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Jurisdictional Responsibilities for Land Resources, Land Use and
Development in the Yukon Territory and Northwest Territories

Northwest Territories Nunavut Settlement Area Lands



Canada

Book Three

Jurisdictional Responsibilities
for Land Resources, Land Use
and Development in the Yukon
Territory and Northwest
Territories

Book three

Northwest Territories Nunavut Settlement Area Lands

Land Management Division,

Northern Affairs Program

November 13, 1997

Preface

The Federal Government through the Minister of Indian Affairs and Northern Development is responsible for administering territorial lands and its resources in the Yukon Territory and the Northwest Territories through various Acts, including the *Territorial Lands Act*, and Regulations, *Yukon Waters Act*, *Canada Petroleum Resources Act*, *Yukon Placer Mining Act*, *Yukon Quartz Mining Act*, etc. Through the Land Claim process, jurisdictional responsibility over certain lands, resources and land uses has been transferred to various First Nations and to Aboriginal groups across the North.

In order to provide a clearer understanding of the jurisdictional framework that is evolving in the Yukon Territory and Northwest Territories, this set of guidelines has been prepared by the Land Management Division concerning “Jurisdictional Responsibilities for Land, Resources, Land Use and Development in the Yukon and Northwest Territories”. These guidelines consist of eight (8) chapters, each chapter describes the jurisdictional regime of a particular geographic region and provides the answers as to which governing bodies should be consulted when making application for specific surface and sub-surface leases, permits, licences, or claims, etc.

Michael Fish, Head of Land Transactions, directed and coordinated the compilation of the guidelines which were written by Bill Biggs and edited by Allan Macartney. Bill Biggs is a lawyer having worked as a Director, Treasury Board Secretariat, implementing federal government policies, legislation and reform in the area of real property management. Allen Macartney is a professional writer and editor having over eighteen years of research and writing experience.

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DIAND

Dedication

This document recognizes the former managers of land resources in both territories and Ottawa, and their staffs, who contributed so much towards the solid framework for land resource management that exists in the North. Their names follow:

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Important Note to Users

This document has been prepared for convenient reference only. It has no official sanction. For all purposes of interpreting and applying the law, and the land claims agreements, consult the Acts passed by Parliament and the land claim agreements themselves.

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Introduction

Dramatic changes have occurred over the past fifteen years in the jurisdictional framework for land resources, land use and development in the Yukon Territory and the Northwest Territories. These changes are primarily a result of:

- ! federal legislation revisions;
- ! the impending creation of Nunavut;
- ! the finalization of Aboriginal land claim agreements; and
- ! the devolution of responsibilities from the federal to the territorial governments.

Jurisdictions will further change as these initiatives continue.

Jurisdictional responsibilities are described in this document as of August 31, 1996 for land resources, land use and development within the territories concerning:

- ! federal lands; and
- ! lands confirmed for Aboriginal groups under land claim agreement settlement legislation.

These responsibilities differ in some respects between the territories. Within each territory the responsibilities vary based on the particular land claim agreements involved. These variations are considered through the chapters of this document.

In each chapter, the jurisdictional regime for a particular geographic region are described, based on territory, then on the land claim agreements. For convenience, this document combines similar land claim agreements in the chapters relating to the Yukon First Nations and the Northwest Territories First Nations. Differences between the individual land claim agreements are noted where appropriate.

Each chapter dealing with land claim settlement areas, begins with a section on the settlement agreement. This section also describes the roles of administrative bodies (such as surface rights boards) established through the settlement agreements.

The second section of each chapter provides an overview of the region's general jurisdictional categories based on federal and Aboriginal land ownership. For example, there are three categories of land in the Yukon First Nation settlement areas in the Yukon Territory:

1. Settlement Lands to which the First Nations received title under their Land Claim Settlement Agreements;
2. Reserves under the *Indian Act*; and
3. Federal lands.

The remainder of each chapter analyses each region's land ownership categories. For the categories relating to settlement lands and federal lands, the jurisdictional regime is discussed under the following headings:

- ! Land Ownership;
- ! Land Use;
- ! General Access Rights;
- ! Non-Renewable Resources;
- ! Forestry and Plants;
- ! Water Use and Waste Deposit;
- ! Fish and Wildlife;
- ! Environmental Assessment; and
- ! Economic Development.

Note: Discussion of lands on reserves under the Indian Act is minimal. This text does not specifically examine lands administered by the territorial commissioners, nor does it discuss privately owned lands, or lands acquired by First Nations outside of the land claim settlement process.

Appendix A lists the legislation and the finalized land claim agreements examined in the preparation of this text. Legislation and land claim agreements are current as of August 31, 1996.

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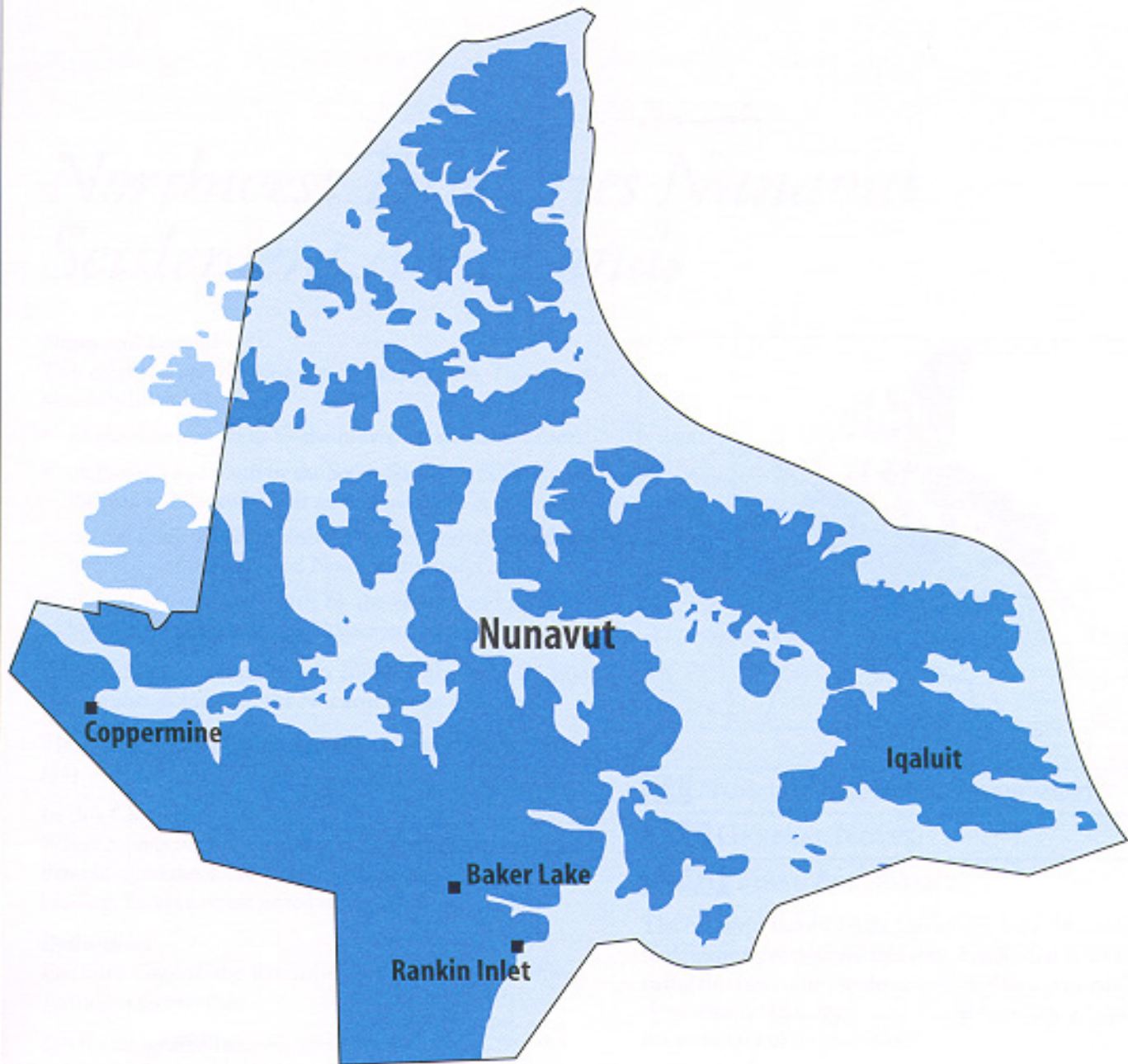
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Northwest Territories Nunavut Settlement Area Lands

Book three

Northwest Territories Nunavut Settlement Area Lands

Notes and Legend

This chapter covers the Nunavut Settlement Area. This area is generally bounded:

- ! on the west and north by the Inuvialuit Settlement Area;
- ! on the west and south by the South Slave, North Slave, and the Sahtu Dene and Métis settlement areas;
- ! on the south by the Manitoba border and the southern boundary of the proposed Nunavut Territory; and
- ! and on the east and north by the eastern and northern boundaries of the proposed Nunavut Territory.

The Belcher Islands and certain adjacent islands in Hudson Bay are also included in the Nunavut Settlement Area.

The Nunavut Land Claims Agreement was ratified on July 9, 1993.

In this Chapter

Where appropriate, relevant sections (called articles) in the settlement agreement are noted immediately below a topic heading. Exceptions are noted in the text.

Definitions

Executive Council: the Executive Council of the Northwest Territories Government.

DIO: a designated Inuit organization.

GIC: the Governor in Council.

NLCA: the Nunavut Land Claims Agreement.

3.1 Nunavut Settlement Agreement

3.1.1 General Notes

3.1.1.1 Final Agreement

The Nunavut Land Claims Agreement is the final land claim settlement agreement for this area. The federal statute authorizing this land claim settlement is the *Nunavut Land Claims Agreement Act* (S.C. 1993, c.29, Act in force July 9, 1993). Here is a summary of its provisions:

- ! “Agreement” means the Nunavut Land Claims Agreement.
- ! “Settlement area” means the areas described as such in the Agreement.
- ! The Act binds the Crown, both federal and provincial (this includes the territorial government).
- ! The Act approves the Agreement and declares it valid.
- ! The Agreement is binding on all persons and bodies not parties to it.
- ! If there is a conflict between the Agreement and any Act, the Agreement prevails.
- ! If there is a conflict between this Act and any other law, this Act prevails.
- ! The Nunavut Wildlife Management Board is incorporated as a non-agent of the Crown. (This means it acts on its own behalf, and not on behalf of the Crown .)

3.1.1.2 General

(Nunavut Settlement Agreement: Article 2)

The NLCA is a land claim agreement within section 35 of the *Constitution Act*.

The Inuit release their Aboriginal rights to the settlement area and to other areas.

