

Chapter 11: Environmental Assessment

Part 11.1 Definitions

11.1.1 In this chapter:

"Authority" means a federal or Provincial authority, or both, as the case may be, including a Minister, responsible for taking an action or making a decision pursuant to the *Canadian Environmental Assessment Act* or the *Environmental Protection Act*; and

"Follow-up Program" means a program for:

- (a) verifying the accuracy of the Environmental Assessment of a Project or Undertaking; and
- (b) determining the effectiveness of any measures taken to mitigate the adverse Environmental Effects of the Project or Undertaking, and may include compliance monitoring.

Part 11.2 General

11.2.1 No Project in Labrador Inuit Lands shall commence until an Environmental Assessment has been completed and all necessary permits, licences or other authorizations required for the Project to commence have been issued by the appropriate Authority, and by the Nunatsiavut Government under an Inuit Law.

11.2.2 The Parties agree to jointly take appropriate measures to avoid unnecessary overlap and duplication in the conduct of Environmental Assessments where:

- (a) Projects may be subject to more than one Environmental Assessment; or
- (b) Undertakings may be subject to more than one Environmental Assessment and may be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area or adverse effects on Inuit rights under the Agreement.

11.2.3 If a Project is subject to more than one Environmental Assessment, the relevant Authority and the Nunatsiavut Government shall, having regard to any harmonization measures that may have been established pursuant to section 11.2.2, negotiate an agreement or arrangement for the coordination and harmonization of the applicable Environmental Assessment processes so as to avoid unnecessary overlap and duplication while also meeting their respective decision-making needs with respect to the Project.

11.2.4 For greater certainty, and notwithstanding any harmonization measure, agreement or arrangement respecting Environmental Assessment under this chapter, each of

the Nunatsiavut Government and the Authorities retains the capacity to take actions and make decisions in relation to a Project, to fund a Project and to issue permits, licenses or other authorizations in relation to a Project for matters within its legislative authority or jurisdiction.

- 11.2.5 Unless superseded by a harmonization measure established pursuant to section 11.2.2 or a harmonization agreement under section 11.2.3, sections 11.2.6, 11.2.7, 11.2.8 and 11.2.9 apply to a Project or to an Undertaking that may reasonably be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area or adverse effects on Inuit rights under the Agreement, as the case may be.
- 11.2.6 When the Nunatsiavut Government receives a registration document or an application for a Project in Labrador Inuit Lands or an application for a permit, licence or authorization in relation to a Project in Labrador Inuit Lands and the Project, in the opinion of the Nunatsiavut Government, may reasonably be expected to have adverse Environmental Effects, the Nunatsiavut Government shall give timely written notice of the Project and shall provide relevant available information on the Project and the potential adverse Environmental Effects to the Provincial Minister and to the Minister responsible for the *Canadian Environmental Assessment Act*.
- 11.2.7 When an Authority receives a registration document or an application for a Project or an application for a permit, licence or authorization in relation to a Project and the Project, in the opinion of the Authority, may reasonably be expected to have adverse Environmental Effects, the Authority shall give:
- (a) timely written notice of the Project and shall provide relevant available information on the Project and the potential adverse Environmental Effects to the Nunatsiavut Government; and
 - (b) written notice of the Project to the other Authority.
- 11.2.8 When an Authority receives a registration document or an application for an Undertaking or an application for a permit, licence or authorization in relation to an Undertaking and the Undertaking, in the opinion of the Authority, may reasonably be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area, the Authority shall give timely written notice of the Undertaking and shall provide relevant available information on the Undertaking and the potential adverse Environmental Effects to the Nunatsiavut Government.
- 11.2.9 After giving or receiving a notice and information required under section 11.2.6, 11.2.7 or 11.2.8, the Nunatsiavut Government and the relevant Authority shall, before making any further determination or taking any further action in relation to the Project or Undertaking, Consult each other about:
- (a) how their respective Environmental Assessment processes are to be applied; and

- (b) whether any harmonization is to be pursued in relation to the Environmental Assessment of the Project or Undertaking.

