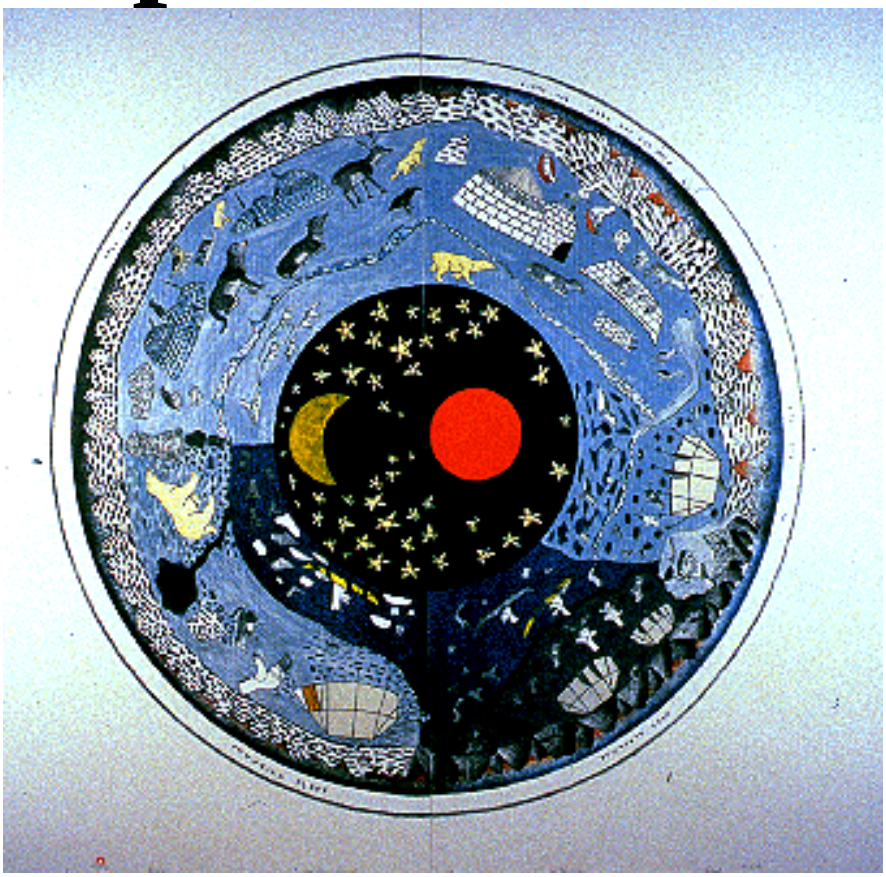
PRICEWATERHOUSECOOPERS

Independent Review



Implementation of the Nunavut Land Claims Agreement 1998-2005

Nunavut

NUNAVUT TUNNGAVIIK

Canada

Second Independent Five Year Review of Implementation of the Nunavut Land Claims Agreement

Final Report

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Prepared by:

PRICEWATERHOUSECOOPERS

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1 Executive Summary

1.0 Background

PricewaterhouseCoopers LLP, together with our Inuit and Northern consultants, have conducted this review of the implementation of the Nunavut Land Claim Agreement (NLCA). Our mandate in this assignment was to: assess the status of implementation of each of the Articles of the NLCA; identify the barriers to the implementation; identify options for overcoming those barriers; identify examples of success; assess the effectiveness of implementation and specifically the Nunavut Implementation Panel, the Panel Support Group, the Nunavut Arbitration Board, and the Annual Report as an information tool; and provide recommendations for improving the effectiveness of implementation. The period covered under the review was from January 1999 to July 2005. In some cases we have also reviewed implementation activities following this period, where those activities help to better illustrate what had occurred during the formal review period.

All Parties agree that Article 23 on Inuit Employment is of critical importance to the successful implementation of the NLCA. Due to both time and resource constraints and the importance of the Article, the Parties agreed that a review of Article 23 would be out of scope for this assignment, but would rather be conducted as a separate assignment subsequent to this one. We understand that GC has obtained approval to begin scoping out the cost of undertaking this review.

We were engaged by the Government of Canada, the Government of Nunavut and Nunavut Tunngavik Inc. Each of the organizations provided extensive documentation for us to review, identified the experts for us to interview, and participated in the development of all interview and focus group guides and public notices.