A particular provision deals with ceding Aboriginal rights to Manitoba lands and waters. The NLCA limits the consideration the Inuit can receive for cession of any Aboriginal rights to Manitoba. This provision allows for the granting of wildlife harvesting rights to the Inuit in this case. (Nunavut Settlement Agreement: Article 42)

All federal, territorial and local government laws apply to the Inuit and to Inuit Owned Lands, unless inconsistent with the NLCA or the settlement legislation.

The NLCA may be amended by consent of the GIC and the Tungavik.

Inuit have certain rights under the NLCA to areas outside the Nunavut Settlement Area. (Nunavut Settlement Agreement: Article 3)

3.1.2 Definitions

(Nunavut Settlement Agreement: Article 1)

The NLCA defines these words:

Crown lands:

These are lands belonging to the Crown, or in which government has the power of disposition.

Designated Inuit Organization (DIO)

This refers to the Tungavik, or (in relation to any function under the NLCA) any of the organizations under the NLCA designated as responsible for that function.

Government

This means either the federal or the Northwest Territories Government, or both.

Inuit Owned Lands

These are lands vesting in a DIO (under the NLCA) and any other lands vested, or acquired as Inuit Owned Lands.

Lands

This also refers to lands covered by water, onshore or offshore.

Laws of general application

These include federal, territorial and local government laws of general application, as defined in the common law.

Marine areas

These are parts of Canada's internal waters or territorial sea lying within the settlement area, including the seabed and subsoil, but not including inland waters.

Nunavut Settlement Area

This area is composed of:

- Part A = the portion of the Arctic Islands, the mainland of Eastern Arctic and adjacent marine areas described in the NLCA; and
- Part B = Belcher Islands, the associated islands and adjacent marine areas in Hudson Bay, described in the NLCA. (Nunavut Settlement Agreement: Article 3)

Outer Land Fast Ice Zone

This refers to an area of land fast ice:

- off the east coast of Baffin island in Baffin Bay and the Davis Strait; and
- between the eastern limits of the Nunavut Settlement Area and the eastern limits of the land fast ice.

Resources

For the purposes of certain parts of the NLCA, resources means coal, petroleum and other

mineable substances, but not specified substances.

Specified substances

These include sand and gravel, other construction materials, as well as peat and carving stone.

Zone I

Zone I means waters, north of 61 degrees latitude, not part of the Nunavut Settlement Area or any other land claim settlement area.

Zone II

Zone II means waters of James Bay, Hudson Bay and Hudson Strait, not part of the Nunavut Settlement Area or any other land claim settlement area.

3.1.3 Administrative Bodies

3.1.3.1 Nunavut Planning Commission

(Nunavut Settlement Agreement: Article 11)

The Nunavut Planning Commission will develop land use plans, to direct the use and development of resources in the Nunavut Settlement Area. The Commission will develop a Nunavut land use plan to address both short term and long term development in the Nunavut Settlement Area. Regional and sub-regional components of the land use plan will be implemented where approved by government.

The NLCA contains policies and functions of land use planning and plans. Where government has approved land use plans, the Nunavut Planning Commission will review all applications for project proposals. This review will determine whether the proposal conforms to the land use plans. If so, the Commission will then forward the proposal, along with the Commission's determination and recommendations, to the appropriate federal and territorial agencies. The land use plan may also allow the Commission to approve minor variances.

Where the Commission determines that a project does not conform to a land use plan, the approval process will stop for that project. A proponent of the project may then apply to the appropriate Minister for exemption. If an exemption or variance is granted, the approval process will resume.

Another role of the Commission is to identify requirements (and set priorities) to clean up waste sites in the Nunavut Settlement Area. The NLCA states that the Kitikmeot area is a priority.

The land use planning process applies to Inuit Owned Lands. The land use planning provisions in the NLCA also apply to both land and marine areas within the Nunavut

Settlement Area and the Outer Land Fast Ice Zone. For the purposes of the land use planning provisions of the NLCA, land includes water and resources, including wildlife. The relationship between:

- ! the Commission,
- ! the Nunavut Impact Review Board, and
- ! the Nunavut Water Board

is set out in the NLCA. (Nunavut Settlement Agreement: Article 13) The NLCA sets conditions allowing government to consolidate institutions, reallocate functions, and so on. To make these changes, government would need to enact new legislation. (Nunavut Settlement Agreement: Article 10)

The Inuit of Nunavut and the Inuit of Northern Quebec jointly manage certain lands. The NLCA contains provisions on joint resource management and mutual protection of rights and interests. Whenever the Nunavut Planning Commission deals with these jointly managed lands, its composition (the people chosen to sit on a review panel) will reflect this joint use of lands. (Nunavut Settlement Agreement: Article 40)

The Commission may alone, or jointly with other Boards through the Nunavut Marine Council, make recommendations to government agencies regarding marine areas. (Nunavut Settlement Agreement: Article 15)

The Commission was to be established by July 9, 1995. (Nunavut Settlement Agreement: Article 10) The NLCA contains the following interim measures.

- ! If legislation establishing the Commission was not in place by July 9, 1996, the NLCA provisions relating to appointments of members would take effect on July 9, 1996. Upon appointment, members will have all the powers and duties described in the NLCA. (Nunavut Settlement Agreement: Article 10)
- ! Until the Nunavut Planning Commission is established, land use planning in the Nunavut Settlement Area will be conducted according to the 1983 Basis of an Agreement for Land Use Planning in the Northwest Territories. This is subject to any interim changes to which the Tungavik Federation of Nunavut and government agree.

3.1.3.2 Nunavut Impact Review Board

(Nunavut Settlement Agreement: Article 12)

The NLCA calls for a Nunavut Impact Review Board to screen project proposals for their socio-economic impacts, as well as their impact on the ecosystem. The Board can

determine whether a project requires further review (by the Board or by a federal Environmental Assessment Panel). The Board may set terms and conditions for proposals proceeding in the approval process. These conditions may concern matters such as:

- ! whether a project can continue in the process;
- ! how the process will proceed; and
- ! the way a project will be conducted after the process, and so on.

If the Nunavut Planning Commission determines that a project proposal conforms with land use plans (or a variance is approved), the Commission sends the proposal to the Nunavut Impact Review Board for screening. Where there is no approved land use plan, project proposals go directly to the Board. The NLCA lists certain types of project proposals that are exempt from screening by the Board. These include:

- ! land use activities not requiring a permit or authorization from government;
- ! land use activities requiring only a Class B permit under the Territorial Land Use Regulations;
- ! construction, operation and maintenance of buildings and services within an established municipality (with certain exceptions);
- ! hotels, motels, and other similar establishments (with less than twenty-one beds) outside municipalities;
- ! water uses not requiring a public hearing under the NLCA;
- ! prospecting, staking, or locating a mineral claim, unless it requires a Class A permit under the Territorial Land Use Regulations; and
- ! other categories as agreed to by the Board and the appropriate Minister.

The NLCA sets out the screening and review process. The NLCA also discusses project monitoring and implementation, as well as flexibility in certificates. No licence or approval allowing a project to proceed will be issued until a Board completes its screening and review, and issues a Board project certificate. The NLCA lists two exceptions to this rule. The impact review provisions apply to:

- ! Inuit Owned Lands;
- ! land and marine areas within the Nunavut Settlement Area;
- ! the Outer Land Fast Ice Zone;

- ! shipping associated with project proposals in the Nunavut Settlement Area (with some exceptions); and
- ! national defence facilities and activities. (In this case there may be exemptions for national security, confidentiality or urgency.)

The Board may review a project proposal located outside the Nunavut Settlement Area, if that proposal may have significant, adverse effects on the Nunavut Settlement Area. This review would only take place on request by government, or by the DIO with government consent.

The relationship between:

- ! the Commission,
- ! the Nunavut Impact Review Board, and
- ! the Nunavut Water Board

is set out in the NLCA. (Nunavut Settlement Agreement: Article 13) The NLCA sets conditions allowing government to consolidate institutions, reallocate functions, and so on. To make these changes, government would need to enact new legislation. (Nunavut Settlement Agreement: Article 10)

The Inuit of Nunavut and the Inuit of Northern Quebec jointly manage certain lands. The NLCA contains provisions on joint resource management and mutual protection of rights and interests. Whenever the Nunavut Planning Commission deals with these jointly managed lands, its composition (the people chosen to sit on a review panel) will reflect this joint use of lands. (Nunavut Settlement Agreement: Article 40)

The Board may alone, or jointly with other Boards through the Nunavut Marine Council, make recommendations to government agencies regarding marine areas. (Nunavut Settlement Agreement: Article 15)

The Board was to be established by July 9, 1995. (Nunavut Settlement Agreement: Article 10) The NLCA contains an interim measure:

- ! if legislation establishing the Nunavut Impact Review Board was not in place by July 9, 1996, provisions relating to the appointments of members would take effect on July 9, 1996. Upon appointment, members will have all the powers and duties described in the NLCA. (Nunavut Settlement Agreement: Article 10)

3.1.3.3 Environmental Assessment Panel

(Nunavut Settlement Agreement: Article 12)

The NLCA discusses compositions and procedures for a federal Environmental Assessment Panel.

3.1.3.4 Surface Rights Tribunal

(Nunavut Settlement Agreement: Article 21)

The NLCA provides that government:

- ! can on its own, or
- ! must, on request of the DIO, establish a Surface Rights Tribunal for the Nunavut Settlement Area.

This Tribunal will:

- ! issue entry orders to use and occupy lands subject to payment of legislated fees. This includes rights to review compensations payable, and to terminate entry orders;
- ! hold hearings to determine compensation payable to surface rights holders.

The NLCA details practice and fees payable.

The Surface Rights Tribunal also rules on wildlife compensation claims. (Nunavut Settlement Agreement: Article 6)

The Surface Rights Tribunal was to be established by January 9, 1994. The NLCA contains interim measures:

- ! if legislation establishing the Tribunal is not in place by one year after January 9, 1994, the Minister for the Department of Indian Affairs and Northern Development will appoint members of the Tribunal. Upon appointment, members will have all the powers and duties described in the NLCA. (Nunavut Settlement Agreement: Article 10)

The NLCA sets conditions allowing government to consolidate institutions, reallocate functions, and so on. To make these changes, government would need to enact new legislation. (Nunavut Settlement Agreement: Article 10)

3.1.3.5 Nunavut Water Board

(Nunavut Settlement Agreement: Article 13)

Legislation establishing the Nunavut Water Board was before the House of Commons at

the dissolution of Parliament in April, 1997.

The Nunavut Water Board has responsibilities and powers over the regulation, use and management of water in the Nunavut Settlement Area, at least equivalent to those held by the Northwest Territories Water Board under the *Northwest Territories Waters Act*.

The Board has authority to approve water uses throughout the Nunavut Settlement Area, subject to the NLCA's compensation provisions. (Nunavut Settlement Agreement: Article 20) No person may use water or dispose of waste into water without the Board's approval. The only exception is the domestic/emergency exemption under section 5 of the *Northwest Territories Waters Act*.