11.2.10

Notwithstanding harmonization measures established pursuant to section 11.2.2 or a harmonization agreement under section 11.2.3, an Environmental Assessment of a Project shall consider and where appropriate take account of, but not be limited to, the following:

- (a) the definition and scope of the Project;
- (b) the scope of the assessment;
- (c) the purpose of the Project, the need for the Project and alternatives to the Project;
- (d) a description of the existing Environment and its relation to the Project;
- (e) any Environmental Effects of the Project including the Environmental Effects of malfunctions or accidents that may occur in connection with the Project, and any cumulative Environmental Effects that are likely to occur in combination with other undertakings, projects, works or activities that have been or will be carried out;
- (f) impacts in Labrador Inuit Lands and the Inuit Communities and impacts on Harvesting by Inuit, Inuit land use and Inuit rights as set out in the Agreement;
- (g) the significance of the Environmental Effects and impacts referred to in subsections (e) and (f);
- (h) the well-being and quality of life of residents in any community in the Labrador Inuit Settlement Area potentially affected by the Project;
- (i) comments from the public;
- (j) measures that are technically and economically feasible and that would Mitigate any significant adverse Environmental Effects of the Project;
- (k) alternative means of carrying out the Project that are technically and economically feasible and the Environmental Effects of those alternative means;
- (l) the need for and requirements of a Follow-up Program in respect of the Project;
- (m) the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future;

- (n) the protection of the Environment and its eco-systemic integrity;
- (o) Inuit traditional knowledge; and
- (p) the scope of the assessment factors referred to in subsections (c) through (o).

Part 11.3 Nunatsiavut Government Jurisdiction

11.3.1 Except as provided in section 11.3.2, the Nunatsiavut Government:

- (a) may require an assessment of the Environmental Effects of a proposed undertaking, project, work or activity in Labrador Inuit Lands in relation to any approval, permit, licence or authorization it may issue under an Inuit Law; and
- (b) may decide whether a proposed undertaking, project, work or activity in Labrador Inuit Lands should be allowed to proceed and, if so, on what terms and conditions.

11.3.2 The Nunatsiavut Government may require an assessment of the Environmental Effects of an undertaking, project, work or activity related to Exploration in Labrador Inuit Lands under Inuit Laws only if the undertaking, project, work or activity is subject to Environmental Assessment under the *Canadian Environmental Assessment Act* or the *Environmental Protection Act*.

11.3.3 The Nunatsiavut Government may make laws in relation to the assessment of the Environmental Effects of proposed undertakings, projects, works or activities in Labrador Inuit Lands, including laws to:

- (a) establish an assessment process;
- (b) mitigate adverse Environmental Effects of any undertakings, projects, works and activities in Labrador Inuit Lands that have been assessed and that are permitted to proceed;
- (c) subject to section 11.3.2, establish a list of undertakings, projects, works or activities in Labrador Inuit Lands that require an assessment;
- (d) subject to section 11.3.2, prescribe undertakings, projects, works and activities or classes of undertakings, projects, works and activities in Labrador Inuit Lands for which an assessment is required;
- (e) authorize the making and implementation of agreements with Authorities for purposes of harmonizing the assessment process pursuant to Inuit Laws under this part with Environmental Assessment processes under federal and Provincial Legislation;

- (f) prescribe Follow-up Programs in relation to undertakings, projects, works and activities in Labrador Inuit Lands; and
- (g) charge fees and recover costs incurred by the Nunatsiavut Government and Inuit in relation to the assessment process and Follow-up Programs pursuant to Inuit Laws under this part.

11.3.4 If there is a Conflict between an Inuit Law under this part and the *Canadian Environmental Assessment Act* or the *Environmental Protection Act*, the *Canadian Environmental Assessment Act* or the *Environmental Protection Act* prevails to the extent of the Conflict.

Part 11.4 Inuit Environmental Assessment Process

11.4.1 If a proposed undertaking, project, work or activity in Labrador Inuit Lands requires a decision, approval, permit, licence or authorization of the Nunatsiavut Government under an Inuit Law, but does not require a decision, approval, permit, licence or authorization of an Authority, it may be assessed only under Inuit Laws.

