completion of reviews, although the Minister may still propose priorities and reasonable time frames. A list of general factors which the NIRB must take into account in any review is outlined in section 12.5.5.

After carrying out a review, the Board is required to send a report to the Minister and the proponent, which assesses the project's impacts, decides whether or not the project should proceed and, recommends terms and conditions if it is to go forward.

The Minister may respond to this report in several different ways:

- accept NIRB's recommendation concerning whether or not project should proceed, including terms and conditions;

- reject recommendation that project should proceed, on grounds of the national or regional interest (NIRB must so advise the proponent);

- reject recommendation that project should proceed, either because terms and conditions are too onerous or insufficient to mitigate project impacts or because they are so onerous that the viability of a project in the national or regional interest will be undermined (in the latter case, NIRB shall reconsider terms and conditions for project approval);

- reject recommendation that project shouldn't proceed, on grounds of its importance in the national or regional interest (NIRB will then be required to examine terms and conditions for any project approval);

- refer report back to NIRB for further review, where it is deficient on ecosystemic and socio-economic issues (NIRB is then required to submit another report).

In responding to the Minister's decisions under the third and fourth alternatives, the NIRB will have 30 days or an agreed upon period to consider appropriate terms and conditions. The Board must then send a revised report to the Minister, as well as make it available to the public. Upon receiving the report, the Minister shall accept, reject or vary its terms and conditions, in whole or in part.

The Minister shall consider and then accept, reject or vary the NIRB's recommendations regarding socio-economic impacts unrelated to ecosystemic impacts "without limitation" to the grounds mentioned above.

When, at the end of this process, it has been decided that a project should proceed, the NIRB shall issue a project certificate, including terms and conditions accepted or varied by the Minister. For comparison's sake, it should be noted that this power is not vested in assessment bodies in the other Inuit claim settlements, where the Minister is responsible for issuing project authorizations.

Federal Panel Reviews

When the Minister decides that a project proposal should be subject to a federal environmental assessment, it will be referred to the Minister of the Environment (MOE) who will mandate a federal panel to conduct a public review. Any such panel is required to operate according to the provisions of Part 6 of Article 12, and must conduct as open and comprehensive a review as is provided under the 1984 Environmental Assessment and Review Process Guidelines Order. The NIRB's role in this review is restricted to those portions of the panel report that "are applicable to or affect the Nunavut Settlement Area".

For a project proposal within the Nunavut Settlement Area, the MOE must appoint one-quarter of the panel members from a list provided by the DIO, and another quarter from a list put forward by the appropriate Territorial Minister. For projects occurring partly within adjacent areas used by other aboriginal group(s), at least one quarter of the panel members shall be appointed from nominees of the DIO and of the other relevant aboriginal group(s), as specified in any agreement amongst them.

The federal panel may issue guidelines to direct the proponent in preparing a statement on ecosystemic and socio-economic impacts. These guidelines will require, where appropriate, the same general kinds of information as are required of proponents by NIRB in its panel reviews (under section 12.5.2). The NIRB will review these guidelines and have input into their development. It will also have an opportunity to review and to comment upon the proponent's impact statement before public hearings begin.

In conducting its hearings, the federal panel will be bound by the same procedural requirements as is NIRB, under sections 12.2.24, 12.2.26 and 12.2.27.

Upon completion of its review, the panel shall forward a report to the MOE, who shall make it public and send a copy to the NIRB. The Board will have 60 days to review the report and to relay its conclusions to the MOE. It may identify deficiencies in the report, suggest other terms, conditions and mitigative measures, and recommend whether the project should proceed.

In responding to the panel report and NIRB recommendations, the MOE will have three general options:

- accept the panel report and terms and conditions to the extent they apply to the Nunavut Settlement Area;

- accept the report as modified by recommendations from the NIRB; or

- reject the panel report in whole or in part, on these grounds:

    - the proposal should be rejected because it isn't in the national or regional interest
    - the proposal should be accepted because it is in the national/regional interest (NIRB must then consider terms and conditions for project approval)
    - the terms or conditions are too onerous or insufficient (NIRB must then reconsider these terms and conditions in light of the objections).

The NIRB will then, within 30 days or another agreed upon period, have the opportunity to reconsider these terms and conditions, and to report back to the MOE. Upon receipt of NIRB's report, the Minister may accept, reject or vary its terms and conditions, in whole or in part.

Once this process is completed, NIRB will issue a project certificate including any terms or conditions authorized by the Minister. Again, this power is not vested in a claims assessment bodies in the other two Inuit settlements.

In interviews, DIAND officials advised that the federal environmental assessment process will continue to apply in the TFN Settlement Area until the NIRB is established and fully operational. In the intervening period, the Regional Environmental Review Process, which administers this process in the NWT, will respect the principles of the TFN Agreement including its assessment provisions.

3.6 Resources

The costs of the NIRB , including the expenses of Board members, will be the responsibility of Government. Government commitments relating to overall financial support for NIRB are detailed in an Implementation Agreement negotiated among Canada, the GNWT and the TFN. Under the terms of the TFN Final Agreement, NIRB will prepare an annual budget, which will be subject to the approval of Government.

NIRB is to appoint and to pay officers and employees, including experts, necessary for the "proper conduct" of its duties and functions. It is recognized that the secondment of government staff may be appropriate to fill some positions.

The TFN Agreement does not explicitly provide for intervenor funding to facilitate participation by individuals, organizations and communities in the assessment process. Even so, it is stipulated that the Agreement will not "prejudice the ability of Inuit to benefit from any programs of intervenor funding which may be set."

3.7 Implementation/Followup

Government approvals required by a project before it can proceed, will not be issued until its screening by NIRB is complete. If a panel review of a proposal is necessary, no project approvals will be issued until the review is completed and NIRB has released a project certificate. Exploration or development licenses and approvals may be issued for projects under review, if they fall within Schedule 12-1 or if NIRB feels that these activities can go ahead without review.

The terms and conditions of NIRB project certificates are to be implemented by all government departments and agencies to the extent of their authority over projects within the Nunavut Settlement Area. This will be done primarily by incorporating the terms and

conditions within the various approvals required by a project proponent. NIRB will be consulted on how best to implement these terms and conditions.

Regulatory boards with authority to make "independent decisions" (defined in s.12.9.4) enjoy more discretion in regard to NIRB project certificates, and several provisions in Part 9 are devoted to spelling out their relationship with NIRB. Where the terms and conditions of an "independent decision" and a NIRB project certificate conflict, the Governor-in-Council will be called upon to adjudicate. With certain exceptions, the NIRB certificate will generally prevail.

With regard to enforcement, responsible departments and agencies are to employ all effective means at their disposal, including prosecution and suspension of any relevant government approval(s). As well, a DIO will have standing before an appropriate court to undertake the following actions: seek a ruling on whether the terms and conditions of a NIRB project certificate have been implemented, and if they have not, to seek appropriate remedy; obtain a court order requiring a person to abide by a NIRB certificate; or, to seek a judicial review of decisions or orders made in accordance with Article 12 of the Agreement.

NIRB project certificates may include a requirement for the creation of a monitoring program for a project, which spells out the responsibilities of the proponent, NIRB or Government. The purpose of such programs will be to study the ecosystemic and socio-economic impacts of projects, and to provide departments with information necessary to enforce the terms and conditions of project approvals. These programs may require regulatory agencies and proponents to inform NIRB regarding project impacts and mitigation measures, and may require NIRB to periodically evaluate project monitoring programs and to report on their adequacy. NIRB monitoring responsibilities will not duplicate those performed by government agencies and departments.

3.8 Links with Other Land Claim Institutions and Processes

The TFN Agreement describes in complex detail the formal relationships which will exist among the NIRB and other joint management and planning bodies created under the claim, notably: the Nunavut Planning Commission (NPC), the Nunavut Wildlife Management Board (NWMB), and the Nunavut Water Board (NWB). Considerations of space do not allow a full analysis of these relationships, but the main elements should be understood for the purposes of this Section.

Under the Agreement, <u>all</u> proposals for projects with the Settlement Region will first be reviewed by the NPC. As a rule, when it decides that a proposal conforms with the land use plan(s) or approves a variance, the NPC will forward it (along with the Commission's

recommendations) to the NIRB for screening. In general, proposals falling within Schedule 12-1 are exempt from this requirement, but where the NPC has concerns about a project's cumulative impacts it may be referred for screening. NIRB will not screen projects which are not in conformity with land use plans, unless they have been exempted by the relevant Minister or the NPC has approved a variance. Where there is no land use plan, all proposals except those exempt under Schedule 12-1 will be sent directly to NIRB for screening.

The process for water applications is slightly different. Again, as a rule, where it decides that an application conforms with the land use plan(s) or approves a variance, and where the application is not exempt under Schedule 12-1, the NPC will forward it to the NIRB for screening. Where an application is exempt under Schedule 12-1 and meets these other conditions, the NPC will send it to the NWB for disposition-- except where the Commission has concerns about the project's cumulative impacts, in which case it may be referred to NIRB. Where there is no land use plan, all water applications except those exempt under Schedule 12-1 will go directly to the NIRB for screening.

Upon screening a water application, the NIRB will determine whether it requires a review under the Article 12 impact assessment process, and will inform the NWB accordingly. If a review is necessary, the NWB and the review body (NIRB or a federal panel) will co-ordinate efforts in the review and processing of the application. Legislation may provide for joint hearings or allow the NWB to forego hearings where it takes part in a public review under the assessment process. Where NIRB does not refer an application for review, the NWB may process it. Where a water application is so referred, the Water Board will not approve it until "Article 12 has been complied with".

As for the NWMB, it is empowered under Section 5.2.34 to advise the NIRB, among others, regarding mitigation measures and compensation required from developers who cause damage to wildlife habitat.

The NIRB, along with these other three bodies, may either jointly, as a Nunavut Marine Council, or individually, make recommendations to other government agencies about marine areas within the Settlement Region. There is no real equivalent to such a Council in the other Inuit claim settlements.