In some cases, the approval of a water use application in the Nunavut Settlement Area would have significant bearing on water use outside the area. The Board may collaborate with the appropriate water authority in reviewing such an application.

The relationship between:

- ! the Commission,
- ! the Nunavut Impact Review Board, and
- ! the Nunavut Water Board,

is set out in the NLCA. (Nunavut Settlement Agreement: Article 13)

The NLCA sets conditions allowing government to consolidate institutions, reallocate functions, and so on. To make these changes, government would need to enact new legislation. (Nunavut Settlement Agreement: Article 10)

The Inuit of Nunavut and the Inuit of Northern Quebec jointly manage certain lands. The NLCA contains provisions on joint resource management and mutual protection of rights and interests. Whenever the Nunavut Planning Commission deals with these jointly managed lands, its composition (the people chosen to sit on a review panel) will reflect this joint use of lands. (Nunavut Settlement Agreement: Article 40)

The Board may alone, or jointly with other Boards through the Nunavut Marine Council, make recommendations to government agencies regarding marine areas. (Nunavut Settlement Agreement: Article 15)

The Nunavut Water Board was to be established by July 9, 1995. The NLCA contains interim measures:

- ! if legislation establishing the Board was not in place by July 9, 1996, provisions relating to appointments of members would take effect on July 9, 1996. Upon

appointment, members will have all the powers and duties described in the NLCA. (Nunavut Settlement Agreement: Article 10)

3.1.3.6 Inuit Heritage Trust

(Nunavut Settlement Agreement: Article 33)

Under the NLCA, the Tungavik Federation of Nunavut was to establish the Inuit Heritage Trust by July 9, 1994. The Trust will be invited to participate in developing government policy and archaeological legislation relating to the Nunavut Settlement Area.

The Inuit Heritage Trust may also assign terms and conditions on the use and occupation of archaeological sites. (Nunavut Settlement Agreement: Article 7)

The Trust and government jointly own all archaeological specimens found within the Nunavut Settlement Area that are not public records, private property, or within lands administered by the Canadian Parks Service (where specimens are managed in accordance with NLCA).

3.1.3.7 Organization Jointly Designated by Tungavik and Makivik

(Nunavut Settlement Agreement: Article 40)

Various rights of the Inuit of Nunavut, under the NLCA, apply equally to the Inuit of Northern Quebec. An organization jointly-designated by the Tungavik and the Makivik will serve as a DIO under these Articles. If a jointly-designated organization is not in place, the existing DIO (for the Nunavut Settlement Area) will exercise the authority.

3.1.3.8 Nunavut Wildlife Management Board

(Nunavut Settlement Agreement: Article 5)

The NLCA calls for a Nunavut Wildlife Management Board to be established. The Board's duties include:

- ! establishing and managing levels of total allowable harvest in the settlement area;
- ! allocating resources to other residents and to existing operations (such as hunting and trapping operations, and so on);
- ! approving and modifying boundaries for conservation areas;
- ! identifying wildlife management zones, and making planning recommendations, for those zones, to the Nunavut Planning Commission;

- ! approving plans for wildlife habitat management within conservation areas, territorial parks and national parks;
- ! approving plans for management of particular wildlife, including endangered species;
- ! providing advice to departments, the Impact Review Board and other agencies, regarding mitigation and compensation by commercial and industrial developers that cause damage to wildlife habitat;
- ! other wildlife management activities; and
- ! regulating access to wildlife in Nunavut Settlement Area, as agreed by the Board and government.

Government shall seek the advice of the Board on wildlife management decisions in Zones I and II, when these decisions affect Inuit harvesting rights within marine areas of the Nunavut Settlement Area. The Board may make recommendations relating to wildlife management in those zones. (Nunavut Settlement Agreement: Article 15)

The primary responsibility for managing lands (including flora) shall be exercised by appropriate government agencies and other related bodies. Government must approve Certain Board decisions.

The NLCA provides that:

- ! the Board will presume that the Inuit need the total allowable harvest of various types of wildlife;
- ! the Board will follow certain rules in allocating any surplus over basic needs. (“Basic needs” refers to appropriate harvesting quotas, reflecting the needs of the people.); and
- ! that the Board must give equal or better treatment to Inuit harvesters in establishing non- quota limitations.

The Inuit of Nunavut and the Inuit of Northern Quebec jointly manage certain lands. The NLCA contains provisions on joint resource management and mutual protection of rights and interests. Whenever the Nunavut Planning Commission deals with these jointly managed lands, its composition (the people chosen to sit on a review panel) will reflect this joint use of lands. (Nunavut Settlement Agreement: Article 40)

The Board may alone, or jointly with other Boards through the Nunavut Marine Council, make recommendations to government agencies regarding marine areas. (Nunavut Settlement Agreement: Article 15)

3.1.3.9 Hunter's and Trapper's Organizations

(Nunavut Settlement Agreement: Article 5)

Each community, and outpost camps on demand, shall have a Hunter's and Trapper's Organization. These organizations have powers to:

- ! regulate harvesting practices among members;
- ! allocate community basic needs. (This involves assessing the specific harvesting needs in the community, for food, trade and so on);
- ! assign a portion of those basic needs to non-members of the Hunter's and Trapper's Organization; and
- ! manage harvesting among members.

A Hunter's and Trapper's Organization cannot conflict with any other regulations governing harvesting practices.

3.1.3.10 Regional Wildlife Organizations

(Nunavut Settlement Agreement: Article 5)

Each region shall have a Regional Wildlife Organization. These organizations have powers to:

- ! regulate harvesting practices among members of Hunter's and Trapper's Organizations in the region;
- ! allocate community basic needs (as described above) among Hunter's and Trapper's Organizations in the region;
- ! assign (to persons or bodies other than Hunter's and Trapper's Organizations) a portion of those basic needs; and
- ! manage harvesting among members of Hunter's and Trappers Organizations in the region.

A Regional Wildlife Organization cannot conflict with any other regulations governing harvesting practices.

3.1.3.11 Makivik

(Nunavut Settlement Agreement: Article 40)

Makivik has the power of a Hunter's and Trapper's Organization or a Regional Wildlife Organization on behalf of the Inuit of Northern Quebec.

3.1.3.12 Nunavut Marine Council

(Nunavut Settlement Agreement: Article 15)

The Nunavut Marine Council may make recommendations to government agencies regarding marine areas.

3.1.3.13 Arbitration Board

(Nunavut Settlement Agreement: Article 38)

An Arbitration Board will be established to arbitrate disputes relating to the NLCA. Before the Board is established, the territorial Arbitration Act applies to any arbitration.

3.1.4 Other Aboriginal Peoples

3.1.4.1 General

(Nunavut Settlement Agreement: Article 40)

Nothing in the NLCA limits negotiated agreements between Inuit and other Aboriginal peoples concerning overlapping interests or claims. Nothing in such local agreements is binding on government, or on any non-Inuit and non-Aboriginal person acting with the government consent.

3.1.4.2 Inuit of Northern Quebec

(Nunavut Settlement Agreement: Article 40)

The Inuit of Northern Quebec traditionally use and occupy certain marine areas and islands of the Nunavut Settlement Area. They have many of the same rights respecting wildlife harvesting in these marine areas and islands, as do the Inuit of Nunavut, under the wildlife provisions of the NLCA. An organization jointly-designated by the Tungavik and the Makivik, will serve as a DIO under these Articles. If a jointly-designated organization is not in place, the existing DIO (for the Nunavut Settlement Area) will exercise the authority.

The Inuit of Nunavut may harvest wildlife in marine areas and islands between the Nunavut Settlement Area and Quebec traditionally used and occupied by them on a basis equivalent to that of the Inuit of Northern Quebec.

The Inuit of Nunavut and the Inuit of Northern Quebec jointly manage certain lands. This

arrangement was formalized on July 9, 1993 when certain lands described in the NLCA vested in the DIO (on behalf of the Inuit of Nunavut) and in Makivik (on behalf of the Inuit of Northern Quebec) as joint tenants.

Those provisions applying to Inuit Owned Lands (under the NLCA) apply in the most part to the jointly owned lands. DIO powers under the NLCA shall be exercised jointly by the DIO and Makivik in the jointly owned lands. The agreement of both groups is needed to:

- ! create or dispose of an interest in the lands;
- ! sever or partition the lands;
- ! establish or operate facilities associated with:
 - sports or commercial use of wildlife, or
 - observation of natural or cultural features of the lands; or
- ! make use of the lands in a way that causes physical alteration or diminishes their value.

The NLCA contains provisions on joint resource management and mutual protection of rights and interests. Whenever administrative boards deal with these jointly managed lands, their composition (the people chosen to sit on a panel) will reflect this joint use of lands. (Nunavut Settlement Agreement: Article 40)

Any additional lands acquired by Inuit of Northern Quebec under their Land Claims Agreement in the certain areas (called the Areas of Equal Use and Occupancy in the NLCA) will be held as joint tenants with the Inuit of Nunavut.

Provisions for the Inuit of Northern Quebec can only be amended with the consent of Makivik. The federal government agrees to not include any contrary provisions in the Northern Quebec Land Claims Agreement.

With some exceptions, if there is any inconsistency between the Inuit of Northern Quebec provisions and other provisions in the NLCA, the Quebec provisions prevail.

3.1.4.3 Other Aboriginal Peoples – Northwest Territories

(Nunavut Settlement Agreement: Article 40)

Unless otherwise agreed between the Inuit and another Northwest Territories Aboriginal people, the Inuit may harvest wildlife in any of their traditionally used areas of the Northwest Territories west of the Nunavut Settlement Area. This applies:

- ! in areas covered by treaty or land claim agreement, on a basis equivalent to that of

other Northwest Territories Aboriginal people who are party to the treaty or agreement;
and

- ! in areas not covered by treaty or land claim agreement, on a basis equivalent to that of other Northwest Territories Aboriginal people using that area. Northwest Territories Aboriginal people (other than the Inuit) may harvest wildlife within their traditionally-used areas of the Nunavut Settlement Area. Their rights to do this are equivalent to Inuit harvesting rights under the wildlife provisions of the NLCA. However, the Inuit and another Northwest Territories Aboriginal people may agree to restrict these rights for the other Aboriginal people. The Nunavut Wildlife Management Board can allocate basic needs levels to such Northwest Territories Aboriginal people. (This refers to allocating appropriate harvesting quotas, reflecting the needs of the people.)

3.1.4.4 Denesuline Indian Bands – Manitoba and Saskatchewan

(Nunavut Settlement Agreement: Article 40)

Notwithstanding the wildlife provisions of the NLCA, members of the:

- ! Fort Churchill Indian Band and the Northlands Indian Band (Northern Manitoba),
and
- ! Black Lake Indian Band, the Hatchet Lake Indian Band, and the Fond du Lac Indian Band (Northern Saskatchewan), may harvest wildlife for personal, family or community consumption, within areas of the Nunavut Settlement Area that they traditionally use. They may also trap wildlife in these areas. These rights are equivalent to Inuit harvesting rights under the wildlife provisions of the NLCA.