We interviewed approximately 100 people through the course of this engagement to obtain detailed information on each of the Articles and/or information on the progress towards achieving overall objectives. We conducted three focus groups with beneficiaries in communities in each of the three regions (a total of nine) to obtain their views on the progress towards overall objectives, and issues of critical importance to them. We also conducted a host of focus groups with a variety of stakeholders, such as: Nunavut Water Board, Nunavut Sivuniksavut, the IQ Council, Nunavut Tourism, Nunavut Impact Review Board, and an economic development group. Finally we reviewed over 120 documents.

It is important to note that we have relied heavily on the opinions of people, and have not had comprehensive objective evidence to support all of our conclusions. In many cases there is a lack of awareness, or misunderstanding about objectives, obligations and outcomes. Nevertheless, in the assessment of progress, perceptions are at least as important as the facts.

It is also important to note that while we have spoken with many people, both experts appointed by the Parties, and members of the community, and reviewed many documents we have not consulted all beneficiaries. Hence, we cannot make definitive claims about the opinions of all beneficiaries and stakeholders.

Having made these qualifications, we are confident that our research process was methodologically sound and that our review represents a comprehensive and fair assessment of the information provided to us. We further note, as stated in the preface to this document, that it is important to share the findings of this review with beneficiaries, and provide them with an opportunity to comment on them.

1.1 Overall Status Assessment

The objectives of the NLCA are four-fold:

- to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore;
- to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting;
- to provide Inuit with financial compensation and means of participating in economic opportunities;
- to encourage self-reliance and the cultural and social well-being of Inuit.

1.1.1 Key Accomplishments

We found that there is much more work to be done to fully achieve the objectives in all areas of the NLCA. We learned that there are several key areas where progress has been made. The progress against objectives and meeting obligations is described in detail in the report. We provide highlights of the key accomplishments in these areas over the review period.

Water

Legislation was enacted for the Nunavut Water Board (NWB). It has the responsibilities and powers over the regulation, and the use and management of water in the Nunavut Settlement Area. While often overwhelmed with demands, the Board is generally seen to be functioning well, is providing services in Inuktitut, is integrating IQ into its decision-making process and has been maintaining a positive relationship with government. In cases where there have been concerns, the RIAs have been negotiating compensation agreements.

Wildlife

- The Nunavut Wildlife Management Board, the main instrument of wildlife management in the Nunavut Settlement Area and the main regulator of access to wildlife, has conducted the Wildlife Harvest Study and begun to set the basic needs levels and total allowable harvests.
- This is the largest study of its kind in Canada. This information is being used to determine the basic needs level for Inuit, so as to ensure that beneficiaries have the right to harvest up to their basic needs level, subject to the principles of conservation.
- The Nunavut *Wildlife Act* was passed by GN legislation.
- The Nunavut Wildlife Management Board consults with each and every community. It posts information on all of its meetings, research and initiatives on the website in Inuktitut, English and French and it assists in supporting the Regional Wildlife Organizations and Hunters and Trappers Associations.
- The Nunavut Wildlife Management Board is developing innovative management options, such as the Community Based Management (CBM) Program for narwhal and beluga. This refers to a system of wildlife management characterized to date by a removal of formal annual quotas and a transfer of initial management responsibility away from the NWMB and Government, directly to a community. Under this system, which is supervised by the NWMB and Government, the community Hunters and Trappers Organization (HTO) must establish and enforce appropriate by-laws and hunting rules to control harvesting by members. The HTO must also develop - in collaboration with Government - a reporting system to accurately record harvesting information, such as the number of animals struck, landed and lost.

Inuit Impact Benefit Agreements

- IIBAs were concluded for National Parks in the Kivalliq and Baffin regions. Prior to the implementation of the NLCA, INAC requested that Federal Departments estimate the costs associated with achieving their respective objectives under the NLCA. Parks Canada invested significant resources into assessing what would be required to implement the IIBAs for National Parks, and negotiated $10.7 million with INAC prior to the implementation of the NLCA for the implementation of the IIBAs. Parks Canada then worked closely with NTI to develop the Agreements. They are currently being implemented.
- The first IIBA for a diamond mine was negotiated between Tahera Mines Inc and the Kitikmeot Inuit Association, for the Jericho Diamond mine project in the Kitikmeot Region. Several further agreements are currently being negotiated, and in each one the Inuit negotiators are learning more about how to ensure that Inuit participate in the benefits of mining activities.