3.9 Interjurisdictional and Trans-boundary Issues

Under the Agreement, NIRB may review project proposals located outside the Nunavut Settlement Area which may have significant transboundary eco-systemic or socio-economic impacts. It may do so when requested by Government, or with the consent of Government when requested by a DIO.

Also, the federal and territorial governments assisted by NIRB will attempt to negotiate agreements with other jurisdictions to enable collaboration in reviewing projects with potentially significant transboundary impacts.

4. ENVIRONMENTAL ASSESSMENT REGIME IN THE JAMES BAY AND NORTHERN QUEBEC SETTLEMENT (INUIT)

4.1 Context

The environmental and social impact regime governing the claim settlement area of the Northern Québec Inuit was established under the provisions of the *James Bay and Northern Québec Agreement*. This agreement was reached in 1975 among a number of parties, including the Grand Council of the Crees, the Northern Québec Inuit Association, the Government of Québec, Hydro Québec and the James Bay Energy Corporation. With the signing of the *Northeastern Québec Agreement (NQA)* in 1978, this regime was also extended to the settlement area of the Naskapi Indians of Schefferville.

The James Bay and Northern Québec Agreement is a land claims agreement, and is therefore constitutionally protected under section 35 of the Constitution Act, 1982. It was given the force of law and implemented through the passage of a number of federal and Québec statutes, chief among which was the federal *James Bay and Northern Québec Native Claims Settlement Act*, 19777. For the purposes of this paper, the most relevant piece of legislation is Québec's Environmental Quality Act, which became law in 1978. In cases of conflict, the provisions of the Agreement take precedence over any legislation, just as the federal Settlement Act prevails over other laws applying to the settlement "Territory" to the extent of any inconsistency or conflict.

As defined in Section 23 of the JBNQA, the "Region" covered by the environmental and social impact regime is the area in Québec north of the 55th parallel, excluding the Category 1 and 2 lands of the Great Whale Crees. The regime's jurisdiction applies to all Inuit and Crown owned lands in this Region, but does not extend to the offshore areas. Under the Agreement, Inuit exchanged aboriginal title for surface title ownership to 3,250 square miles of Category 1 lands within the Region, along with 50% of any subsurface development benefits, plus exclusive harvesting rights on another 35,000 square miles of Category 2 lands. These lands are not "Lands Reserved for Indians" under s.91(24) of the Constitution Act, 1867. According to the terms of the NQA, the regime also applies to the Category 1B-N and 2B-N lands of the Schefferville Naskapis.

All applicable federal and Québec laws of general application relating to environmental and social protection apply in the Region insofar as they are consistent with the JBNQA, and more specifically, with Section 23. The dominant governmental presence in the Region is that of Québec, which exercises legislative authority over nearly all categories of lands and resources, and which holds Crown title to all lands not owned by Inuit and Indian organizations. The federal government also has a significant presence, deriving from its jurisdictional authority over Indians and Lands reserved for Indians, Navigation and Migratory Birds. Although the Kativik Regional Government is subordinate to the other levels of government, it has authority to pass by-laws relating to environmental matters, which it has so far not exercised to any great extent.

4.2 Environmental Assessment Regime (General Features)

At the centre of the environmental and social impact regime governing the Region are three institutions -- the Environmental Quality Commission, the Federal Review Panel (COFEX), and the Environmental Advisory Committee. The first two bodies are joint management institutions with representation from Inuit and Government appointed members, and with independent advisory and decision making powers. As claims-created and mandated institutions of public government, they form part of the broader lands and resources management system for the Region. The third body is not so much a management institution as a multilateral forum for discussing legislation and regulations.

The Environmental Quality Commission (EQC) is responsible for screening and reviewing all "matters" and "development projects" in the Region insofar as they come under provincial jurisdiction. It consists of nine members, with four being appointed by the Kativik Regional Government (KRG), and the other four being appointed by Québec. Of the KRG appointees, at least two must be either Inuit resident in the Region or an Inuk living in the Region and a Naskapi resident in the Region or on Category 1A-N lands, or their duly authorized representatives. The EQC's chairperson is appointed by Québec, and must be acceptable to the KRG.

The Federal Review Panel is responsible for screening and reviewing all "developments" and "development projects" in the Region insofar as they fall under federal jurisdiction. The Panel supervises the activities of a Screening Committee, consisting of four members, with two each appointed by Canada and by the KRG. The Regional Government's appointees shall be either "Native" people, or a "Native" person and a Naskapi, or their duly appointed representatives. The Review Panel itself is to be composed of five members, with three (including the chairperson) appointed by Canada, and two appointed by the KRG (with the same guarantees for Naskapi representation as on the EQC). The Federal Administrator may

and provincial jurisdictions in the Region, and for their attendant responsibilities to conduct environmental assessments.

Some of these jurisdictional questions were resolved temporarily for the purposes of assessing the proposed Great Whale project, by the signing of a Memorandum of Understanding in January of last year. So far, there has been no comparable Agreement in relation to projects in other Inuit settlement areas, and the model of interjurisdictional co-operation which it offers is deserving of careful study.

alter the size of the Panel, so long as the same ratio of representation between Canada and the KRG is retained.

The Environmental Advisory Committee brings together representatives from Canada, Québec and the KRG for the following purposes: to oversee the implementation of the environmental and social impact regime, and to discuss and give advice on the impact legislation and regulations which apply to the Region. The Committee has nine members, with three members being appointed by each of the parties represented on it. Changes to this membership formula may be made by unanimous consent of the appointing parties. There is no equivalent of this Committee in the other Inuit claims settlements, and its role is discussed further in section 4.10.

A crucial aspect of this impact regime is the relationships between the EQC and the Provincial Administrator (and the Québec Minister), and the Review Panel and the Federal Administrator (and the federal Minister). In practice, the Deputy Minister of Québec's Department of the Environment (MENVIQ) acts as the Provincial Administrator, while the Federal Administrator is an appointee of the federal Minister of the Environment. The nature of these relationships is described at greater length in sections 4.4 and 4.5.

Several other features of the regime should be highlighted:

- aboriginal/Inuit representation on the EQC, the Review Panel and the EAC is provided by appointees of the Kativik Regional Government and not directly by Inuit organizations. The KRG is a public government structure created under the claims settlement and Québec municipal law, and while the communities which it serves have predominantly Inuit populations, it is not a "private" Inuit organization;

- the JBNQA makes specific and detailed provision for the participation of representatives from another aboriginal claims settlement, the Naskapis of Schefferville, in the Section 23 assessment bodies and processes. More details are given in sections 4.4 and 4.5;

- the fact that both Canada and Québec claim and exercise a range of legislative authorities in the Settlement Region has created a jurisdictional framework of greater complexity than exists in the other two Inuit settlement areas. The potential for duplication and overlaps in environmental assessments is that much greater, as are the tensions which this causes among the two governments. Further complicating this situation are recent Supreme and Federal court rulings such as *Oldman River Dam, Cree Regional Authority and Eastmain.* At the time of writing, lawyers for all parties are grappling with the implications of these rulings for the balance between federal

4.3 Objectives/Criteria/Standards

Subsection 23.2.4 spells out a set of "guiding principles" which are to be "given due consideration" in the operations of the environmental and social impact Regime. These include: the protection of Native people, societies, communities and economies from development activity affecting the Region; minimizing development impacts on Native people; the protection of wildlife resources, physical and biotic environment and ecological systems in the Region; and, involvement of Native people and other inhabitants of the Region in the application of the Regime.

Two principles are specially noteworthy: protection of the harvesting rights of Native people in the Region and their other rights with respect to development activity affecting the Region; and, the right to develop in accordance with the JBNQA by persons acting lawfully in the Region. These must be understood in relation to the provisions of s. 5.5.1, which stipulate that the harvesting rights of Native people as defined in Section 24 are subject to the right of Québec and Hydro- Québec, etc. to develop Category 2 and 3 lands in the Region. However, any such developments are subject to the Environmental Regime created under the Agreement.

These various principles are restated in section 186 of the provincial Environmental Quality Act. Particular attention is given in this statute to: the protection of Inuit and Naskapi harvesting rights and rights relating to projects affecting the Region; and, the participation of all inhabitants of the Region in implementing the environmental and social protection regime.

The JBNQA requires that ecosystemic and socio-economic effects of projects be given equal consideration in impact assessments. For the purposes of the assessment regime, they are regarded as closely connected and equally requiring impact assessment. Socio-economic impacts are studied insofar as they result directly from projects, and not simply, as in the CEAA regime, as indirect consequences of environmental changes caused by developments.

In this regard, a crucial exception must be noted. As specified under s. 8.1.3, only the "ecological impacts" of the Great Whale and the Nottaway-Broadback-Rupert River projects, and of any additions and/or substantial modifications to Le Complexe La Grande, will be subject to the environmental regime. In addition, it provides that "sociological" impacts will not be grounds for the Inuit and/or Cree to oppose or prevent these developments. Even so, the guidelines for the Environmental Impact Statement for the Great Whale Project require information on a number of socio-economic and cultural matters.

Both the EQC and the federal Review Panel may establish bylaws and rules of procedure to govern their internal operations and their conduct of assessments. However, these rules are subject to the approval of the parties represented on them.

In making decisions about projects, both assessment bodies are also bound by the terms of the two Schedules attached to Section 23. Schedule One is a list of developments automatically subject to assessment and review, and thus not requiring prior screening. Schedule Two designates developments not subject to an assessment. Both schedules are to be reviewed by Québec and the KRG every five years, and may be updated or modified with their mutual consent. Also appended to the Section is a third Schedule which specifies requirements for Environmental and Social Impact Statements, to be considered by the Administrator.

4.4 Screening

Environmental Quality Commission

Project proposals are referred to the EQC for screening by the Provincial Administrator. All developments not falling under Schedule One's "automatic review" list or Schedule Two's "exemption" list are screened by the Commission to determine whether or not they should be subject to further impact assessment and review. The EQC's decisions on this matter are final, except where the Lieutenant Governor-in-Council decides to exempt a project permanently or temporarily from the impact assessment process, for reasons of public interest.