The Nunavut Wildlife Management Board can allocate basic needs levels to these Bands. (This refers to allocating appropriate harvesting quotas, reflecting the needs of the people.) To exercise their harvesting and trapping rights, the members of these Bands have the same right of access to lands, including Inuit Owned Lands, as do the Inuit.

For the two Northern Manitoba Bands:

The Nunavut Wildlife Management Board can place limits and regulations governing wildlife harvesting by these Bands (within the Nunavut Settlement Area), corresponding to the limits and regulations placed on Inuit harvesting rights in northern Manitoba.

The Inuit have no right of first refusal on an application by a member of these Bands (those of Northern Manitoba and those of Northern Saskatchewan) to:

- ! establish certain wildlife-related facilities; or
- ! conduct certain wildlife-related activities in the area traditionally used by the Band.

Such an application is subject to laws of general application.

The Councils of these Bands are to be:

- ! given notice,
- ! considered, and/or
- ! consulted

in administrative board decisions affecting the Bands' interests.

Provisions relating to title in archaeological specimens do not apply to Denesuline archaeological specimens under the NLCA.

If a member of these Bands had a cabin on Inuit Owned Lands on January 1, 1992, he or she can continue to use and occupy the cabin. On the request of a Band Council by July 9, 1995, the DIO is obligated to transfer to the Crown, title to the cabin. Disputes between the DIO and a Band Council will be resolved by arbitration under the *Territorial Arbitration Act*. Lands relinquished do not automatically become reserves under the *Indian Act*.

3.1.4.5 Sahtu Dene and Métis Settlement Agreement

Participants under the Sahtu Dene and Métis Settlement Agreement have a right to traditional wildlife harvests, within their traditional harvest areas in the Nunavut Settlement Area. Their rights to do this are equivalent to Inuit harvesting rights under the wildlife provisions of the NLCA; the same conditions apply. (This is outlined in the Sahtu Dene and Métis Settlement Agreement.)

The Inuit retain certain traditional harvest rights within the Sahtu Dene and Métis settlement area. These rights may be limited by agreement between a designated Sahtu organization and the Inuit.

3.2 Jurisdictional Categories

Four jurisdictional categories of land exist in the Nunavut Settlement Area:

1. *Inuit Owned Lands* under the Nunavut Land Claims Agreement (NLCA). These lands are held by the Inuit in the following two manners:
 - a. Category 19.2.1(a) Inuit Owned Lands. Here the Inuit have a fee simple title in the lands, and fee simple title to all mines and minerals. For these lands, the Inuit act in general as private landowners. The lands are not federal lands, and any federal jurisdiction over the lands derives from the

NLCA.

- b. Category 19.2.1(b) Inuit Owned Lands. Here the Inuit have a fee simple title in the lands, excluding mines and minerals. The Inuit also have the right to specified substances, including sand and gravel. These surface lands are not federal lands, and any federal jurisdiction over the surface lands or the specified substances derives from the NLCA. The federal government has the fee simple equivalent title to mines and minerals (other than specified substances) and retains jurisdiction over them subject to the NLCA.
2. *Contwoyto Lake Lands*. Here the Inuit have a fee simple title in the lands and fee simple title to all mines and minerals. For these lands, the Inuit act in general as private landowners. The lands are not federal lands, and any federal jurisdiction over the lands derives from the NLCA.
3. *Municipal Lands*. These are owned by the Northwest Territories Commissioner or Municipal Corporations. This paper contains only a limited discussion of these lands.
4. *Federal Lands*. The federal government has jurisdiction over these subject to the NLCA.

Note: This publication does not discuss reserves under the *Indian Act*, and Commissioner's lands, other than municipal lands.

3.3 Inuit Owned Lands

3.3.1 Land Ownership

3.3.1.1 Administrative Bodies

The Arbitration Board, under the NLCA, has a role resolving certain disputes over:

- ! land exchanges;
- ! land dealings; and
- ! expropriations.

Please see 3.1.3 for more information.

3.3.1.2 Land Quantum

(Nunavut Settlement Agreement: Article 19)

On July 9, 1993, Inuit Owned Lands (totalling at least an area equal to the amounts specified in the NLCA) vested in the DIO. The vesting of title in two parcels was subject to disturbances and/or improvements made prior to that date. (One of these parcels was on the Melville Peninsula and the other in Lake Harbour.)

Note:

- ! The land quantum in schedules 19-2 to 19-7 does not include lands owned jointly by the Inuit of Nunavut and the Inuit of Northern Quebec.

- ! Inuit Owned Lands will not include marine areas or those areas described in the NLCA as Exempted High Arctic Areas.

3.3.1.3 Title

(Nunavut Settlement Agreement: Article 19)

Inuit Owned Lands are not deemed to be lands reserved for Indians. (Nunavut Settlement Agreement: Article 2)

In Category 19.2.1(a) Land, the Inuit have the following title:

- ! fee simple to the land; and

- ! fee simple to mines and minerals existing within, upon or under the lands.
In Category 19.2.1(b) Land, the Inuit have the following title:

- ! fee simple, *excluding* mines and minerals existing within, upon or under the lands and the right to work them; but

- ! *including* the right to all specified substances.

When specific future events take place, government will grant to the DIO certain other lands described in the NLCA. These lands will be held as Category 19.2.1(b) Inuit Owned Lands.

The NLCA describes certain lands at Pangnirtung, which become Category 19.2.1(b) Inuit Owned Lands, when the DIO acquires fee simple interest to that portion at no government cost.

Title to Inuit Owned Lands generally includes title to those lands covered by water, except where:

- ! the bank of a river, or other water body, forms the boundary of Inuit Owned Lands; or

! Inuit Owned Lands do not enclose a lake or other water body.

Natural boundaries of Inuit Owned Lands along waters are at ordinary high water mark. Specific property descriptions note any exceptions.

Lands within 100 feet of the boundary of the Nunavut Settlement Area cannot be Inuit Owned Lands, except where the bank of a river or lake:

! forms part of the Settlement Area boundary; and

! can be used to clearly locate the Inuit Owned Lands parcel as being within the Settlement Area.

The DIO will grant to government certain parcels of Inuit Owned Lands (and easements over other Inuit Owned Lands) for microwave repeater structures, as part of the North Warning System. Other Inuit Owned Lands are subject to easements for winter resupply of those sites. The NLCA describes these specific lands.

Certain Inuit Owned Lands are subject to easements described in the NLCA. The DIO and government must agree on terms and conditions for the exercise of these easements. Disputes will be resolved by arbitration under the NLCA.

If a municipal corporation no longer exists – and its municipal lands are abandoned and not required for government purposes – the DIO has a right of first refusal to buy the lands or exchange Inuit Owned Lands for them. Disputes over exchanges are to be resolved by arbitration under the NLCA.

The DIO can only convey the title to Inuit Owned Lands as follows:

! *for Inuit Owned Lands outside municipalities:*
the DIO can convey title to another DIO, or to the government, or as otherwise provided in NLCA;

! *for Inuit Owned Lands within municipalities:*
the DIO can convey title to the federal or territorial government, or a municipal corporation;

! the DIO can grant leases, licences, and any other interest or title, less than fee simple.

Where Inuit Owned Lands are subject to a third party interest (other than a mineral right) at the time of vesting in the DIO, the interest continues. However, the DIO assumes the rights and obligations of the Crown in relation to that interest. The DIO will receive all moneys payable by the interest holder, for the period following vesting. For this provision, “third party interest” means:

! a right granted under the *Territorial Lands Act* or the *Public Lands Grants Act* [*Federal Real Property Act*] enforceable against the Crown. These include:

- a land use permit, and
- a permit to prospect; but

! these do not include a prospecting licence for 19.2.1(a) Inuit Owned Lands. (Nunavut Settlement Agreement: Article 21)

Schedule	Land Use Region	Category 19.2.1(a) Lands minimum		Category 19.2.1(b) Lands minimum	
		square kilometres	square miles	square kilometres	square miles
19-2	North Baffin	6,010	2,320	80,050	30,910
19-3	South Baffin	4,480	1,730	60,265	23,270
19-4	Keewatin	12,845	4,960	82,695	31,931
19-5	Kitikmeot East	1,500	580	35,470	13,696
19-6	Kitikmeot West	9,645	3,724	56,745	21,911
19-7	Sanikiluaq	2,486	960	0	0
	Totals	36,966	14,274	315,225	121,718

3.3.1.4 Carving Stone Land Exchange

(Nunavut Settlement Agreement: Article 19)

After July 9, 1993, government will notify the DIO of a discovery of any deposits of carving stone on Crown lands. The DIO will (subject to government obligations respecting third party rights) have the right to exchange Inuit Owned Lands for lands with significant deposits of carving stone. Disputes will be resolved by arbitration under the NLCA.

3.3.1.5 Reimbursement

(Nunavut Settlement Agreement: Article 19)

The DIO will reimburse the territorial government for development costs incurred before July 9, 1993, on certain parcels identified in the NLCA. This payment will be made when a development permit is issued for the parcel.

3.3.1.6 Expropriation

(Nunavut Settlement Agreement: Article 21)

Inuit Owned Lands may be expropriated under the rules set out in the NLCA.

3.3.1.7 Squatter's Rights

(Nunavut Settlement Agreement: Article 21)

There are no squatter's rights on Inuit Owned Lands.

3.3.2 Land Use

3.3.2.1 Administrative Bodies

The Nunavut Planning Commission and the Nunavut Impact Review Board have roles in the approval of projects on Inuit Owned Lands. Please see 3.1.3 for more information. The Inuit Heritage Trust has a role in the ownership and management of archeological specimens and sites. Please see 3.1.3 for more information.

3.3.2.2 General

Throughout the Nunavut Settlement Area, government generally has the right to protect and manage water (and land covered by water), and to use water in connection with that right. Government will use this right for public purposes, including:

- ! wildlife management;
- ! navigation and transportation management;
- ! dredging of navigable waters;
- ! protection from contamination; and
- ! flood control.

This general right is subject to the specific provisions of the NLCA. (Nunavut Settlement Agreement: Article 19)

The primary responsibility for the management of lands (including flora) shall be exercised by appropriate government agencies and other related bodies set out in NLCA. (Nunavut Settlement Agreement: Article 5)

3.3.2.3 Parks

(Nunavut Settlement Agreement: Article 8)

The NLCA sets out the special management regime in national and territorial parks (and proposed parks).

3.3.2.4 Conservation Areas

(Nunavut Settlement Agreement: Article 9)

The special management regime for Conservation Areas is set out in the NLCA. Conservation Areas means:

- ! any existing Conservation Area; and
- ! any of various areas, when established under legislation. These include:
 - national wildlife areas,
 - national historic sites,
 - Canadian heritage rivers, and so on.