11.4.2 If a Project in Labrador Inuit Lands requires a decision, approval, permit, licence or authorization of the Nunatsiavut Government under an Inuit Law and of an Authority, it may be assessed under Inuit Laws and shall, as applicable, be assessed under the *Canadian Environmental Assessment Act* or the *Environmental Protection Act*.

11.4.3 Upon completion of an Environmental Assessment of a Project in Labrador Inuit Lands under Inuit Laws, the Nunatsiavut Government shall provide the Provincial Authority with a report on the matters referred to in section 11.2.10.

11.4.4 Prior to making any decision or taking any action that would allow a Project in Labrador Inuit Lands to proceed, the Nunatsiavut Government shall Consult the Provincial Authority.

Part 11.5 Provincial Environmental Assessment Process

11.5.1 With respect to a Project in the Labrador Inuit Settlement Area outside Labrador Inuit Lands, the Provincial Authority shall, in addition to providing the notice and information required under section 11.2.7:

- (a) Consult the Nunatsiavut Government about the Environmental Effects of the Project;
- (b) Consult the Nunatsiavut Government about the best way to achieve meaningful participation of Inuit in any Environmental Assessment under the *Environmental Protection Act* if, in the opinion of the Provincial Authority, the Project may reasonably be expected to have adverse Environmental Effects in Labrador Inuit Lands or adverse effects on Inuit

- rights under the Agreement but nothing in this subsection derogates from section 11.5.6; and
- (c) provide the Nunatsiavut Government with a report on the matters referred to in section 11.2.10 upon completion of an Environmental Assessment of the Project.
- 11.5.2 Prior to making any decision or taking any action that would allow a Project to proceed, the Provincial Authority shall Consult the Nunatsiavut Government.
- 11.5.3 If a Project in Labrador Inuit Lands is being assessed by a board, tribunal or public review panel under the *Environmental Protection Act*, the members of the board, tribunal or public review panel shall be appointed jointly by the Nunatsiavut Government and the Provincial Authority from a list composed of equal numbers of nominations by each of the Nunatsiavut Government and the Provincial Authority.
- 11.5.4 For purposes of section 11.5.3, one half of the members appointed to the board, tribunal or public review panel, other than the chairperson, shall be Nunatsiavut Government nominees and the chairperson shall be selected jointly by the Nunatsiavut Government and the Provincial Authority.
- 11.5.5 If a Provincial Authority establishes a board, tribunal or public review panel under the *Environmental Protection Act* to provide advice or make recommendations with respect to a Project in Labrador Inuit Lands, the Nunatsiavut Government shall have standing before the board, tribunal or public review panel.
- 11.5.6 If a Project in the Labrador Inuit Settlement Area outside Labrador Inuit Lands, is being assessed by a board, tribunal or public review panel under the *Environmental Protection Act*:
- (a) the Nunatsiavut Government shall provide to the Provincial Authority a list of nominees and the Provincial Authority shall appoint to the board, tribunal or public review panel at least one member who is a nominee of the Nunatsiavut Government; and
- (b) the Nunatsiavut Government shall have standing before the board, tribunal or public review panel.
- 11.5.7 Where a Project is proposed to be located or carried out both in Labrador Inuit Lands and in the Labrador Inuit Settlement Area outside Labrador Inuit Lands, and is being assessed by a board, tribunal or public review panel under the *Environmental Protection Act*, the Provincial Authority and the Nunatsiavut Government shall appoint the members from a list composed of nominations from the Nunatsiavut Government and the Provincial Authority, and the Nunatsiavut Government shall have standing before the board, tribunal or review panel.
- 11.5.8 Upon completion of an Environmental Assessment conducted by a board, tribunal or public review panel referred to in section 11.5.3, 11.5.6 or 11.5.7, the board,

tribunal or public review panel shall prepare and submit a report to the Provincial Authority and the Nunatsiavut Government which shall include, but shall not be limited to:

- (a) a description of the Environmental Assessment process, including provisions for public participation;
- (b) a summary of any comments and recommendations from the public; and
- (c) the rationale, conclusions, recommendations and where applicable, Mitigation measures and Follow-up Program requirements recommended by the board, tribunal or public review panel.