In this regard, the Commission may also make recommendations to the Provincial Administrator about the contents of any impact statement required from a project proponent.

No time limits appear to be placed upon the Commission's screening activities, although it seems assumed that these will be done in a timely fashion. The EQC is not required to hold public hearings during its screenings or to take representations, but it must maintain a public record of its decisions and of all related data, at its principal office.

Special provision is made to ensure Naskapi participation in EQC screenings. When no Naskapi or Naskapi representative sits on the Commission at the time of a screening, it must consult with the Naskapi local authority before deciding not to subject to review a proposed development on Category IB-N or IIB-N lands, as well as inform the authority of this decision. The Naskapi authority has up to 20 days to submit its views on a project, after receiving the relevant information from the EQC.

Federal Review Panel

Project proposals are referred to the Federal Review Panel for screening by the Federal Administrator. All developments not falling under Schedule One's "automatic review" list or Schedule Two's "exemption" list are screened by the Screening Committee of the Review Panel to determine whether or not they should be subject to further impact assessment and review. For every development screened, the Committee shall recommend to the Federal Administrator whether or not a preliminary and/or final impact statement should be prepared by the proponent, and if required, the extent of the assessment and review of these statement.

No specific time limits appear to be placed on the Committee's screening activities. Similarly, it is not required to hold public hearings, or to take representations from the public.

Again, special provision is made to ensure Naskapi input into Committee screenings. Whenever a development proposed for Category IB-N or IIB-N lands is being screened and no Naskapi or Naskapi representative is on the Committee, an alternate (proposed by the Naskapi local authority) will be appointed to the Committee for the purposes of that screening.

4.5 Reviews

Environmental Quality Commission

In developing guidelines for the proponent's environmental and social impact statement, the Provincial Administrator takes into account recommendations from the EQC, as well as the general guidelines set out in Schedule Three. After preparing the statement according to these guidelines, the proponent returns it to the Administrator, who may seek further information and require additional studies to be undertaken. This impact statement is then transmitted to the EQC for review.

In its evaluation of a statement, the EQC must consider, among other things, the list of factors given in section 23.3.19. These include: positive and negative environmental and social impacts; reasonable mitigative measures; reasonable alternatives to the development as proposed; monitoring procedures; and, emergency measures.

The Agreement places specific time limits upon the Commission's conduct of a review. Reviews of developments described in the "automatic review" list must be completed within 90 days. In the same way, the EQC must provide a decision to the Administrator regarding developments not on this list within 45 days.

There is no mandatory requirement for the Commission to hold public hearings. If it wishes, the EQC may invite interested persons, groups or organizations to make representations concerning the development in question, and they may also submit written briefs to it on any development. In this regard, the Commission is also entitled to receive relevant information from responsible government departments and agencies concerning activities in or affecting the Region. It does not, however, have the power to subpoena witnesses, information or things.

When there is no Naskapi representative on the EQC during a review, it must send the Naskapi local authority a copy of the proponent's Impact Statement before making a decision about any proposed development on Category IB-N or IIB-N lands. The Naskapi authority has up to 30 days after receiving a statement to submit its views on a project, and this period may be extended at the discretion of the Commission.

After carrying out its review, the EQC decides whether or not a development should be permitted to proceed, and what conditions should accompany any such approval or refusal. This decision is sent to both the Québec Administrator and Québec Minister of the Environment, and to the Naskapi local authority (in the circumstances noted in the previous paragraph). If the Administrator accepts the decision, it is put into force. Otherwise, the Administrator may only modify or change the decision, or decide otherwise, with the prior approval of the Minister. In either case, his or her final decision is sent to the project proponent, the EQC, the Québec Minister and the KRG. If it is decided to allow the project to proceed, the Minister issues a certificate of authorization (s.201, Environmental Quality Act).

Proponents are required to abide by this decision, except where the Lieutenant Governor in Council authorizes a project not approved by the Provincial Administrator. The Lieutenant Governor may also alter the terms and conditions of the Administrator's decision.

According to KRG environmental officials, all decisions of the EQC have been respected by the Provincial Administrator, and to date none have been overturned. The terms and conditions which the Commission usually attaches to its decisions have also been accepted by the government and by proponents. Apparently the Lieutenant Governor has so far not intervened in this process.

Federal Review Panel

After considering the Screening Committee's recommendations and other factors, the Federal Administrator decides whether or not a review of the project proposal is necessary, as well as the scope of such a review. If he or she rejects or wishes to modify the Committee's

recommendations, the Administrator must consult with it before formally relaying a decision to the proponent.

In preparing an environmental and social impact statement, the proponent is required to comply with the following: requirements of the Federal Administrator and/or guidelines from the Review Panel; requirements of any applicable laws and regulations; and, any elements of Schedule 3 deemed advisable by the Panel. Once it is completed, this statement is sent to the Administrator, who transmits it to the Panel for review. The Panel in turn is required to send it to the Regional Government.

There is no mandatory requirement for the Review Panel to hold public hearings during a project review. Interested persons, groups, or communities, by themselves or through the KRG, may make oral or written briefs to the Panel. The Panel itself has no power to subpoena witnesses, information or things, but the Federal Administrator may authorize more extensive representations.

When a development proposed for Category IB-N or IIB-N lands is being reviewed and no Naskapi or Naskapi representative is on the Panel, an alternate (proposed by the Naskapi local authority) will be appointed by the KRG to the Panel for the purposes of that review.

In making recommendations on a project, there are two general possibilities open to the Panel:

- whether or not it should proceed, and if so, under what terms and conditions, including mitigative and remedial measures;

- whether it should be subject to further review, and if so, the information required.

After reviewing the Panel's recommendations among other factors, the Administrator:

- where an impact statement is preliminary or deficient advises the proponent about the alternatives submitted, or about further information required;

- where a final decision may be made about an impact statement, decides whether or not the development should proceed, and if so, under what terms and conditions.

If the Federal Administrator rejects or wishes to change any Review Panel recommendations, he or she must consult with the Panel before doing so. The Administrator's decision is then transmitted to the proponent and to the KRG.

This decision , including any terms and conditions, is binding upon the proponent. However, the Governor in Council may approve a development not authorized by the Administrator, or alter the terms and conditions set by this officer. In the event of such a decision, the Federal Administrator may, after consulting with the Panel, recommend necessary environmental and social protection measures for the development project.

4.6 Resources

Each of the appointing bodies is responsible for the salaries and expenses of their members on the EQC, the Screening Committee and the Review Panel. An exception is made for KRG members or representatives on the Review Panel, whereby their expenses are to be met by the secretariat of the Environmental Advisory Committee. In practice, however, regional government officials have stressed that no specific mechanism exists for the KRG to provide funding to its appointees on the Panel.

Under the Agreement, Quebec is responsible for maintaining and "adequately" funding the EQC and its staff, so that it can "properly carry out its responsibilities." EQC funding is subject to the annual approval of its budget. The Agreement stipulates as well that the Review Panel is to have "an adequate staff to carry out its responsibilities", and Canada is responsible for maintaining and funding this staff.

There is no provision in the JBNQA for intervenor funding, to be administered by either the EQC or by the Review Panel.

4.7 Implementation/Followup

Environmental Quality Commission

The Agreement stipulates that any development subject to review by the EQC may not proceed until the review process just described is complied with. This process must be completed and a decision made about whether and on what terms a project may proceed, before any government loans or funds are given, except if the Minister responsible decides otherwise. During a review, proponents may still receive funding to undertake feasibility studies, or for activities relating to compliance with the review process.

The Québec Administrator, collaborating when necessary with the EQC, works to ensure that the plans for construction and operation of a development conform with any terms and conditions established by the assessment process. Beyond this, the Agreement is silent on the implementation, enforcement and monitoring of these terms and conditions, and on the role

played by Inuit in these activities. In practice, KRG officials report, this role is a minimal one. Apparently, Québec's Department of the Environment views project monitoring as its sole responsibility, and will not consult with or allow the KRG to play any part in these activities.

Federal Review Panel

Once the proposed development has been approved in accordance with this review process, it may proceed. The proponent may now seek to obtain the necessary authorizations from responsible Government departments. The Agreement says nothing further about the implementation, enforcement or monitoring of recommendations resulting from the review process, or about the role of Inuit in undertaking these activities.

4.8 Links with Other Land Claims Institutions and Processes

The Agreement does not formally define any relationships between the Section 23 impact review processes and institutions and other management institutions and processes. Its only references to other claims-created institutions are in relation to the Kativik Regional Government and its role in appointing representatives to the EQC and to the federal Review Panel.

4.9 Interjurisdictional and Transboundary Issues

The Agreement permits Canada and Québec to agree to combine the two separate review processes conducted by the EQC and by the Review Panel. Although there doesn't appear to be any formal requirement of Inuit or KRG consent to such an arrangement, it must be done without prejudice to the rights and guarantees of the Inuit and the Naskapi, as well as the other residents of the Region as set out in Section 23.

It also stipulates that a project shall not be subject to more than one impact review process unless it either falls within both federal and Québec jurisdictions, or it is located partly within the Region and partly within another area where a review is required.

The JBNQA says little about the application of the federal environmental assessment process to the Region, or about how such a process would interact with the claims-mandated review process. It makes a point of stressing that nothing in Section 23 should be understood as imposing the federal process unless required by federal law and regulations. At the same time, this doesn't rule out any "Federal requirement for an additional impact review process as a condition of Federal funding for any development project."

Similarly, there are no formal provisions relating to possible joint reviews of development projects which either occur in areas both above and below the 55th parallel, or which have transboundary effects. Thus, any terms and conditions concerning co-operation between the review processes created under Sections 22 and 23 are left to be negotiated.