3.3.2.5 Inuit Impact and Benefit Agreements

(Nunavut Settlement Agreement: Article 26)

A major development project requires a finalized “Inuit Impact and Benefit Agreement” before it may commence, except where:

- ! the DIO and the proponent of the project agree otherwise;
- ! there is a military or national emergency (in this case a project requires permission of the Minister for Indian Affairs and Northern Development); or
- ! the Minister gives approval for an early project start-up, on certain conditions.

Under the NLCA, “major development project” means any project of a Crown corporation or the private sector, involving (in a five year period) over 200 person-years of employment or \$35 million in capital costs. The NLCA definition of major development projects only includes:

- ! a water power generation (or water exploitation) project in the Nunavut Settlement Area; or
- ! a resource development or exploitation project (but not an exploration project) wholly or partly under Inuit Owned Lands.

3.3.2.6 Archaeology

(Nunavut Settlement Agreement: Article 33)

The NLCA sets out a permit system for archaeological sites. This system will be used in future archaeological legislation for the Nunavut Settlement Area.

Where a land use application is made in the Nunavut Settlement Area, and there is a reasonable belief that there could be archaeological sites on the lands, no one will issue a land use permit without:

- ! obtaining the consent of a designated federal or territorial agency (the NLCA lists these); and
- ! attaching certain terms and conditions to the permit.

Government and the Inuit Heritage Trust jointly own all archaeological specimens found within the Nunavut Settlement Area that are not:

- ! public records;
- ! private property; or
- ! within Canadian Parks Service administered lands. (Specimens in these lands are managed in accordance with NLCA.)

The NLCA deals with the title to, and use of, archaeological specimens.

3.3.3 General Access Rights

3.3.3.1 Administrative Bodies

The Surface Rights Tribunal has a role in permitting and terminating access to Inuit Owned Lands. Please see 3.1.3 for more information.

Someone wishing to exercise certain rights may first need to obtain authorization from the Nunavut Impact Review Board and the Nunavut Water Board. Please see 3.1.3 for more information.

3.3.3.2 General

(Nunavut Settlement Agreement: Article 21)

Non-Inuit persons may not enter, cross or remain on Inuit Owned Lands without the consent of the DIO. The NLCA provides some exceptions to this rule. See the paragraph

below, entitled “Public Access,” for more information.

Any person exercising access rights under the NLCA (other than certain general public access rights and national defence access rights) shall, where required, get Nunavut Impact Review Board and Nunavut Water Board authorization before exercising his or her rights.

3.3.3.3 Public Access

(Nunavut Settlement Agreement: Article 21)

Under the NLCA, the public has access over Inuit Owned Lands as follows.

- ! The public has an access right (for purpose of travel by water and for recreation) to a 100 foot strip of Inuit Owned Lands bounding:
 - the sea coast;
 - navigable rivers; and
 - navigable lakes that can be entered from these rivers.

The strip is measured from the ordinary high water mark. The access right includes access to the foreshore adjacent to the strip. “Foreshore” means the land between the edge of the water and the high water mark.

- ! The public has an access right to enter and remain on Inuit Owned Lands for emergencies.
- ! The public has an access right to cross Inuit Owned Lands for personal or casual travel, including:
 - travel to or from work, or a recreation place; and
 - the right to make necessary stops.

Wherever possible, crossings will take place on routes designated by the DIO. The DIO and government may agree to remove this right where the DIO requires exclusive possession.

- ! Politicians, political candidates and their entourage can enter Inuit Owned Lands for election campaigning.
- ! The public has an access right on the Inuit Owned Lands described in the NLCA for:
 - the Kingnait Public Access Easement; and
 - the Milne Inlet Tote Road Public Access Easement.

Subject to laws of general application and the wildlife provisions of the NLCA, a member of the Public:

- ! (while exercising an access right) may harvest wildlife for non-commercial purposes;
- ! may harvest wildlife in the waters;
- ! (while exercising an access right or harvesting wildlife) cannot:
 - engage in any development activity, or
 - establish camps or structures (other than casual or temporary) on the 100 foot strip of land described above.

The DIO and government can agree to remove certain public access rights and harvest rights where the DIO requires exclusive possession. The DIO and government can agree to remove the water harvest right.

With DIO consent, persons conducting research for public knowledge:

- ! have the same access right to Inuit Owned Lands as do government employees, and contractors working for government; or
- ! have an access right to Inuit Owned Lands under DIO terms and conditions. Persons conducting this research are exempt from paying fees. The public access rights to Inuit Owned Lands are conditional upon there being:
 - ! no significant damage;
 - ! no mischief; and
 - ! no significant interference with Inuit use and enjoyment of lands.

Persons exercising access rights are liable for damages caused to the land. Failure to comply with the conditions of access makes a person a trespasser.

No access fees are payable and no terms and conditions can be applied on rights of access, except as provided in NLCA.

3.3.3.4 Government Access

(Nunavut Settlement Agreement: Article 21)

Access by government employees, agents and contractors is set out in the NLCA.

3.3.3.5 Third Party Access

(Nunavut Settlement Agreement: Article 21)

A person (with no other rights of access under the NLCA) may require access to Inuit Owned Lands to exercise his or her right on lands other than Inuit Owned Lands. When this involves a right:

- ! to explore,
- ! to develop,
- ! to produce or transport minerals,

the Surface Rights Tribunal may grant access, where the Tribunal is satisfied that access is reasonably required. (For example, someone may have a right to conduct exploration on lands adjacent to Inuit Owned Land. The person may not have a right to cross Inuit Owned Land to do his or her work. However, the Tribunal might grant access in such a case.)

The Surface Rights Tribunal can resolve a compensation dispute where the DIO agrees to let a third party cross Inuit Owned Lands for commercial purposes.

A person has access across Inuit Owned Lands for commercial purposes (when not otherwise covered in the NLCA) *with the consent* of the DIO. Failing such consent, the person may apply to the arbitration panel under NLCA or the Surface Rights Tribunal.

3.3.4 Non-renewable Resources

3.3.4.1 Administrative Bodies

The Surface Rights Tribunal has a role in access and compensation relating to non-renewable resources. Please see 3.1.3 for more information.

3.3.4.2 Petroleum Exploration

(Nunavut Settlement Agreement: Article 27)

Government will notify the DIO, and give it an opportunity to be heard, before opening any lands in the Nunavut Settlement Area for petroleum exploration.

3.3.4.3 Subsurface Boundary Disputes

(Nunavut Settlement Agreement: Article 19)

Certain subsurface boundary disputes on 19.2.1(a) Inuit Owned Lands will be resolved in accordance with the Canada Mining Regulations (as they existed on July 9, 1993). These

may involve disputes between a recorded mineral claim holder and the holder of an interest created by the DIO in the 19.2.1(a) Inuit Owned Lands.

3.3.4.4 Specified Substances

(Nunavut Settlement Agreement: Article 19)

“Third party interest” (for the purposes of these provisions) means a right granted under the Territorial Lands Act or the Public Lands Grants Act enforceable against the Crown. This includes:

- ! a land use permit; and
- ! a permit to prospect; but
- ! it does not include a prospecting licence for 19.2.1(a) Inuit Owned Lands.
(Nunavut Settlement Agreement: Article 21)

A third party holding a mineral right from the Crown on Inuit Owned Lands, has the right to remove and use incidental specified substances in the land in the course of exercising the mineral right. No compensation shall be payable by the third party to the DIO except:

- ! under third party access provisions of the NLCA; and
- ! where the specified substance is used for a purpose not directly related to the exercise of the mineral right.

Disputes on compensation may be referred, by the third party or the DIO, to the Surface Rights Tribunal.

If government requires sand, gravel and other construction materials from Inuit Owned Lands for public purposes, but the DIO does not consent, government may apply to the Surface Rights Tribunal for an entry order. Conditions and royalties are set out in the NLCA. (Nunavut Settlement Agreement: Article 21)

Where Inuit Owned Lands are subject to a third party right to specified substances at the time of vesting in the DIO, the right continues. However, the DIO assumes the Crown’s rights and obligations in relation to the interest. The DIO will receive all moneys payable by the interest holder, for the period following vesting.

No person other than the DIO shall be granted a permit or a lease to dispose of carving stone for carving purposes.

3.3.4.5 Access Rights

(Nunavut Settlement Agreement: Article 21)

The NLCA governs operators exercising rights in, on or under Inuit Owned Lands:

- ! to explore;
- ! to develop; or
- ! to produce or transport minerals.

For certain types of access, the operator requires the consent of the DIO before exercising the mineral rights. The Surface Rights Tribunal may issue an entry order if there is no consent.

Someone with a right to prospect for minerals, has a right of access to Inuit Owned Lands (with the consent of the DIO) for the purpose of conducting activities – where those activities would not require a land use permit under the Territorial Land Use Regulations, if they were conducted on Crown lands.

(The DIO and government have approved a code for expediting prospecting access on Inuit Owned Lands. The DIO will consent to activities that are conducted according to that code.)

3.3.4.6 Existing Mineral Interests

(Nunavut Settlement Agreement: Article 21)

Where 19.2.1(a) Inuit Owned Lands are subject to a third party mineral interest (other than specified substances) at the time they vest in the DIO, the right continues. This includes rights arising from:

- ! legislation existing at the time of vesting; and
- ! any successor legislation applicable to similar interests on Crown land.

The following rules also apply:

- ! the DIO has to consent for successor legislation to apply to Inuit Owned Lands, if the new legislation will diminish rights of the DIO;
- ! government continues to administer the interest, and legislation continues to apply, until the interest holder and the DIO agree that the DIO will administer the interest. At that time, government will transfer administration to the DIO;
- ! following vesting, the DIO receives all moneys payable by the interest holder;

- ! government consults the DIO concerning the exercise of government's powers in relation to interests;
- ! the consent of the DIO is required for government to reduce or waive a royalty;
- ! government shares with the DIO certain information (required by statute) from interest holders; and
- ! the proponent and government have to consult with the DIO before exercising rights under certain conditions. (Nunavut Settlement Agreement: Article 27)

3.3.4.7 Right to Work Minerals on 19.2.1(b) Lands

(Nunavut Settlement Agreement: Article 19)

The right to work minerals reserved to the government on 19.2.1(b) Inuit Owned Lands does not allow a person to explore, develop, produce or transport minerals in, on or under Inuit Owned Lands except in accordance with the access provisions of the NLCA.

3.3.5 Forestry and Plants

(Nunavut Settlement Agreement: Article 5)

The primary responsibility for management of lands, including flora, shall be exercised by appropriate government agencies and any other related bodies set out in the NLCA. The NLCA contains no special provisions relating to forestry and plants.