11.5.9 The Nunatsiavut Government and the Provincial Authority shall discuss the report referred to in section 11.5.8 with a view to reaching agreement on whether each of them, within their respective jurisdictions, will allow the Project to proceed and, if so, on what terms and conditions.

11.5.10 If the Nunatsiavut Government and the Provincial Authority fail to reach agreement on the matters referred to in section 11.5.9 within any time frame established by Law for taking an action or making a decision with respect to the Project, the Nunatsiavut Government and the Provincial Authority, within their respective jurisdictions, may take an action or make a decision notwithstanding section 11.5.9.

11.5.11 If, in the opinion of the Provincial Authority, an Undertaking that is subject to the *Environmental Protection Act* may reasonably be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area or adverse effects on Inuit rights under the Agreement, the Provincial Authority shall, in addition to providing the notice and information required under section 11.2.8:

- (a) Consult the Nunatsiavut Government about the Environmental Assessment applicable to the Undertaking;
- (b) Consult the Nunatsiavut Government about the possible participation of Inuit and the Nunatsiavut Government in that Environmental Assessment; and
- (c) in any event, Consult the Nunatsiavut Government before making any decision or taking any action to allow the Undertaking to proceed.

Part 11.6 Federal Environmental Assessment Process

11.6.1 If, in the opinion of a federal Authority, a Project or an Undertaking that is subject to the *Canadian Environmental Assessment Act* may reasonably be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area or adverse effects on Inuit rights under the Agreement, the Authority shall, in addition

to providing the notice and information required under sections 11.2.7 and 11.2.8, ensure that the Nunatsiavut Government:

- (a) is Consulted about the Environmental Effects of the Project or Undertaking;
- (b) is Consulted about the best way to achieve meaningful participation of Inuit in the Environmental Assessment; and
- (c) receives the report generated as a result of the Environmental Assessment including, where applicable, the rationale, conclusions, and recommendations of the official, mediator or review panel that carried out the Environmental Assessment.

11.6.2 A federal Authority shall Consult the Nunatsiavut Government before taking any action that would allow a Project or Undertaking referred to in section 11.6.1 to proceed or making a decision to issue a permit, licence, funding, or other authorization in relation to the Project or Undertaking.

11.6.3 If Canada refers a Project or Undertaking referred to in section 11.6.1 to a review panel under the *Canadian Environmental Assessment Act*:

- (a) in the case of a Project, at least one member of the review panel shall be a nominee of the Nunatsiavut Government; and
- (b) in the case of an Undertaking, the members of the review panel shall be selected from a list that includes candidates nominated by the Nunatsiavut Government.

11.6.4 If Canada intends to appoint a mediator to assist in conducting an Environmental Assessment under the *Canadian Environmental Assessment Act* with respect to a Project or Undertaking referred to in section 11.6.1, the appropriate federal Authority shall Consult the Nunatsiavut Government before making the appointment.

11.6.5 The Nunatsiavut Government shall, in addition to its functions and duties in relation to the matters referred to in part 11.2 and sections 11.6.1 and 11.6.2 with respect to public reviews, be entitled to make representations to the mediator or review panel.

11.6.6 Upon completion of the mediation or of the hearings of the review panel, the mediator or review panel shall prepare and submit a report to the relevant Authorities and the Nunatsiavut Government which shall include, but shall not be limited to:

- (a) a description of the Environmental Assessment process, including provisions for public participation;
- (b) a summary of any comments and recommendations from the public; and

- (c) the rationale, conclusions, recommendations and where applicable, Mitigation measures and Follow-up Program requirements recommended by the mediator or review panel.

Part 11.7 Monitoring

11.7.1 If a Project or an Undertaking that may reasonably be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area is allowed to proceed subject to a permit, licence or other authorization containing conditions that require Mitigation measures, the Nunatsiavut Government and the relevant Authorities, within their respective jurisdictions, shall:

- (a) coordinate their responsibilities for Follow-up Programs to the extent possible; and
- (b) in the exercise of their powers or the performance of their duties and functions, ensure that any Mitigation measures that they consider to be appropriate are implemented.