Until the Great Whale Project, there was no real need to determine how co-operation would work between the Section 22 and 23 assessment processes, or between either or both of these process and the federal environmental assessment process. But in view of the size of Great Whale and of the complexity of the jurisdictional issues it raised, all parties found it desirable to work out some means of co-ordinating the assessment processes. To this end, a Memorandum of Understanding was signed on January 23, 1992, by the governments of Canada and Québec, and by the Cree Regional Authority, the Grand Council of the Cree(of Québec), Makivik Corporation and the Kativik Regional Government. Each of the claims assessment bodies and EARP panel also agreed to comply with the MOU.

The major provisions of this MOU are worth noting, for it is the first Agreement of its kind reached in the context of an Inuit claim settlement. To begin with, it is agreed that Great Whale will "be assessed and reviewed globally as a single project." Each of the claims bodies and the EARP panel will conduct its activities independently, according to the relevant provisions of the JBNQA, the Environmental Quality Act, and the EARP Guidelines Order.

At the same time, they will all work to co-ordinate and harmonize their activities and service requirements in a number of ways specified in the MOU. Some of these include: joint public meetings and hearings; consultations on preparation of guidelines for the EIS with a view to their co-ordination; co-ordination of requirements for technical expertise and administrative/logistical support, including a joint support team; and, co-ordination of schedules and rules of procedure. Several stages of this review have now been completed, such as the scoping workshops, preparation of the project Environmental Impact Statement, and some of the public hearings.

4.10 Environmental Advisory Committee

In recognition of the different jurisdictions represented on the Environmental Advisory Committee(EAC), its operations are governed by a complex set of rules for voting and occupation of the Chair. The Committee may also establish by-laws to govern its internal affairs, subject to the approval of each of the parties represented on it. Quorum rules may be changed by unanimous consent of the members.

When matters of exclusive federal or provincial jurisdiction are addressed, members representing the other jurisdiction do not vote. In this situation, a quorum is four members, provided that each party has at least one appointee present. When interjurisdictional ("mixed" or "joint") issues are addressed, Canada and Québec members each have one vote, while KRG appointees have two. A quorum in this case is six, again provided that each party has at least one member present. The positions of Chair and Vice-Chair are rotated on successive years among representatives of the three parties.

The EAC is a consultative body, intended to provide a forum for all governments in the Region involved in formulating laws and regulations relating to the Environmental and Social Protection Regime. As such, it recommends to government legislation, regulations and other measures related to this Regime, and reviews laws and regulations which may directly affect the rights of aboriginal people set out in Sections 23 and 24 of JBNQA. It also advises governments on the implementation of the environmental and social protection and land use Regimes in the Region.

Responsible federal and provincial Ministers consult with the EAC before enacting regulations relating to the Regime, and which apply only to Category I or II lands, and/or Category III lands surrounded by Category I lands. When the Committee makes recommendations on such regulations, the relevant Minister(s) must consult with it before modifying or not acting on these recommendations. As well, the Québec Department of Lands and Forests forwards management plans for Crown forests to the EAC for its consideration.

5. ENVIRONMENTAL ASSESSMENT REGIME IN THE WESTERN ARCTIC CLAIM -- THE INUVIALUIT CLAIM SETTLEMENT

5.1 Context

The environmental assessment review for the Inuvialuit claim settlement area was created under the provisions of the *Western Arctic Claim: Inuvialuit Final Agreement,* concluded in 1984 between the Committee for Original Peoples' Entitlement (precursor of the Inuvialuit Regional Corporation) and the federal government.

The Inuvialuit Final Agreement (IFA) is a land claim agreement, and its provisions are therefore constitutionally protected under section 35 of the Constitution Act, 1982. It was given the force of law and implemented through the passage and amendment of several federal and territorial statutes, foremost among which was the federal *Western Arctic*

(Inuvialuit) Claims Settlement Act, 1984. As stipulated in this Act, the Agreement or the Act will prevail in cases of inconsistency or conflict with the provisions of any other laws applying to the settlement area, to the extent of the conflict or inconsistency.

The Inuvialuit Settlement Region(ISR), as described in the IFA, encompasses the mainland in the Beaufort/ Mackenzie Delta area of the NWT, several Arctic islands including Banks and part of Victoria Island, and the North Slope area of the Yukon Territory. Significantly, the environmental assessment regime's jurisdiction applies to both Crown and Inuvialuit owned lands within the Region. Under the Agreement, Inuvialuit exchanged aboriginal title for fee simple ownership of some 35,000 square miles, title to 5,000 square miles of which includes surface and sub-surface ownership rights. These lands are not "Lands Reserved for Indians" under s.91(24) of the Constitution Act, 1867.

Subject to the IFA, all federal and territorial laws of general application applicable to private lands extend to Inuvialuit Owned lands in the ISR. The primary governmental presence in the Region remains the federal government, due to its ownership of nearly all Crown lands (other than those vested in each Territory's Commissioner) and to its predominant jurisdictional authority over lands, waters and resources. Subject to Canada's legislative superiority and to the terms of the Yukon and NWT Acts, the Yukon and NWT governments also exercise a range of authorities over the areas under their jurisdiction within the Settlement Region.

This situation is expected to change as more jurisdictions are devolved and Crown title is eventually transferred to the existing or restructured territorial governments for the western NWT and for the Yukon. Inuvialuit self-government aspirations continue to centre around the creation of a public regional government for the ISR, with strong legislative and regulatory powers relating to land and resource management.

5.2 Environmental Assessment Regime (General Features)

At the centre of the environmental assessment regime for the Inuvialuit Settlement Region are two separate yet inter-related bodies -- the Environmental Impact Screening Committee and the Environmental Impact Review Board. Both are joint management institutions with equal representation from Inuit and Government appointed members, and with independent advisory and decision making powers. As claims-mandated institutions of public government, they are crucial components of the broader lands and resources management system for the Region.

The Environmental Impact Screening Committee (EISC) is responsible for screening all developments in the ISR which may have potentially adverse impacts upon the environment or on wildlife and wildlife harvesting. It is comprised of seven permanent members, with three being appointed by the Government of Canada and three being appointed by the Inuvialuit Game Council. The governments of the Yukon and of the NWT are each entitled to appoint one of the Government members. The Chairperson is appointed by Canada with the consent of the Inuvialuit, and where they cannot reach agreement the Chief Justice of either Territory may appoint the Chair at the request of one of the parties.

The Environmental Impact Review Board (EIRB) is responsible for reviewing and assessing all developments referred to it in accordance with the provisions of the IFA. It is comprised of seven permanent members, three each being appointed by Canada and by the Inuvialuit, and with the Chairperson being appointed by Canada with the consent of the Inuvialuit. Of the three Government members, the Governments of the Northwest Territories and of the Yukon each have one designated member. Territorial representation will increase along with increases in territorial government legislative authorities. Canada may at its discretion change the membership of the Review Board, but the same ratio between Government and Inuvialuit representatives must remain.

Screenings and Panel reviews are conducted by panels of five members, with two each being appointed by Canada and by the Inuvialuit, plus the Chairperson. In practice, the EISC Chair designates the Committee members on a screening panel, while the EIRB Chair designates which Board members are on a review panel. Of the two Government members, one represents the territorial government within whose jurisdiction the development in question is located. Territorial representation is to increase along with increases in territorial jurisdiction over lands and resources.

As with the other Inuit claim settlements, the relationship between the Committee and the Panel and the Minister is crucial to the IFA assessment process. Although the Screening Committee in particular has substantial discretionary decision making power, the Minister has the final word on whether a project shall proceed. This relationship is discussed in more detail in sections 5.4 and 5.5.

The IFA 's impact assessment regime has several other noteworthy features:

- general guarantees for the inclusion of representatives of aboriginal organizations from adjoining claim settlements. Where such an organization feels that a development subject to the IFA process may have negative environmental impacts upon its members using or occupying the ISR, it may designate a member to the EISC and/or EIRB panel(s). Where so agreed with the Inuvialuit, it may be

represented by more than one member. Such guarantees will cease upon the settlement of other adjoining claims unless similar representation is provided to Inuvialuit on environmental assessment panels managing adjoining land areas used or occupied by the Inuvialuit;

- the special management system in effect for the North Slope region of the Yukon. There is no equivalent of this system in the other Inuit claim settlements, and it will be discussed at greater length in section 5.9.

- the singular role played by this impact review regime in assessing projects for their adverse impacts upon wildlife and wildlife harvesting in the ISR, and in determining wildlife compensation. This is further described in section 5.10.

5.3 Objectives/Criteria/Standards

The IFA provides few explicit standards or criteria to guide the activities of the impact assessment regime for the Settlement Region. As acknowledged in the Operating Procedures of both the EISC and the EIRB, the primary goals which they seek to realize are set out in Section 1 of the Agreement. These are: to preserve Inuvialuit cultural identity and values within a changing northern society; to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and, to protect and preserve the Arctic wildlife, environment and biological productivity.

On the other hand, Section 12 relating to the Yukon North Slope lists a set of fairly detailed principles and criteria which are to guide assessments of projects proposed to take place within its "special conservation regime" (see s.5(9)). In the same way, Section 13 stipulates several specific objectives and principles which must be considered by the Committee and the Board in carrying out their responsibilities in relation to questions of Wildlife Compensation.

The IFA requires that environmental impacts and impacts upon wildlife, habitat and native harvesting be given equal consideration in impact assessments. For the purposes of the assessment regime, they are regarded as closely connected and equally requiring impact assessment. Socio-economic impacts are studied insofar as they result directly from projects, and not simply, as in the proposed CEAA regime, as indirect consequences of environmental changes caused by developments.

Both assessment bodies have established their own by-laws and operating procedures. The second edition of the Screening Committee's Operating Guidelines and Procedures are still in the process of revision, while the Board came out with its revised Operating Procedures in June 1992.

Unlike the JBNQ and TFN Agreements, the IFA's impact assessment provisions do not include an exemption list. However, the EISC's Operating Procedures provide for it to establish, by resolution, guidelines for identifying categories of development which "need not necessarily be submitted for detailed screening". As well, it should be noted that the scope of "development" as defined in the Agreement does not include "commercial wildlife harvesting".