3.3.6 Water Use and Waste Deposit

3.3.6.1 Administrative Bodies

The Nunavut Water Board has responsibilities and powers at least equivalent to those held by the Northwest Territories Water Board under the Northern Inland Waters Act. These responsibilities and powers relate to the regulation, use and management of water in the Nunavut Settlement Area. Please see 3.1.3 for more information.

3.3.6.2 General

(Nunavut Settlement Agreement: Article 20)

The water use provisions of the NLCA do not override (or allow conditions or charges to be placed on the exercise of):

- ! public rights of navigation;

- ! rights of innocent public passage on water (“innocent” means a person in not aware of having crossed into Inuit Owned Lands);
- ! use of water for emergency purposes; or
- ! ability to use water for domestic use as defined in the *Northwest Territories Waters Act*.

The water use provisions are subject to the public’s right to harvest wildlife under the NLCA.

The DIO has the right to go to court to seek determination of certain issues related to water use.

3.3.6.3 Development Operations

Where an operator working on Inuit Owned Lands has obtained, from the Nunavut Water Board, the right to use water:

- ! the operator does not have to obtain DIO consent to use that water. However, the operator may have to pay compensation to use the water, as required by the NLCA;
- ! existing Inuit water uses take priority over the operator’s requirements for water in Inuit Owned Lands; and
- ! the operator may still need to obtain a right-of-way agreement from the DIO, and pay compensation for the right-of-way. (Nunavut Settlement Agreement: Article 20)

3.3.6.4 Inuit Water Rights

(Nunavut Settlement Agreement: Article 20)

The DIO has the exclusive right to use waters on, in, or flowing thorough Inuit Owned Lands. However, any use of those waters must comply with the water management provisions of the NLCA. The right is also subject to any exceptions in specific property descriptions.

The DIO has the right to have the water (flowing through Inuit Owned Lands) substantially unaltered as to quality, quantity and flow. This provision applies even where a water body marks the Inuit Owned Lands boundary and the water body is not located entirely on Inuit Owned Lands. However, the Nunavut Water Board may still approve water uses upon payment of compensation.

3.3.6.5 Compensation

(Nunavut Settlement Agreement: Article 20)

If a project or activity in the Nunavut Settlement Area may substantially alter:

- ! the quality,
- ! the quantity, or
- ! the flow,

of waters flowing through Inuit Owned Lands, the Nunavut Water Board can only approve that project or activity if compensation is payable to the DIO. This provision applies even where a water body marks the Inuit Owned Lands' boundary, and the water body is not located entirely on Inuit Owned Lands. In setting compensation, the Board must take into account factors set out in the NLCA.

3.3.6.6 Projects Outside the Nunavut Settlement Area

(Nunavut Settlement Agreement: Article 20)

Where a project or activity outside the Nunavut Settlement Area, but within the Northwest Territories, may substantially affect:

- ! the quality,
- ! the quantity, or
- ! the flow of water flowing through Inuit Owned Lands,

the competent water authority cannot approve the project or activity unless compensation is payable to the DIO. This provision applies even where a water body marks the Inuit Owned Lands' boundary, and the water body is not located entirely on Inuit Owned Lands.

The same factors, and payment or cost provisions, apply as in the case of projects on Inuit Owned Lands.

3.3.7 Fish and Wildlife

3.3.7.1 Administrative Bodies

The Nunavut Wildlife Management Board, the Hunter's and Trapper's Organizations and

the Regional Wildlife Organizations all have certain roles in fish and wildlife management. Please see 3.1.3 for more information.

The Surface Rights Tribunal has a specific role in wildlife compensation. Please see 3.1.3 for more information.

3.3.7.2 General

(Nunavut Settlement Agreement: Article 5)

The primary responsibility for managing lands (including flora) shall be exercised by appropriate government agencies and any other related bodies set out in the NLCA.

None of these wildlife rights applies in respect to wildlife harvested outside Nunavut Settlement Area.

Only an Inuk, or a person having existing rights and activities, or a person approved by a Hunter's and Trapper's Organization, may harvest furbearers in the Nunavut Settlement Area. The latter two are subject to laws of general application.

A person (other than an Inuk) harvesting big game, requires a licence from government and, for two years after, accompaniment by an Inuk guide.

Government gives preference to residents when allocating commercial licences.

Emergency kills of wildlife are permitted under the NLCA.

The Inuit have free and unrestricted right of access (for the purpose of wildlife harvesting) to all lands, water and marine areas in the Nunavut Settlement Area. This includes municipal lands, parks and conservation areas, with the following exceptions, and under the following conditions.

Exceptions

The Inuit do not have unrestricted rights of access (described above) to the following:

- ! military or national security lands;
- ! lands held in fee simple title on July 9, 1993, other those owned by a municipality;
- ! lands (under one square mile) held in fee simple title, granted after July 9, 1993;
- ! lands held under an agreement of sale on July 9, 1993;
- ! lands subject to surface lease on October 27, 1981, where the access not renegotiated; and

- ! lands within one mile of:
 - a structure on fee simple lands,
 - lands under surface lease, or
 - lands under an agreement for sale.

Conditions

The Inuit's unrestricted access rights (described above) are subject to:

- ! public safety laws of general application;
- ! any Nunavut Wildlife Management Board conservation restrictions;
- ! any bilateral agreements between the Inuit and the management in parks or conservation areas;
- ! any land use activity (to the extent the access right is incompatible with the activity), so long as the activity is exercised. (For example, there may be places where hunting would be incompatible with current mining activity, or some other land use.) Disputes may be arbitrated under the NLCA; and
- ! the right of access not impeding navigation.

Government agrees to insert a clause, in renewals or transfers of existing surface leases of one square mile or over, to make leases subject to the rights of Inuit access for wildlife harvesting (unless government would incur a legal liability).

Under the NLCA, any contractual limitation on access or harvesting by the Inuit in their leisure time is void.

The assignment of harvest rights to Inuit and non-Inuit is possible under conditions set out in the NLCA.

3.3.7.3 Wildlife Compensation

(Nunavut Settlement Agreement: Article 6)

A developer is liable for loss or damage suffered as a result of development activity in the Nunavut Settlement Area. This includes liability for:

- ! loss or damage to property or equipment used in wildlife harvesting,
- ! loss of income from wildlife harvesting, or
- ! loss of wildlife,

unless the loss or damage is caused by “force majeure.” (“Force majeure” means an irresistible force or collusion.) This liability may be limited by legislation. The Surface Rights Tribunal rules on wildlife compensation claims.

Where an Inuit Impact Benefits Agreement includes wildlife compensation, this precludes the need to address the subject under the water rights, and access rights, provisions of the NLCA.

A developer and the DIO can enter into a wildlife compensation agreement that would replace the NLCA obligations.

3.3.7.4 Harvesting and Public Access Right

(Nunavut Settlement Agreement: Article 21)

A person may be exercising his or her public access right as described in 3.3.3.3. (We repeat the appropriate information below.) That person has a conditional right to harvest wildlife (while exercising that public access right). The DIO and government may remove these harvest rights.

Public Access Right

The public has an access right (for purpose of travel by water and for recreation) to a 100 foot strip of Inuit Owned Lands bounding:

- ! the sea coast;
- ! navigable rivers; and
- ! navigable lakes that can be entered from these rivers.

The strip is measured from the ordinary high water mark. The access right includes access to the foreshore adjacent to the strip. “Foreshore” means the land between the edge of the water and the high water mark. (Please see 3.3.3.3 for more information.)

3.3.8 Environmental Assessment

(Nunavut Settlement Agreement: Article 12)

3.3.8.1 Administrative Bodies

The Nunavut Impact Review Board has a role in screening and reviewing proposed projects for their environmental impacts. A federal Environmental Assessment Panel may also review projects. Please see 3.1.3 for more information.

3.3.9 Economic Development

Any government agency will give preference to qualified Inuit contractors, in awarding contracts relating to archaeological work in the Nunavut Settlement Area. (Nunavut Settlement Agreement: Article 33) The DIOs have a first right of refusal on new wildlife

marketing and wildlife product collection or processing. (Nunavut Settlement Agreement: Article 5)

3.4 Contwoyto Lake Lands

3.4.1 General

(Nunavut Settlement Agreement: Article 41)

On July 9, 1993, government was to grant to the DIO the fee simple title (including mines and minerals within, upon, or under the lands) to the following lands :

- ! west side of Fry Inlet at Contwoyto Lake, 406 square kilometres (approximately 157 square miles); and
- ! east side of Fry Inlet at Contwoyto Lake, 166 square kilometres (approximately 64 square miles).

These lands are not Inuit Owned Lands, but the subsurface boundary dispute resolution provisions of the NLCA apply to such lands as if they were Inuit Owned Lands. Where the Contwoyto Lake Lands were subject to a mineral right (other than to specified substances), that:

- ! existed when the land vested,
- ! was not a prospecting licence,
- ! was granted under the *Territorial Lands Act* or the *Public Lands Grants Act*, and
- ! was enforceable against the Crown at June 12, 1992,

the right continues in accordance with its terms and conditions.

The latter includes rights arising from:

- ! legislation existing at the time of vesting; and
- ! any successor legislation applicable to similar interests on Crown land.

The DIO has to consent for successor legislation to apply to Contwoyto Lake Lands, if the new legislation will diminish rights of the DIO.

After title vests in the DIO, the government will forward to the DIO payments that these right holders made for the use or exploitation of minerals (other than specified substances).

The NLCA provisions relating to existing third party rights on Inuit Owned Lands apply to such rights on the Contwoyto Lake Lands.

The “Inuit Impact and Benefit Agreements” provisions of the NLCA apply to any project on Contwoyto Lake Lands, that involves the development or exploitation of minerals (other than specified substances, and not including exploration). These provisions apply as if the project were a “major development project.” Benefits are restricted to those relating to the particular properties involved.

In all other respects, the Contwoyto Lake Lands are treated as private lands in the Northwest Territories.

3.5 Municipal lands

3.5.1 General

(Nunavut Settlement Agreement: Article 14)

“Municipal lands” in the NLCA means all lands within a municipal boundary, except:

- ! Inuit Owned Lands;
- ! Crown lands that are:
 - beds of water bodies,
 - within a 100 foot strip along the shoreline,
 - identified in the “Inventory of government and Crown Agency lands in Municipalities,”
 - acquired by the Crown after July 9, 1993;
- ! fee simple lands not owned by a municipal corporation; and
- ! mines and minerals (other than granular, quarry and construction materials).

The NLCA lists communities which had corporate municipality status on the date the NLCA took effect. The municipal lands provisions of the NLCA apply to future municipal corporations, on the date of their establishment.

By July 9, 1996, the Commissioner of the Northwest Territories conveyed, to the municipal corporation, fee simple title to any municipal lands within the municipality’s built-up area. After this conveyance, the municipal corporation can request that it receive fee simple title to all surveyed land within the municipality. This is subject to third party interests existing at the date of conveyance.