Nunavut Trust

Nunavut Trust has been collecting government and royalty payments, and managing them on behalf of the beneficiaries. It is a good example of blending of Inuit culture with "southern knowledge". Trustees are recommended by the Regional Inuit Associations and NTI. There is an Advisory Board comprised of experienced individuals in asset management. Half of the staff (two of the four) are Inuit. The Trust has been managed to disburse and invest funds so as to preserve the capital of beneficiaries and achieve its target of $1.14 billion by 2007. In addition, the Trust visits approximately six communities per year, visiting the schools and explaining the mandate and performance of the Trust, and talking about the skills required for the organization. It represents an illustration of older Inuit teaching younger Inuit by way of example, which is a key facet of IQ.

Territorial Government Contracting Policy

The Government of Nunavut came into being in 1999. One of its early accomplishments was to establish the Nunavut Nangminiqaqtunik Ikajuuti (NNI) Policy, which was designed to enable Inuit businesses and Inuit to compete successfully for government contracts. The first policy was released in 2000 and, in conjunction with NTI it was revised in 2005. The policy identifies the steps that contracting agents within the government must take to provide support for Inuit businesses. The Government of Nunavut has monitored the outcomes of the policy, evaluated its implementation, and identified key areas for improvement. The success rate of Inuit business on government contracts is significantly lower than the Government of Nunavut and NTI would like. However, all parties believe that the process is the right one, and are in agreement that further information needs to be gathered to assess how effective it is in achieving the desired goal to enable Inuit businesses to become more successful at competing for government contracts.

Example of successful collaboration

The working group on the Nunavut Resource Management Act (NRMA) is an example of a highly inclusive process of legislative drafting, involving NTI, GN, GC and the IPGs. Being inclusive and collaborative takes a great deal more time than working in isolation, and this is part of the reason the work on the NRMA has taken four years to get to the point of drafting. The guiding principles of the NRMA working group are referenced repeatedly by NTI and GN as a good model for collaboration on implementation issues. While the process has been time-consuming, this is because it has also been highly collaborative and inclusive.

In summary, there have been examples of success. While none of these "successes" are unqualified (as is discussed further in the report), they represent successes largely in relation to some of the key deficiencies noted below. It is important to note that there are several common themes to each of these. In all cases, there has been a strong blending of Inuit and non-Inuit. In many cases, Inuit have typically had the lead roles. Another common theme is that all involve consultation within the communities on a regular basis. Finally, they all represent examples of how the Government of Canada, the Government of Nunavut, NTI, the institutions of public governance and/or beneficiaries have worked in collaboration.

1.1.2 Key Deficiencies

Throughout the course of our review, we also noted key deficiencies in the meeting of obligations, and progress towards objectives. These are also described in detail in the report. We provide highlights of the most serious deficiencies here.

Inuit Participation in Decision-making

Throughout the course of our review, we repeatedly heard beneficiaries say that they thought that the implementation of the NLCA would give Inuit the ability to set their own priorities, develop their own policies, and implement them in a way that respected their culture. Many interviewees and participants in our focus groups repeatedly claimed that this was not happening. They indicated that there were many rules being set, and processes being established, and that they were not involved in the decision-making and they were not sufficiently consulted throughout. In addition, all too often we heard Inuit say that they believe their opinions, and most importantly the opinions of elders, are neither solicited, nor respected.

Progress in Socio-economic Outcomes

Beneficiaries also reported that they expected that the implementation of the NLCA would enable them to participate in the economy and achieve self-sufficiency. We have learned through speaking to beneficiaries and reviewing reports that there is great concern about the status of progress.

In conducting our review of progress on socio-economic outcomes, we did not just look at outcomes in regards to the specific obligations within the NLCA. This is because, while many of the obligations within the NLCA do pertain directly to socio-economic outcomes, socio-economic outcomes are a result of a wide range of factors, including initiatives under the NLCA, other federal and territorial programs and the general functioning of the economy. For example, the NLCA does not contain obligations regarding housing (except in regards to Park IIBAs), or health. However, these factors are key in determining socio-economic outcomes. Furthermore, the Preamble of the NLCA states, as the fourth general objective, "to encourage self-reliance and the cultural and social well-being of Inuit", rather than "to provide for". Consequently, it is important to look at a broad range of socio-economic outcomes, rather than just those directly relating to the NLCA in order to assess self-reliance and cultural and social well-being.