Nor, as with the JBNQA, do these provisions contain an inclusion, or mandatory review list. In general, subject to whatever internal guidelines they develop, the Committee and the Board currently approach development proposals on a case-by-case basis.

5.4 Screening

As specified in Article 11, several types of development are subject to screening by the EISC: those with potential adverse impacts upon wildlife and wildlife harvesting in the ISR; those occurring in the Yukon North Slope; those taking place in the ISR of which the Inuvialuit request impact screening; and, those occurring in areas including the Aklavik land selections which may adversely affect the traditional harvest of the Dene/Metis, where requested by the Dene/Metis or by the Inuvialuit. In practice, this has meant that every development in the ISR that could have significant negative impacts is subject to screening by the Committee. All development proposals relating to the Yukon North Slope are screened.

A formal process of referrals to the EISC for screenings is not defined in the Final Agreement. Unlike the JBNQA process, for example, referrals do not come solely from the Minister(s) responsible or from their designate(s). Instead, as it has turned out, screening referrals come to the Committee from several sources -- from proponents, the Inuvialuit, and government regulatory agencies.

Proponents of developments undergoing screening must submit project descriptions to the Committee containing information on the following: purpose and nature of the proposed development; rationale for site selection; and, sufficiently detailed information to permit an adequate preliminary assessment of the project's environmental impact.

No specific time limits are placed upon the EISC's screening of a project, other than it shall do so "expeditiously". According to the Committee's Annual Reports, the average time required for a screening is 30 days, with only a few taking longer than this. There is no formal requirement for public hearings during a screening, or for the Committee to take public representations on a proposal. In practice, arrangements are made for individuals or organizations to present their views to it, where circumstances warrant.

After screening a project, the EISC reports in writing to the relevant government authority, and recommends one of the following courses of action:

- the development will have no significant impacts and may proceed without further assessment and review;

- the development could have significant negative impacts and is subject to further review under the IFA; or

- the development proposal has deficiencies which warrant its termination and the submission of another project description.

Unlike in the other two Inuit claim agreements, the EISC has complete discretion in deciding whether or not a project should be forwarded for further environmental review, and which body should undertake this review. In the other settlements, these decisions are left to the appropriate Minister or Administrator. The IFA makes no formal provision for the Committee to attach terms and conditions to its recommendations. In practice, EISC recommendations are often included in decision letters from government authorities.

Environmental officials report that recommendations from the EISC take several forms: they may reflect changes made to a project by the proponent; they may inform the proponent what the EISC wants in a future project description; and/or they may serve as advice to the proponent. It is entirely at the discretion of government authorities whether they choose to include any of these recommendations in project licenses or permits.

Where the Screening Committee feels that an existing or proposed governmental development or environmental review process can adequately conduct a review of a project, it may refer a proposal to that process. But where it doesn't believe the governmental review process will be adequate or the review body declines to consider a proposal, it is referred to the EIRB for a public review.

5.5 Reviews

EIRB Reviews

The IFA doesn't impose any specific time limits upon the EIRB's review of a project proposal other than to require it be done "expeditiously". Under the Board's Operating Procedures, it issues a Public Notice of Referral (within 15 days of receiving a referral)

inviting individuals and organizations to register their interest in taking part in the public review. Registered Participants receive all relevant information on the assessment and are expected to make oral or written submissions to the panel. The Board is also required by the Agreement to maintain a public register of all its decisions and of the data which it uses.

Since its creation, the EIRB has developed three different approaches to conducting public reviews of a project proposal. As explained in the Board's Operating Procedures (1992, 2nd ed.), these were designed to accommodate the variety of proposals referred to it for review. The approaches are: (a) the Small Scale Development Procedures (b) the Standard Public Review Procedures, and (c) Variations on the Standard Procedures where circumstances warrant. In deciding which procedure to employ for a particular proposal, the Board applies several criteria: limited spatial extent; short term impact; limited community effects; minimal cumulative effects; existing class assessment; and, previous review(s).

After conducting a review through one of these Procedures, the EIRB sends a report to the government authority responsible for approving the development in question. It recommends whether or not the project should proceed and if so, on what terms and conditions, including mitigative and remedial measures. It may also recommend an additional review of the project, and if so, the information which is required.

After considering the EIRB's recommendations and other factors, the responsible authority decides whether or not the development should proceed, and if so, under what terms and conditions (including mitigative and remedial measures). It may also decide that further impact assessment and review is necessary, and request additional information from the proponent. Where the government authority rejects or wishes to change any of the Review Board's recommendations, it notifies the Board to that effect within 30 days. This condition has been controversial, with the EIRB maintaining that the 30 day period begins when its recommendations are delivered to the authority. In any event, the authority's decision is transmitted to the proponent and to all interested parties and made public.

Federal Review Process

The IFA makes few actual references to the federal environmental review process, and its relationship with the claims assessment process is not defined in nearly the same detail as is done in the TFN Final Agreement. Section 11 leaves it up to the EISC to decide whether a project should be referred to a federal panel or to the Board. Beyond this, all it says is that nothing restricts the power or obligation of the Government to conduct environmental impact assessment and review "under the laws and policies of Canada." DIAND, which is the lead government agency in the NWT for the purposes of the federal assessment process,

interprets this to mean that it may carry out impact reviews in the ISR when it deems necessary.

In practice, DIAND and other federal authorities still conduct "level one" screenings for all projects also screened by the EISC. In addition, DIAND reserves the right to conduct "level two" reviews, where required, through the Regional Environmental Review Committee process, especially in the offshore area.

The question of jurisdictional authority for impact assessments in the offshore is complicated, and remains unsettled at this point. This paper simply notes the Inuvialuit Game Council position, which, in its letter to the Minister of DIAND, dated April 10, 1987, gave "formal notice under s.11(1)(c) that all projects in the offshore and onshore on Crown land within the Inuvialuit Settlement Region are to be submitted for Environmental Screening." Similarly, the EIRB's Operating Procedures state that: "because such potential impacts would involve wildlife, wildlife habitat and other integral environmental elements, it is difficult to distinguish between the onshore and the offshore in an environmental impact assessment."

These arrangements are largely based upon informal understandings and agreements, and the need does not appear to have arisen yet for more formal arrangements to be worked out between Government and the Inuvialuit. Federal departments are currently studying the implications of the new Canadian Environmental Assessment Act for the existing federal assessment process in the NWT.

5.6 Resources

The IFA provides that permanent members of the EISC an EIRB are to be remunerated by their respective appointing parties. Similarly, other aboriginal organizations designating representatives to participate in screenings are responsible for their expenses. The Agreement also requires Canada to provide the EIRB with the staff necessary to enable it to fulfill its functions.

The Joint Secretariat was created by agreement among Canada, the GNWT and the Inuvialuit to provide administrative and technical services to the EISC/EIRB and other IFA joint management bodies, as well as to the Inuvialuit Game Council. Funding flows to these bodies under the financial terms and conditions of the Implementation Agreement negotiated in relation to the Settlement. Federal funding is subject to the review and approval of annual budgets from these bodies.

The IFA makes no provision for intervenor funding to facilitate public participation in the impact assessment process.

5.7 Implementation/Followup

As required by the IFA, governmental authorities do not issue any approvals which would enable a proposed development to proceed, unless it has complied with the environmental impact review process established under Section 11. Other than this, the Agreement makes no reference to the implementation, enforcement or monitoring of the terms and conditions of project approval. More specifically, no formal role is provided for Inuvialuit to take part in or to carry out these functions.

5.8 Linkages with other IFA Institutions and Processes

The IFA does not define any formal linkages among the EISC and the EIRB and the other joint institutions created under the Agreement to manage lands and resources in the Settlement Region. The only explicit reference to a connection with another institution is in relation to the Inuvialuit Game Council, which, under s.14(74) is empowered to appoint Inuvialuit representatives to the two impact assessment bodies. As a result, the relationship between environmental assessment processes and institutions and other management institutions /processes has and continues to be worked out on an informal basis.

The relationship between the environmental assessment regime and the land management regime for Inuvialuit owned lands is, as noted in the EIRB's Operating Procedures, an "evolving one". The operating procedures of the Inuvialuit Land Administration, which administers Inuvialuit lands, contain a screening process for activities solely affecting Inuvialuit Private Lands. Inuvialuit officials report that the interaction between this internal Inuvialuit process and the broader claims process is subject to continuing discussion.

5.9 Special Regime for Yukon North Slope

In the case of the Yukon North Slope (YNS), the IFA's environmental assessment regime must take into account certain special features and requirements, which are set forth in Section 12. To begin with, the YNS regime is guided by the following general requirements:

- all development proposals relating to the North Slope will be screened to determine whether they could have significant negative impacts on wildlife, habitat or native harvesting;

- other uses within the YNS which may have a significant negative impact on wildlife or native harvesting will be permitted if it is decided that public convenience and necessity outweigh conservation or native harvesting interests.

- public reviews will be held for all development proposals relating to the YNS that may have a significant negative impact .

The federal National Park in the western portion of the YNS has its own park management regime, and development activities inconsistent with its purposes are prohibited. The Herschel Island Territorial Park also has its own management regime, with conditions as stringent as those of the federal park. However, the IFA's environmental assessment process applies to developments proposed for the lands adjacent to Pauline Cove.

The region east of the Babbage River to the Yukon/NWT border is designated as an area of "controlled development". Any development activities proposed here are covered by the IFA impact assessment process as described in Section 11. This does not include the area of the adjacent nearshore and offshore waters which is subject to the normal government assessment process, as well as the wildlife compensation provisions of Section 13.

In assessing developments, review boards with jurisdiction in this area must take into account several special criteria (see s.12. 23), most notably:

- significance of areas proposed for development use in terms of conservation and harvesting interests;

- evaluation of practical alternative locations and of their relative commercial and economic merits and of environmental impacts upon them; and

- weighing of interests of users, conservationists and harvesters in the YNS against public convenience and necessity for development.