All municipal lands not conveyed to a municipal corporation, are administered by the

Commissioner on the municipality's behalf. The Commissioner cannot create or dispose of interests in municipal lands without the prior consent of the municipal corporation. The Commissioner can transfer (to a Crown Minister, agent or servant) those municipal lands not already conveyed to a municipal corporation. Lands transferred in this way cease to be municipal lands. This transfer requires either:

- ! approval of the municipal corporation; or
- ! compensation payable to the municipal corporation, as if the transfer were an expropriation.

The Commissioner administers (on behalf of the municipality) the 100-foot strip along the shoreline. The Commissioner cannot permanently dispose of the strip, but can create interests in the strip with the prior consent of the municipal corporation.

The Commissioner can transfer the strip to a Crown Minister, agent or servant. Lands transferred in this way cease to be administered on behalf of the municipality. This transfer requires either:

- ! the approval of the municipal corporation; or
- ! compensation payable to the municipal corporation (as if the transfer were an expropriation).

Municipal boundaries can be varied, but a variance will not:

- ! affect in itself the title to lands;
- ! include Inuit Owned Lands (without the permission of the DIO); or
- ! require the amending of the NLCA.

There may be surplus Crown lands within municipal boundaries, which government no longer needs. Government will convey fee simple title of surplus lands to the municipal corporation for a nominal consideration.

On April 11, 1995, the territorial government conducted a referendum within each municipality. This would determine whether municipal voters wanted to restrict permanent alienation of municipal lands. ("Alienation" means selling, leasing, and so on, parcels of land.)

- ! If the vote was in favour of restriction, the municipal corporation cannot:
 - convey any interests or rights in municipal lands that are for more than 99 years,

- grant renewals, or any interests or rights that arise at least 100 years in the future.

! Prior to the referendum, these limits applied to all municipal lands.

! The restrictions are in effect for at least 20 years after the vote.

Where no municipal plan is in effect for municipal lands, the municipal corporation cannot create any interest in the lands (or allow any development to proceed on the lands) without the Commissioner's consent.

A municipal corporation can temporarily transfer its administration of municipal lands to the Commissioner.

If a municipal corporation no longer exists (and its municipal lands are abandoned and not required for government purposes), the DIO has a right of first refusal to buy the lands or exchange Inuit Owned Lands for them. Disputes over these exchanges will be resolved by arbitration under the NLCA.

The expropriation of municipal lands is governed by laws of general application. The Inuit have free and unrestricted right of access (for the purpose of wildlife harvesting) to all:

! lands

! water, and

! marine areas

in Nunavut Settlement Area (including municipal lands) with the exceptions and under the conditions listed in 3.3.7.2. (Nunavut Settlement Agreement: Article 5)

3.6 Federal lands

The jurisdictional regime is the same as under Chapter 8 of this document, entitled "Other Northwest Territories Federal Lands," except as follows.

3.6.1 Land Ownership

The lands may be divided into three jurisdictional categories:

1. Federal lands administered by the Minister of Indian Affairs and Northern Development;
2. Federal lands administered by other federal Ministers; and

3. Federal lands owned or administered by agent Crown corporations.

The Minister of Indian Affairs and Northern Development administers most federal lands in this area. The Northern Affairs Program of the Department of Indian and Northern Development is responsible for managing these lands.

The exceptions (under the *Department of Indian Affairs and Northern Development Act*) include federal lands in the Yukon Territory and Northwest Territories administered by another Minister prior to October 1, 1966.

The Minister of Canadian Heritage administers national parks.

The Minister of Public Works and Government Services administers all federal lands not specifically under the administration of another Minister.

3.6.2 Land Use

The *Territorial Lands Act* governs (in general) land use activities on federal lands administered by the Minister of Indian Affairs and Northern Development. The Territorial Land Use Regulations under that Act require permits for certain activities. Sale and leasing of these lands are governed primarily by the *Territorial Lands Act* and the Territorial Lands Regulations. However, the sale and leasing of certain offshore areas (administered by the Minister of Indian Affairs and Northern Development) are governed by the *Federal Real Property Act* and the Federal Real Property Regulations under that Act.

The sale and leasing of federal lands administered by other federal Ministers are governed by specific legislation or the Federal Real Property Act and the Federal Real Property Regulations under that Act. However, the Territorial Lands Act governs the use and disposition of lands administered by the Minister responsible for the Northern Pipeline Act.

Specific legislation and Part X of the Financial Administration Act governs the sale and leasing of federal lands owned or administered by agent Crown corporations.

3.6.2.1 Administrative Bodies

The Nunavut Planning Commission and the Nunavut Impact Review Board have roles in the approval of projects in the Nunavut Settlement Area and in the Outer Land Fast Ice Zone. Please see 3.1.3 for more information.

The Inuit Heritage Trust has a role in the ownership and management of archeological specimens and sites in the Nunavut Settlement Area. Please see 3.1.3 for more information.

3.6.2.2 General

Throughout the Nunavut Settlement Area, government generally has the right to protect and manage water (and land covered by water), and to use water in connection with that right. Government will use this right for public purposes, including:

- ! wildlife management;
- ! navigation and transportation management;
- ! dredging of navigable waters;
- ! protection from contamination; and
- ! flood control.

This general right is subject to the specific provisions of the NLCA. (Nunavut Settlement Agreement: Article 19)

The primary responsibility for management of lands (including flora) shall be exercised by appropriate government agencies and any other related bodies set out in NLCA. (Nunavut Settlement Agreement: Article 5)

3.6.2.3 Parks

(Nunavut Settlement Agreement: Article 8)

The NLCA sets out the special management regime in national and territorial parks (and proposed parks).

3.6.2.4 Conservation Areas

(Nunavut Settlement Agreement: Article 9)

The special management regime for conservation areas is set out in the NLCA. “Conservation areas” means:

- ! any existing conservation area; and
- ! any of various areas, when established under legislation. These include:
 - national wildlife areas,
 - national historic sites,
 - Canadian heritage rivers, and so on.

3.6.2.5 Land Use Planning

(Nunavut Settlement Agreement: Article 11)

The land use planning provisions of the NLCA apply to both land and marine areas within the Nunavut Settlement Area and the Outer Land Fast Ice Zone. In the land use planning provisions, land includes water and resources, including wildlife.

3.6.2.6 Development Impact

(Nunavut Settlement Agreement: Article 12)

The development impact provisions apply to:

- ! land and marine areas within the Nunavut Settlement Area;
- ! the Outer Land Fast Ice Zone;
- ! shipping associated with project proposals in the Nunavut Settlement Area (with some exceptions); and
- ! national defence facilities and activities (although there may be exemptions for national security, confidentiality or urgency).

No licence or approval allowing a project to proceed will be issued until the Nunavut Impact Review Board completes its screening and review, and issues a project certificate. The NLCA lists two exceptions to this rule.

3.6.2.7 Inuit Impact and Benefit Agreements

(Nunavut Settlement Agreement: Article 26)

A major development project requires a finalized “Inuit Impact and Benefit Agreement” before it may commence, except where:

- ! the DIO and the proponent of the project agree otherwise;
- ! there is a military or national emergency (in this case the Minister’s permission is required); or
- ! the Minister gives approval for an early project start-up, on certain conditions.

Under the NLCA, “major development project” means any project of a Crown corporation or the private sector, involving (in a five year period) over 200 person-years of employment or \$35 million in capital costs. The NLCA definition of major development projects only includes:

- ! a water power generation (or water exploitation) project in the Nunavut Settlement Area; or

- ! a resource development or exploitation project (but not an exploration project) wholly or partly under Inuit Owned Lands.

3.6.2.8 Archaeology

(Nunavut Settlement Agreement: Article 33)

The archaeology provisions of the NLCA apply to marine areas in the Nunavut Settlement Area.

The NLCA sets out a permit system for archaeological sites. This system will be used in future archaeological legislation for the Nunavut Settlement Area.

Where a land use application is made in the Nunavut Settlement Area, and there is a reasonable belief that there could be archaeological sites on the lands, no one will issue a land use permit without:

- ! obtaining the consent of a designated federal or territorial agency (the NLCA lists these), and
- ! attaching certain terms and conditions to the permit.

Government and the Inuit Heritage Trust jointly own all archaeological specimens found within the Nunavut Settlement Area that are not:

- ! public records;
- ! private property; or
- ! within Canadian Parks Service administered lands (where specimens managed in accordance with NLCA).

The NLCA deals with the title to, and use of, archaeological specimens.

3.6.2.9 Outpost Camps

(Nunavut Settlement Agreement: Article 7)

The Inuit may continue to occupy outpost camps under the NLCA.

After July 9, 1993, the Inuit may establish new outpost camps on any lands in the Nunavut Settlement Area where the Inuit have a general access right for wildlife harvesting under the NLCA, and where the lands are:

- ! not “fee simple lands,” other than Inuit Owned lands or municipal corporation

lands;

- ! not under surface lease;
- ! not within municipal boundaries (unless the municipal corporation consents); and
- ! not within a park or conservation area, where establishing a camp would be inconsistent with the park or area management plan under the NLCA. Site locations will be determined by an Inuit Impact Benefit Agreement between the DIO and the appropriate management agency.

New outpost camps must also have the approval of the appropriate Hunter's and Trapper's Organizations.

The Inuit will occupy outpost camps as tenants-at-will. Their tenancy may be terminated upon notice by government:

- ! if there is a proposed use for the land, which conflicts with the tenancy; or
- ! if government removes a general access right.

Upon request, government will make lands available for establishing outpost camps. Government will provide the lands under leases or licences of at least five-year terms. Special conditions apply to requests for lands for outpost camps in parks and conservation areas

·
Holders of subsurface rights in lands occupied as outpost camps enjoy the same rights of access as do subsurface rights holders under common law or statute.

Organizations and agencies responsible for the management of wildlife, lands, and resources (as provided in the NLCA or in legislation) shall endeavour to protect the interests of the Inuit occupying outpost camps.

The Inuit may establish outpost camps on archaeological sites. The Inuit Heritage Trust may set terms and conditions for the use and occupation of such sites. Special conditions apply for parks and conservation areas.

3.6.2.10 Marine Areas

(Nunavut Settlement Agreement: Article 15)

Some parks or conservation areas extend beyond marine areas. In this case, the NLCA provisions (relating to parks and conservation areas) apply to the entire park or conservation area.

Various provisions in the NLCA apply to marine areas.

There shall be no Inuit Owned Lands in marine areas.

Government may need to make wildlife management decisions in Zones I and II, which will affect Inuit harvesting rights within marine areas of the Nunavut Settlement Area. In these situations, government will seek advice from the Nunavut Wildlife Management Board. The Board may make recommendations relating to wildlife management in those zones.

Government will promote a fair distribution of commercial fishing licences within Zones I and II, between Nunavut Settlement Area residents and other residents of Canada.