The 2000 Report on the State of Inuit Culture and Society concluded that "The Inuit of Nunavut face a situation of extreme gravity. This report details many aspects of this grave situation". Similarly, the 2002/2003 Report on the State of Inuit Culture and Society state that "There is growing unease over the trends that are evident in many key indicators of social well-being".The 2002/03 report summarizes some of key socio-economic concerns, as follows:

- **Housing**: "With units up to 40 years old, the social housing stock in Nunavut is one of the oldest in Canada". Moreover, the report states that "many Inuit still live in overcrowded conditions that contribute to poor indoor air quality and numerous medical problems and interfere with students'

homework and school performance. Overcrowding retards the physical and intellectual growth of our children, which in turn drives the growth rates in the criminal justices system, the health system and the demand for social services." It should be noted that there are no specific objectives or obligations in regards to housing. However, housing does impact on social and economic well being and thus is related to progress towards meeting the objective of "encouraging self-reliance and the cultural and social well being of Inuit".

- **Education**: While educational offerings and educational attainment levels have increased substantially, there is a significant concern that Inuit culture and values are not sufficiently incorporated into the education system. For example, "two-thirds of public school teachers and almost all the high school teachers are Southerners, most of whom receive no organized training in the Inuit way of life or orientation to the Inuit experience of being out on the land."
- **Language**: Many Inuit have noted that there is a fear that their traditional languages are being lost, and that this threatens the sustainability of the culture. The 2002/03 report noted that English is often the working language in day-care centres, educational facilities and work places.
- **Health**: Inuit have a significantly lower health status than other Canadians. The average life expectancy at birth for Nunavut residents is 68 years old, compared to 78 for Southern Canadians. Infant mortality in Nunavut, at 16.3 deaths per 1,000 births is almost four times the national average of 4.6. The suicide rate in Nunavut is 6.8 times the national average.
- **Elders**: While there are many examples of how elders are involved, beneficiaries frequently noted that they believed that elders were not involved or respected enough.

Based on a review of data from Statistics Canada, we found that the unemployment rate in Nunavut in 2000 (the latest year for which data is available), at 17.4% was over two and a half times the national average of 6.8%.

These problems do not necessarily reflect a failing of the NLCA. Rather, they illustrate that the residents of Nunavut were experiencing socio-economic challenges in some areas to a much greater degree than other Canadians. This suggests that the Parties must work together, in implementing initiatives under the NLCA, and other federal and territorial programs, to address these challenges.

Dominance of IQ

The term Inuit Qaujimajatuqangit (IQ) has recently (since the late 1990s) been adopted "to replace and broaden the limited connotations typically attached to the term Inuit traditional knowledge" This term describes "all aspects of traditional Inuit culture including values, world-view, language, social organization, knowledge, life skills, perceptions and expectations". The development of this term is a very important step in enabling Inuit culture and values to drive government decision-making and activity. In almost all aspects of our work on this review, we have heard about the importance of IQ. We note that in almost all cases, people also reported that IQ has not been fully or effectively incorporated into the government process. Nevertheless, giving it a defined name is important for identifying a clear goal of what needs to happen – it forces people to continually ask: is this consistent with IQ? The pervasiveness of the term, and the fact that it is defined, suggests that people are at least aware of what needs to be achieved, even if they do not yet know how to achieve it.

Throughout our review we repeatedly heard that IQ was not taken into account sufficiently, tangibly or effectively in the setting of priorities and policies and in the design and delivery of programs. Having a concrete definition to such a heady concept is a key first step. Now it needs to be implemented in a concrete in-depth way by the three Bodies, so the public truly feel that they are an intricate and crucial part of the decision-making process.