5.10 Wildlife Compensation

Section 13 of the IFA gives the EISC and EIRB certain special powers and responsibilities relating to wildlife compensation, which in other Inuit claims agreements are vested in Arbitration Boards or Tribunals. In their deliberations, these bodies are guided by two primary objectives: to prevent damage to wildlife and habitat and to avoid disruption of Inuvialuit harvesting activities resulting from development; and, if damage occurs, to restore wildlife and habitat as far as is practicable and to compensate Inuvialuit harvesters for loss of subsistence or commercial harvesting opportunities.

The wildlife compensation provisions do not extend to developments on Inuvialuit owned 7(1)(a) lands, except where these are proposed for lands subject to existing land rights. Otherwise, the same environmental assessment process applies to questions of wildlife compensation as applies to the environmental and social impacts of developments. For practical purposes, environmental and wildlife/harvesting impacts are considered inseparable and thus are evaluated concurrently during an impact assessment of a development project.

Every proposed development likely to cause negative environmental impacts in the ISR is screened by the EISC to determine whether it could have a significant negative impact on present or future wildlife harvesting. If the Committee decides that a development could have such a negative impact, it is referred to either a federal assessment body or the EIRB for review, as described in section 5.4 above.

After completing a review referred to it, the EIRB makes recommendations to the responsible government authority concerning: the mitigative and remedial measures it considers necessary to minimize any negative impact on harvesting; and, an estimate of the developer's potential liability (set on a worst case scenario), considering the balance between economic and environmental factors.

As stated in the Agreement, Government will only authorize developments that could have significant negative impacts on wildlife habitat or on present or future wildlife harvesting in the ISR, after they have been subject to impact assessment and after reasonable mitigative and remedial measures are imposed.

It should be noted that the scope of assessments carried out under Section 13 is potentially broader than those conducted according to the provisions of Section 11. The Wildlife Compensation Section requires assessment of "every proposed development <u>of consequence to</u>" the ISR, while Section 11 proper invariably speaks of developments <u>in</u> the ISR. This appears to give the IFA assessment bodies jurisdiction over projects occurring outside the ISR.

5.11 Interjurisdictional and Transboundary Issues

The IFA does not explicitly make provision for assessments of projects with transboundary impacts, taking place either inside or outside the Settlement Region. Projects occurring within the Region which either cross the Yukon/NWT boundary or have impacts on the other side of the boundary are subject to the jurisdiction of the EISC and the EIRB. But it isn't clear from the wording of the IFA what powers the claims assessment regime has

regarding: (a) projects outside the Settlement Region whose impacts occur inside (b) projects located only partly within the Settlement Region, and (c) projects whose most significant impacts occur outside the ISR.

On this matter, the EISC has maintained (aee s.2.1, Operating Guidelines and Procedures) that projects planned outside of the ISR with potential for creating negative environmental impacts within the ISR must be screened. However, the opportunity has not yet arisen to test out this position.

If the need eventually arises for the IFA bodies to conduct an assessment of a project with transboundary effects, co-operation will almost certainly be required with assessment bodies from other jurisdictions. These could be a federal panel, a YDAP panel, an assessment body from the TFN settlement area, or a body with authority over adjoining First Nations claims settlement lands. Short of amendments to the IFA's impact assessment provisions, agreement will have to be worked out with one or more of these bodies regarding terms of co-operation.

6.0 CONCLUSION

This report provides some basic descriptive and comparative information on the impact assessment processes in each of the three Inuit land claims settlements in Canada. As noted in the introduction, this kind of information has not been readily accessible before, especially to those without specialized legal training or experience in claims negotiations. It is hoped that the paper, read in conjunction with the accompanying tables, will give readers a clearer view of the assessment regime in each settlement, as well as a broader comparative perspective on all three regimes. It may also serve as a useful starting point for anyone seeking a better understanding of the larger settlements in which these regimes are embedded.

The report has sought to convey, not only the similarities among the three assessment regimes, but the particular variations unique to each regime. As should by now be evident, these regimes hold a number of elements in common-- their coverage of the entire claims settlement area; their existence as public management institutions with equal representation for Inuit and government representatives; their crucial relationships with the government authorities responsible for approving projects and with the federal impact assessment process; and the role which they play in protecting and advancing the environmental and socio-economic objectives of Inuit.

But, as should be equally clear, each regime has its own special features, deriving from a number of broader circumstances unique to each Inuit claim settlement. Any attempt to

generalize about all three regimes must not lose sight of these unique features. Similarly, any recommendations for harmonizing regimes to deal with transboundary issues and impacts must necessarily take them into account.

Beyond these descriptive and comparative purposes, the paper has been especially concerned with the connections between Inuit claims assessment regimes and the federal assessment process. Until this year, the broader legal and policy framework guiding this federal process was provided by the 1984 *Guidelines Order*. The imminent implementation of the new *Canadian Environmental Assessment Act* and related regulations seems likely to bring about significant changes to this federal framework.

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Earl Laliberte	Kitikmeot Inuit Association
Robert Lanari	Makivik Corporation
David Livingstone	Department of Indian Affairs and Northern Development
Fred McFarland	Department of Indian Affairs and Northern Development
Marshall Netherwood	Joint Secretariat
Carey Ogilvie	Renewable Resources, Government of the Northwest Territories
Philippe di Pizzo	Kativik Regional Government
Judy Rowell	Labrador Inuit Association

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	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME
1. SCOPE	Environmental assessment of a project is required before a federal authority exercises a power or performs a duty or function listed in s.5. These include: project proponency; financial assistance; administration & disposition of federal lands; and, issuing a project approval under a federal authority specified in the "law list" (s.59(f)). The actual scope of an assessment will be set by the responsible authority or the Minister of the Environment(MOE).	All projects occurring within the Nunavut Settlement Area in the eastern NWT will be subject to the impact assessment regime set out in the TFN Final Agreement. This regime will apply to all lands within the NSA, incl. Inuit and Crown owned lands.	All projects occurring within the Region in Québec north of the 55th parallel, excluding the lands of the Great Whale Cree, are subject to the impact assessment regime established under s.23 of the James Bay and Northern Québec Agreement. This regime will apply to all lands within the Region, incl. Inuit, Naskapi and Crown owned lands.	Every project occurring in the Inuvialuit Settlement Region (ISR) that could have significant environmental impacts or impacts upon wildlife, is subject to the impact assessment regime created under the Inuvialuit Final Agreement (IFA). All project proposals relating to the Yukon North Slope (YNS) are subject to assessment. The IFA regime applies to all lands within the ISR, incl. Inuvialuit and Crown owned lands.
2. STANDARDS/OBJECTIVES	The general purposes of the CEAA are set forth in s.4. These include: ensuring that environmental effects of projects are carefully considered before they are allowed to proceed; promoting sustainable development; ensuring that projects in Canada or on federal lands don't have adverse effects outside the jurisdictions where they are located; and, involving the public in environmental assessments.	S.12.2.5 of the TFN Agreement states the primary objectives of the NIRB: (a) to protect and promote the wellbeing of the residents & communities of the Nunavut Settlement Area (NSA), and (b) to protect the ecosystemic integrity of the NSA. The well-being of Canadians outside Nunavut must also be considered.	S.23.2.4 spells out "guiding . . principles" which must be considered in the operations of the environmental and social impact regime. They include: protecting Native people, societies, communities & economies from developments affecting the Region; minimizing impacts on Native people; and protecting wildlife resources, physical and biotic environment and ecological systems. These are also elaborated in s.186 of the Environmental Quality Act (Québec).	The primary goals of the IFA impact assessment regime are stated in s.1: preserving Inuvialuit cultural identity and values; enabling Inuvialuit to participate effectively in the northern & national economy and society; and, to protect & preserve Arctic wildlife, environment and biological productivity. More detailed standards are provided in Sections 12 and 13 to guide assessments relating to the Yukon North Slope and to Wildlife Compensation, respectively.

	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME
3. SCREENING				
3.1 Institution or Body Responsible for Screenings	Screenings are conducted by a "responsible authority" as defined in s.11 of the CEAA.	**Nunavut Impact Review Board (NIRB)** is to be a joint management body, which will screen all projects in TFN Settlement Area.	**Environmental Quality Commission (EQC)** is a joint management body, which screens all projects insofar as they come under provincial jurisdiction. --- **Federal Review Panel** is a joint management body, which screens all projects insofar as they come under federal jurisdiction.	**Environmental Impact Screening Committee (EISC)** is a joint management body which screens projects in the Inuvialuit Settlement Region.
3.2 Membership of Screening Body	No membership requirements.	Nine member Board, including. Chair. Four to be nominated by DIO, and appointed by Minister of DIAND. Four to be appointed by Government, two each by federal and by territorial Ministers. Chair appointed by Minister consulting with territorial government, on basis of nominations from Board members. Smaller panels may be created, if allowed by law.	EQC has nine member Board, incl. the Chair. Four appointed by Kativik Regional Government (KRG) and four appointed by Québec. Chair appointed by Québec & acceptable to KRG. Two KRG members must be Inuit living in Region, or an Inuk and a Naskapi living in the Region, or their representatives. --- Review Panel oversees Screening Committee which has four members, two each appointed by Canada and by KRG. KRG appointees are either "Native" people, or a "Native" person and a Naskapi or their representatives.	EISC has seven members, three each being appointed by Canada and by the Inuvialuit Game Council (IGC). Of the government members, both Yukon and GNWT entitled to appoint one. Chair appointed by Canada, with approval of Inuvialuit. Screenings are done by five member Panels, two each being appointed by Canada and the Inuvialuit, plus the Chair. Other aboriginal organization(s) may appoint member to Panel, where it feels project may have negative impacts upon its members using the ISR. This guarantee is contingent upon Inuvialuit receiving similar representation on panels in adjoining settlement areas.
3.3 Project Referrals	Screenings are conducted internally by the responsible authority, and not referred to an independent body.	All referrals are to come from the **Nunavut Planning Commission.**	All referrals come to EQC from **Provincial Administrator.** All referrals come to Panel's Screening Committee from **Federal Administrator.**	No formally defined project referral process. Referrals to EISC come from proponents, the Inuvialuit and government departments.