Marine area provisions of the NLCA do not preclude Inuit access to wildlife harvesting in Zones I and II.

Nunavut administrative boards may each (or jointly, through the Nunavut Marine Council) make recommendations to government agencies regarding marine areas.

3.2.6.11 Outer Land Fast Ice Zone – East Baffin Coast

(Nunavut Settlement Agreement: Article 16)

Various sections of the NLCA apply to the Outer Land Fast Ice Zone. The Inuit have the right to continue to use open waters, in the Zone, for domestic harvesting of species (other than marine mammals). The Inuit will not need licences for these activities. Other management regulations imposed by government will apply to the Inuit exercising this right.

Fisheries in the Zone shall be managed so as not to deplete marine mammal populations.

3.6.3 General Access Rights

3.6.3.1 Administrative Bodies

The Surface Rights Tribunal has a role in permitting and terminating access to lands in the Nunavut Settlement Area. Please see 3.1.3 for more information.

3.6.3.2 General

(Nunavut Settlement Agreement: Article 21)

Where no adequate public route is available, government will not deprive the Inuit of reasonable access, through Crown lands, to Inuit Owned Lands. This applies to any legislation government enacts, and to other management practices. The manner in which

the Inuit exercise that access is subject to laws of general application.

3.6.4 Non-renewable Resources

3.6.4.1 Administrative Bodies

The Surface Rights Tribunal has a role in:

- ! permitting and terminating access to lands in the Nunavut Settlement Area;
- ! determining compensation payable to surface rights holders; and
- ! resolving certain disputes between subsurface interest holders.

Please see 3.1.3 for more information.

3.6.4.2 Natural Resource Development

(Nunavut Settlement Agreement: Article 27)

Government shall notify the DIO, and give it the opportunity to be heard, before opening any lands in the Nunavut Settlement Area for petroleum exploration.

A proponent wishing to begin a project, and government, will consult the DIO before the first time any of these rights are exercised:

- ! petroleum exploration, development or production rights on Crown lands in the Nunavut Settlement Area;
- ! non-petroleum resource development or production rights on Crown lands in the Nunavut Settlement Area.

The NLCA describes certain matters to be discussed in this consultation.

3.6.4.3 Outpost Camps

(Nunavut Settlement Agreement: Article 7)

Holders of subsurface rights (in lands occupied as outpost camps) enjoy the same rights of access as subsurface rights holders under common law or statute.

3.6.4.4 Carving Stone

(Nunavut Settlement Agreement: Article 19)

After July 9, 1993, government will notify the DIO whenever deposits of carving stone are discovered on Crown lands. Government may have obligations concerning third party rights. Subject to those obligations, the DIO will have the right to:

- ! obtain an exclusive quarry lease to significant deposits of carving stone; or
- ! exchange Inuit Owned Lands for lands with significant deposits of carving stone.

Disputes will be resolved by arbitration under the NLCA.

An Inuk has the right to remove up to 50 cubic metres of carving stone annually, from Crown lands, without permit. This right may be exercised on land subject to other interests if there is no significant damage or significant interference with use of the land by the interest holder.

If there is a conflict between a DIO holding a permit or lease to quarry carving stone and a person having rights to explore, develop or produce minerals (other than specified substances), the Surface Rights Tribunal may resolve the conflict.

No person other than a DIO shall be granted a permit or lease:

- ! to quarry carving stone on Crown lands for carving purposes; or
- ! to dispose of carving stone for carving purposes.

Whenever the parks agency considers establishing a national park in the Nunavut Settlement Area, the Inuit in affected communities may request that the agency undertake a detailed study to determine the potential for carving stone in the park. The agency will comply with this request.

At the request of the Inuit, significant deposits of carving stone and routes of access shall be excluded from the boundaries of the park (unless this would cause a significant detraction from the park purpose or objectives).

Carving stone provisions (in the NLCA) do not apply within national parks. Within these parks, the Inuit have the right to remove carving stone without permission from the park agency:

- ! subject to an Inuit Impact Benefits Agreement under the NLCA; and
- ! if powered tools or explosives are not used.

Within territorial parks and conservation areas, the Inuit may only exercise certain carving stone rights as provided in an Inuit Impact Benefits Agreement under the NLCA.

3.6.5 Forestry and Plants

The primary responsibility for management of lands (including flora) shall be exercised by appropriate government agencies and such other related bodies as set out in the NLCA. The NLCA contains no special provisions relating to forestry and plants.

3.6.6 Water Use and Waste Deposit

3.6.6.1 Administrative Bodies

The Nunavut Water Board has responsibilities and powers over the regulation, use and management of water in the Nunavut Settlement Area, at least equivalent to those held by the Northwest Territories Water Board under the *Northwest Territories Waters Act*. Please see 3.1.3 for more information.

3.6.6.2 General

(Nunavut Settlement Agreement: Article 20)

The water use provisions of the NLCA do not override (or allow conditions or charges to be placed on the exercise of):

- ! public rights of navigation;
- ! rights of innocent public passage on water (“innocent” means a person in not aware of having crossed into Inuit Owned Lands);
- ! use of water for emergency purposes; or
- ! ability to use water for domestic use as defined in the *Northwest Territories Waters Act*

The water use provisions are subject to the right of the public to harvest wildlife under the NLCA.

The DIO has the right to go to court to seek determination of certain water use-related issues.

3.6.6.3 Inuit Water Rights

(Nunavut Settlement Agreement: Article 20)

The DIO has the right to have the water (flowing through Inuit Owned Lands) substantially unaltered as to quality, quantity and flow. This provision applies even where a water body marks the Inuit Owned Lands boundary and the water body is not located

entirely on Inuit Owned Lands. However, the Nunavut Water Board may still approve water uses upon payment of compensation.

3.6.6.4 Compensation

(Nunavut Settlement Agreement: Article 20)

Where a project or activity (in the Nunavut Settlement Area) may substantially alter:

- ! the quality,
- ! the quantity, or
- ! the flow of water flowing through Inuit Owned Lands,

the Nunavut Water Board can only give its approval if compensation is payable to the DIO. This provision applies even where a water body marks the Inuit Owned Lands' boundary, and the water body is not located entirely on Inuit Owned Lands.

The NLCA sets factors that the Board must consider in determining compensation.

3.6.7 Fish and Wildlife

3.6.7.1 Administrative Bodies

The Nunavut Wildlife Management Board, the Hunter's and Trapper's Organizations and the Regional Wildlife Organizations all have certain roles in fish and wildlife management.

Please see 3.1.3 for more information.

The Surface Rights Tribunal has a specific role in wildlife compensation. Please see 3.1.3 for more information.

3.6.7.2 General

(Nunavut Settlement Agreement: Article 5)

The primary responsibility for the management of lands (including flora) shall be exercised by appropriate government agencies and any other related bodies set out in the NLCA.

None of these wildlife rights applies in respect to wildlife harvested outside Nunavut Settlement Area.

Only an Inuk, or a person having existing rights and activities, and a person approved by a Hunter's and Trapper's Organization, may harvest furbearers in the Nunavut Settlement

Area. The latter two are subject to laws of general application.

A person (other than an Inuk) harvesting big game, requires a licence from government and, for two years after, accompaniment by an Inuk guide.

Government gives preference to residents, in allocating commercial licences.

Emergency kills of wildlife are permitted under the NLCA.

The Inuit have the free and unrestricted right of access (for the purpose of wildlife harvesting) to all lands, water and marine areas in the Nunavut Settlement Area. This includes municipal lands, parks and conservation areas, with the following exceptions, and under the following conditions.

Exceptions

The Inuit do not have unrestricted rights of access (described above) to the following:

- ! military or national security lands;
- ! lands held in fee simple title on July 9, 1993, other those owned by a municipality;
- ! lands (under one square mile) held in fee simple title, granted after July 9, 1993;
- ! lands held under an agreement of sale on July 9, 1993;
- ! lands subject to surface lease on October 27, 1981, where the access not renegotiated; and
- ! lands within one mile of:
 - a structure on fee simple lands,
 - lands under surface lease, or
 - lands under an agreement for sale.

Conditions

The Inuit's unrestricted access rights (described above) are subject to:

- ! public safety laws of general application;
- ! any Nunavut Wildlife Management Board conservation restrictions;
- ! any bilateral agreements between the Inuit and the management in parks or conservation areas;
- ! any land use activity (to the extent the access right is incompatible with the activity), so long as the activity is exercised. Disputes may be arbitrated under the NLCA; and

! the right of access not impeding navigation.

Government agrees to insert a clause, in renewals or transfers of existing surface leases of one square mile or over, to make leases subject to the rights of Inuit access for wildlife harvesting (unless government would incur a legal liability).

Under the NLCA, any contractual limitation on access or harvesting by the Inuit in their leisure time is void.

The assignment of harvest rights to Inuit and non-Inuit is possible under conditions set out in the NLCA.

3.6.7.3 Wildlife Compensation

(Nunavut Settlement Agreement: Article 6)

A developer is liable for loss or damage suffered as a result of development activity in the Nunavut Settlement Area for:

- ! loss or damage to property or equipment used in wildlife harvesting,
- ! loss of income from wildlife harvesting, or
- ! loss of wildlife,

unless the loss or damage is caused by “force majeure.” This liability may be limited by legislation. The Surface Rights Tribunal rules on wildlife compensation claims.

Where an Inuit Impact Benefits Agreement includes wildlife compensation, this precludes the need to address the subject under the water rights, and access rights, provisions of the NLCA.

A developer and the Inuit can enter into a wildlife compensation agreement that would replace the NLCA obligations.

3.6.7.4 Marine Area East of Manitoba

(Nunavut Settlement Agreement: Article 42)

East of Manitoba is a marine area in Hudson Bay. Here, Inuit designated by the Keewatin Regional Wildlife Organization have the right to harvest wildlife for personal, family and community consumption needs. This right is covered under terms and conditions set out in the NLCA.

3.6.8 Environmental Assessment

(Nunavut Settlement Agreement: Article 12)

3.6.8.1 Administrative Bodies

The Nunavut Impact Review Board has a role in screening and reviewing proposed projects for their environmental impacts. A federal Environmental Assessment Panel may also review projects. Please see section 3.1.3 for more information.

3.6.9 Economic Development

Any government agency will give preference to qualified Inuit contractors when in awarding contracts relating to archaeological work in the Nunavut Settlement Area. (Nunavut Settlement Agreement: Article 33)

The DIOs have a first right of refusal on the establishment of:

- ! new sports and naturalist lodges in the Nunavut Settlement Area; and
- ! new facilities for wildlife propagation and similar activities.

Government agrees to lease lands for them. (Nunavut Settlement Agreement: Article 5)
The DIOs have a first right of refusal on new wildlife marketing and wildlife product collection or processing. (Nunavut Settlement Agreement: Article 5)