	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME
3.4 Screening Criteria	Responsible authority(s) will screen all projects not appearing in the Comprehensive Study and the Exclusion lists. Every screening must take into account the list of factors in s. 16(1) of the CEAA. Scope of these factors determined by the responsible authority.	NIRB may establish own by-laws and rules of procedure. S. 12.4.2 sets out guidelines for Board in determining that project is required or not required under certain circumstances.	EQC and Review Panel have bylaws & rules of procedure, subject to approval of parties represented on them. Both bodies screen all development projects not described in Sched.1 and Sched.2 attached to Section 23.	EISC has bylaws & rules of procedure, which recognize the primary goals of the IFA (s.1). Information requirements for project descriptions from proponent are set out in s.11(12).
3.5 Exclusion, Mandatory Review and other Lists	Regulations developed under s. 59 of the CEAA will create: a "comprehensive study list" of projects and classes of projects requiring a comprehensive study: an "exclusion list" of projects and classes of projects not requiring assessments; and, a "law list" of federal Acts and regulations conferring powers and duties on federal authorities the exercise or performance of which in relation to a project triggers an environmental assessment.	Schedule 12-1 attached to Article 12 lists projects exempt from assessment. There is no list of projects automatically requiring review.	Schedule 1 lists those projects automatically requiring review under the Section 23 assessment process, and Schedule 2 lists those projects exempt from the assessment process.	There are no Exemption or Mandatory Review lists in the IFA's impact assessment provisions.
3.6 Requirements for Public Involvement	Responsible authorities may involve the public in screenings, where this seems appropriate or where required by regulations. A public registry shall be established by the authority containing all relevant records relating to each project assessment.	Public hearings not required. No requirement for public notice or public comments.	EQC and Screening Committee not required to hold public hearings, or to take public representations. EQC maintains public record of its decisions & related data.	No formal requirement for public hearings, or for public representation regarding a project proposal.
3.7 Time Limits on Screenings	No time limits stipulated for screenings.	Screenings must respect time limits of licensing authorities. Otherwise, they must take place within 45 days, unless Minister approves more time.	No specific time limits on screenings by EQC or by Screening Committee.	No specific time limits on screenings by EISC, but in practice, it usually takes an average of 30 days.

	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME
3.8 Powers of Screening Body(s)	No formal powers to subpoena witnesses or information. Under s.17(1), responsible authorities may delegate responsibilities to claims assessment bodies, including any part of a project screening, preparation of a screening report, or design and implementation of a followup program.	No power to subpoena witnesses or information	No formal powers to subpoena witnesses or information.	EISC has no formal powers to subpoena witnesses or information.
3.9 Class Screenings	The Canadian Environmental Assessment Agency may, on request of responsible authority and where it seems appropriate, use a screening report as a model in conducting screenings of other projects within the same class. Where a responsible authority uses or permits the use of a class screening report, it shall make adjustments necessary to take into account local circumstances and any cumulative effects.	No provision for class screenings to be undertaken.	No provision for class screenings to be undertaken.	No provision for class screenings to be undertaken.
3.10 Joint Screenings	Under s.12(4), where another jurisdiction like a claims assessment body has similar responsibilities relating to a project, a responsible authority may co-operate with it in conducting a screening.	No formal provision for joint screenings.	No explicit provision for joint screenings in JBNQA but under s. 23.7.5, Canada and Québec may agree to combine the EQC and Screening Committee processes.	No explicit provision for joint screenings in IFA, other than guarantees of representation for aboriginal organizations in adjoining claims settlement areas.
3.11 Report from Screening Body	Responsible authority considers recommendations of report.	NIRB may recommend: that no review required(with terms & conditions), or review required by NIRB or fed. panel, or proposal must be clarified or proposal abandoned.	EQC and Review Panel make recommendations on whether or not project should be subject to further impact review, and if so, the extent of the review.	EISC may recommend to responsible government authority that no review is required, or that further review is required, or that proposal must be resubmitted.

	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME
3.12 Decision Regarding Screening Report	Responsible authority may: approve project subject to mitigation measures; not allow the project to proceed; or, send the project to the Minister of the Environment (MOE) for referral to either a mediator or panel review.	Minister may approve project, refer for review, require it to be clarified or modified, or inform proponent it must be abandoned.	EQC's decisions are final, except where Lieutenant Governor exempts project from the assessment process. --- Federal Administrator decides whether or not project review is required, as well as its scope. The Administrator consults with Screening Comm., if he/she rejects or wishes to modify its recommendations.	EISC makes decision on whether or not project should be subject to further review, and whether review should be undertaken by federal panel or by EIRB.
4. REVIEWS				
4.1 Comprehensive Studies	For projects described in comprehensive study (c.s.) list, responsible authority must either ensure c.s. is conducted, or send to MOE for referral to mediator or panel. Every c.s. must take account of factors listed in s. 16(1) and (2). A responsible authority may cooperate with another "jurisdiction" in conducting a c.s., or delegate responsibility to it for doing so. In responding to a c.s., the MOE will either refer project back to the responsible authority for action, or refer it to mediator or review panel.	No provision for comprehensive studies by NIRB	No provision for comprehensive studies of project(s).	No provision for comprehensive studies of project(s) in IFA.
4.2 Mediation	Where appropriate, MOE will refer project in whole or in part to a mediator.	No provision for referrals to mediation.	No provision for referral to mediation.	No provision for referral to mediation.
4.3 Referrals for Review	Where appropriate, MOE will refer project in whole or in part to a review panel.	Minister will refer project proposals to NIRB (or to federal panel).	Referrals for review made by Provincial and Federal Administrators.	Referrals made by EISC.

	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME	
4.4 Membership of Review Panels	No specific provisions concerning size or composition of review panels. MOE will consult with responsible authority in appointing panel members, according to criteria in s.33(1)(a). No explicit provision for aboriginal representation.	Same as under Screening. NIRB panels to consist of at least two members, with equal ratio of Government & Inuit members.	Membership on EQC same as under Screening. --- Review Panel has five members with three (including the Chair) appointed by Canada and two by the KRG. KRG appointees must be either Native people or a Native person and a Naskapi.	Environmental Impact Review Board's(EIRB) review panels normally consist of four permanent members(two selected from Canada's appointees & two selected from those appointed by Inuvialuit), plus the EIRB Chair. The Chair of the EIRB designates which members are on a review panel. Project's geographical location determines which territorial government appointee is selected as a panel member.	
4.5 Guidelines for Preparation of EIS	No specific provisions dealing with guidelines for preparation of EIS.	NIRB to develop guidelines for preparation of proponent's EIS. General information requirements listed in s.12.5.2.	EQC: the Provincial Administrator develops guidelines for preparation of proponent's impact statement, taking account of EQC recommend-ations, and of Schedule 3 (Contents of an Impact Statement). --- Review Panel: in preparing impact statement, the proponent must meet requirements of the Federal Administrator and the Review Panel, any applicable laws and regulations, and the requirements of Schedule Three	EIRB develops guidelines for the preparation of impact statement by proponent.	
4.6 Criteria	MOE will consult with responsible authority in fixing scope of the review, and terms of reference for the panel. In conducting review, panel must consider the factors set out in s.16(1) and (2).	Minister may request certain issues/concerns be considered during review. NIRB review must take into account factors listed in s.12.5.5.	In conducting a review, EQC must consider various factors, including those listed in s.23.3.19.	See Standards/Objectives above.	

	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME
4.7 **Requirements for Public Involvement in Reviews**	Mandatory requirement for public hearings, subject to panel's terms of reference and any relevant regulations. Exceptions may be made where public disclosure of information would cause harm to a witness (see s.35(3)). Canadian Environmental Assessment Agency will maintain a public registry relating to the review.	No mandatory requirement for public hearings. NIRB rules for hearings must stress "flexibility & informality", incl. giving weight to traditional Inuit oral communications & decision making, plus standing to a DIO.	EQC: No mandatory requirement for public hearings, but may invite interested persons and organizations to make representations. --- Review Panel: No mandatory requirement for public hearings, but interested persons, groups and communities (by themselves or through KRG) may make oral or written briefs.	EIRB holds public hearings, and circulates relevant information to, and takes oral and written briefs from, Registered Participants. It keeps public record of decisions and data used(s.11(26)).
4.8 **Time Limits on Reviews**	No specific time limits placed on reviews.	No specific time limits on reviews, although Minister may propose priorities & reasonable time frames.	EQC: Reviews of projects on Mandatory Review list must be completed within 90 days. Reviews of projects not on the list must be conducted within 45 days. --- Review Panel: No time limits placed on reviews.	No specific time limits on EIRB reviews.
4.9 **Powers of Review Body**	Review panel has power to subpoena witnesses, information and other things.	Board has power to subpoena witnesses, documents, things.	EQC and Review Panel have no formal powers to subpoena witnesses, documents, etc.	EIRB has no formal powers to subpoena witnesses or documents.
4.10 **Report of Review Body**	Report of review panel submitted to the MOE and to the responsible authority. MOE shall make report available to the public.	In its report to the Minister, NIRB may decide whether or not project should proceed, plus any terms and conditions.	EQC: Decides whether or not project should proceed, and under what conditions. Decision goes to Québec Administrator and Minister. --- Review Panel: In making recommendations, the Panel has two main options: whether or not the project should proceed, and if so, the terms and conditions; or, whether it should undergo further review, and if so, the information required.	In report to responsible government authority, the EIRB recommends whether or not project should proceed, and if so, under what terms and conditions (incl. mitigative and remedial measures). May also recommend additional review of project, and the information required.

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4.11 Decision by Minister or by Responsible Authority	In responding to a report from a mediator or review panel, or to a comprehensive study, the responsible authority has several alternatives: (a) allow project to proceed, subject to mitigation, where project isn't likely to have significant adverse impacts, or where these can be justified, or (b) not permit project to proceed, where, taking into account mitigation, its adverse impacts cannot be justified.	Minister may accept or reject Board's recommendations on whether or not project should proceed, refer back for more review, or require Board to consider or reconsider terms and conditions.	EQC: If Administrator accepts EQC decision, it is put into force. The Administrator may only reject or vary the decision with Minister's approval. --- Review Panel: The Administrator has two general options: (a) where impact statement is preliminary or deficient, advise proponent about alternatives submitted; or (b) where final decision may be made, decide whether or not project may proceed, and if so, under what terms and conditions.	Responsible authority decides whether or not project should proceed, and if so, under what terms and conditions. May also decide further assessment is necessary, and request more information from proponent.
4.12 Response to Decision by Minister or Responsible Authority	Not applicable.	NIRB is to have 30 days to consider or reconsider terms and conditions, and Minister may accept, reject or vary Board recommendations.	EQC: No provision for this. --- Review Panel: If the Administrator rejects or wishes to change any Panel recommendations, he or she must consult with it before doing so.	If authority rejects or wishes to change any EIRB recommendations, it must notify Board within 30 days.
4.13 Project Approval	Responsible authorities shall not exercise powers or perform functions/duties listed in s. 5 relating to a project, unless it has been subject to a screening and/or a comprehensive study, mediation or panel review. The CEAA doesn't empower responsible authorities to issue a specific certificate or license stipulating the conditions of a project approval.	Once process is completed and Minister decides project to proceed, NIRB is to issue project certificate, incl. terms and conditions accepted or varied by the Minister.	EQC: If it is decided project should proceed, Minister issues a certificate of authorization. The Lieutenant Governor may authorize project not approved by the Administrator, and may also alter terms and conditions of his or her decision. --- Review Panel: The Governor in Council may approve a project not authorized by the Federal. Administrator, or alter terms and conditions. In this case, the Administrator, after consulting with the Panel, may recommend necessary protection measures.	Responsible government authority(s) issue necessary project approvals.

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5. RESOURCES				
5.1 Funding for Members of Assessment Bodies	Expenses will be borne by the Ministry of the Environment.	Government will be responsible for NIRB costs, including those relating to members. NIRB will prepare annual budget, subject to government approval.	Appointing bodies are responsible for salaries and expenses of their EQC, Screening Committee and Review Panel members. In practice, however, no specific mechanism exists for the KRG to provide funding to its appointees on the Panel.	Permanent members of the EISC and EIRB are to be remunerated by their respective appointing parties.
5.2 Staff and other Resources	Staff and other resources will be provided by the MOE. The Canadian Environmental Assessment Agency will be the responsibility of the MOE. The Agency will, where appropriate, make use of services & facilities of federal departments, boards and agencies.	Officers & employees necessary for the proper conduct of NIRB, incl. experts, may be appointed. and shall be paid by NIRB. Secondment of government staff may be appropriate.	Quebec is to maintain and adequately fund the EQC and its staff, in order to properly carry out its responsibilities, subject to approval of its budget. --- The Review Panel is to have an adequate staff to carry out its responsibilities, and Canada is to maintain and fund this staff..	Canada is to provide the EIRB with the staff necessary to enable it to fulfill its functions.
5.3 Intervenor Funding	The MOE may establish a participant funding program to assist public participation in mediations & panel reviews.	The Agreement will not prejudice the ability of Inuit to benefit from any programs of intervenor funding which may be set.	No provision for intervenor funding.	No provision for intervenor funding.
6. FOLLOWUP				

	CEAA REGIME	TFN REGIME	JBNQA REGIME	IFA REGIME
4.14 Wildlife Compensation	No provisions specifically dealing with issues of wildlife compensation.	NIRB to play no role regarding questions of wildlife compensation.	No formal provision for EQC or Review Panel to play role in determining wildlife compensation.	Section 13 of the IFA gives the EISC and EIRB certain powers & responsibilities relating to questions of wildlife compensation. EIRB makes recommendations to responsible authorities concerning necessary remedial and mitigative measures, and potential liability of developer(s).
4.15 Special Requirements and Regimes	No reference to special regimes.	No special regimes.	No special regimes.	The Yukon North Slope (YNS) area in the ISR has special features & requirements which the IFA assessment process must respect. The western portion of the YNS contains a federal and a territorial park, which have their own management regimes. The portion east of the Babbage River is an area of "controlled development", subject to the IFA assessment process. Near-shore and offshore waters are subject to the government review process, and the Section 13 wildlife compensation provisions.

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6.1 Implementation	Responsible authorities will implement conditions of project approval through mechanisms provided by relevant legislation, i.e. licenses and permits.	No project approvals to be granted until review is completed and project certificate issued. Terms and conditions of certificate to be implemented by all relevant government departments, by incorporating within project approvals. NIRB to be consulted on this.	EQC: Projects under review can't proceed, until review process is complied with. No government loans or funds may go to proponent, until decision is made about whether and on what terms project may proceed -- except if Minister responsible decides otherwise. Administrator, in collaboration with EQC, works to ensure that project's plans for construction & operations satisfy terms and conditions of project approval. --- Review Panel: Once project is approved in accordance with this review process, it may go forward.	Government authorities don't issue required approvals, until a project has complied with the IFA's impact assessment process.
6.2 Mitigation	Under s.37(2), responsible authorities must ensure implementation of any mitigation measures required as conditions of project approval.	Certificate and project authorities may include mitigation measures.	Project authorizations may include mitigation measures.	Project authorizations may include mitigation measures.
6.3 Monitoring	Responsible authorities shall design and implement "follow-up" programs to monitor implementation of mitigation measures for a project and to verify accuracy of project assessment.	Certificate may require project monitoring program, with responsibilities for NIRB. NIRB responsibilities not to duplicate those of government departments. Assessment provisions give no monitoring role to Inuit organizations/ communities.	Impact assessment provisions contain no formally defined project monitoring role for the EQC or the Review Panel, or for the KRG or Inuit organizations/communities.	Assessment provisions silent on role of claims assessment bodies or of Inuvialuit organizations/communities in project monitoring.

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6.4 Enforcement	In general, enforcement of conditions of project approval will rely upon existing mechanisms (i.e. penalties for non-compliance) provided by relevant legislation. Where an assessment is being conducted of a project with transboundary impacts, the MOE may by order prohibit a project from proceeding until it is completed (s.50(1)).	Responsible departs. to use all effective means, incl. prosecution & suspension of project approvals. DIO will have standing before appropriate court to seek court orders and judicial reviews.	No provision made for EQC or Review Panel, or for the KRG or Inuit organizations, to take part in enforcement activities.	IFA has no specific provisions on enforcement of terms and conditions resulting from impact assessment process.
7. LINKS WITH OTHER ASSESSMENT PROCESSES				
7.1 Relationship with Federal Environmental Assessment Process	Not applicable.	Part 6 of Article 12 contains detailed provisions relating to NIRB and Inuit involvement in federal reviews of projects in the Settlement Area. One-quarter of federal panel members must come from list provided by the DIO. NIRB is entitled to review and make recommendations on the panel's EIS guidelines, as well as on its report to the Minister (including terms & conditions). Once federal review is completed, NIRB will issue a project certificate.	No provisions explicitly addressing relationship between the federal and the JBNQA environmental assessment processes. Express proviso that nothing in section 23 should be understood as imposing the federal process unless required by federal law and regulations. This doesn't rule out any "federal requirement for an additional impact review process as a condition of federal funding for any development project." Role of the federal review panel in the Great Whale Review came as a result of negotiations.	EISC has discretion to decide whether project should be referred to federal panel or EIRB. But no specific provisions in IFA regarding relationship between EISC and EIRB and federal assessment bodies. S.11(32) says nothing restricts power of Government to conduct reviews "under the laws and policies of Canada."
7.2 Joint Panel Reviews	Under s.40(1)-(3), the MOE may negotiate agreements with other "jurisdictions," including claims assessment bodies, to conduct joint panel reviews of projects.	No provisions which explicitly address joint panel reviews involving NIRB and an assessment body exercising authority in another jurisdiction.	Under the IFA, Canada and Québec may agree to combine the separate review processes conducted by the EQC & the Review Panel.	No specific provisions dealing with joint panel reviews.

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7.3 **Terms and Conditions of Joint Reviews**	Any joint review must consider the factors listed in s.16(1)-(2), and satisfy the requirements of s.41: MOE must appoint or approve Chair; MOE must fix or approve terms of reference; panel must have subpoena powers; review must provide for public participation	Same as above.	Joint review must not prejudice the rights and guarantees of Inuit and Naskapi, plus other residents of the Region, as set out in s.23. Project(s) will be subject to only one review process, unless it falls within federal and Québec jurisdictions, or is located partly outside the settlement Region.	Same as above.
7.4 **Transboundary Assessments**	Under s.46-48, the MOE may refer a range of different projects with transboundary effects for review by a mediator or panel. Before such a referral, the MOE will seek to reach agreement with the relevant "jurisdictions", incl. claims assessment bodies, on an alternative way to conduct an assessment of a project's transboundary effects.	NIRB may review projects located outside the Settlement Area with possible significant transboundary impacts -- if requested by Government, or if requested by a DIO with the consent of Government. NIRB will assist Canada and the territorial government in negotiating agreements with other jurisdictions to collaborate in reviewing projects with transboundary impacts.	No provisions in the IFA dealing with joint reviews of projects which are located on both sides of the 55th parallel, or which have transboundary effects. The terms of transboundary reviews must be negotiated, as in the case of the Great Whale Review.	IFA doesn't explicitly make provision for assessment of projects with transboundary impacts. IFA assessment bodies have some jurisdiction over such projects, by virtue of powers relating to wildlife compensation.