Monitoring and Effective Dispute Resolution

The Nunavut Implementation Panel was created to oversee the implementation of the NLCA. In particular, two of its key roles are to monitor the implementation and progress towards outcomes and to resolve disputes as they arise amongst the stakeholders involved in the implementation process. Throughout the review period, the Nunavut Implementation Panel has not continuously and comprehensively monitored implementation activities. Moreover, it has not been able to successfully resolve disputes. Several key examples of ongoing disputes are provided below:

- Disputes over funding, of the IPGs, GN and investment in support initiatives have persisted over long periods of time. For example, negotiation of funding for the second 10 year term of the implementation of the NLCA (2003 to 2013 period) began in 2001 and has still not been concluded. It is currently three years into the period for which funding should have been agreed upon. We understand that, as per a letter dated February 6, 2006 (Ref. 7.4), all members of NIP have come to agreement on recommended funding increases for the IPGs and a number of other matters. This agreement endorsed by NIP remains subject to the internal approval policies of each party to the Contract. However, agreement on incremental funding, in relation to the NLCA, for the GN, has not been met.
- There is a significant gap between the Government of Canada and NTI in regards to the expectations and assessments regarding the implementation of Article 24. In NTI's opinion, the Government of Canada is not meeting its obligations with regards to this Article, and perhaps most importantly, is not producing information on monitoring and periodic evaluation as required. The Government of Canada takes the position that federal departments and agencies are instructed to observe the NLCA. Contracting Policy Notice 1997-8, issued December 10, 1997 (superseding CPN 1995-2, dated March 1, 1995), is addressed to all Functional Heads, Administration/Finance of all Departments and Agencies and is mandatory for contracting authorities conducting procurements within the Nunavut Settlement Area. While it is clear that GC had instructed Federal Departments and Agencies to comply with the NLCA, we have not been provided with information to illustrate that there has been full compliance. We have been provided with some examples of how GC has complied. However, we have not been provided with a description of the process that has been followed regularly in all departments to illustrate compliance, nor have we been provided with general monitoring and periodic evaluation as required by 24.8.1. Furthermore, some interviewees within GC have indicated that they do not believe GC has complied fully. We note that GC has indicated that they have tried to meet with NTI to discuss this Article, and in particular to discuss what should be included in the monitoring and periodic evaluation (given that GC must do this in cooperation with NTI). NTI has responded that the discussions they had had were fruitless, and they wanted the issue to go to Arbitration, rather than engage in further discussion. Given the fact that neither objective monitoring and periodic evaluation reports, nor comprehensive discussions of how the other obligations were met (other than the specific examples that are noted in the discussion on Article 24 in the report) in regards to federal contracts, we found that the obligations had largely not been met in this area.
- Inuit Impact and Benefit Agreements have not been concluded with respect to Territorial Parks and Conservation Areas, due to continuing disputes over funding.
- There has been an ongoing dispute in regards to offshore fisheries. NTI and the Government of Nunavut are arguing that while Canadian provinces are assigned between 80 percent and 90 percent of the quota for their adjacent offshore, Nunavut has been assigned less than 50 percent. The share has increased for some species in recent years, but the increase has not given them a share equal to what the provinces receive, and the share for many species is still very low. GC has noted that Canada has taken several measures to rectify this problem, including assigning all new quota in areas 0A and 0B to Nunavut. While progress is being made, the issue remains an ongoing dispute between thee Parties.

Land Use Plans

No territorial-wide land use plan has been developed, and only two of six planned regional land use plans have been produced. Moreover, legislation has not been enacted for either the Nunavut Planning Commission or the Nunavut Impact Review Board. The lack of land use plans, and in some cases legislation, is creating both confusion over decision-making and a concern, particularly among beneficiaries that economic development is taking precedence over protection of the land, wildlife, water and environment.

The report describes in greater detail the deficiencies (as well as the accomplishments). In contrast to the key accomplishments noted above, the common threads lacking in these areas are insufficient involvement of Inuit and/or a lack of collaboration amongst the parties.

1.1.3 Status Summary

While there are many examples of key accomplishments, we have found that many of these are isolated to specific initiatives, and there has not been widespread progress across all fronts.

Many beneficiaries are hopeful, but there are also those who are very discouraged and have lost or are losing faith. However, we found that for the most part, the beneficiaries we spoke with agree with the basic principles of the NLCA, and believe it provides a good foundation upon which to achieve their objectives.

It is important to note that while we have not spoken with all beneficiaries, we did find somewhat of a trend in differences of opinion amongst beneficiaries. Specifically, we found that many beneficiaries in government had a more positive perception of and outlook on progress than was the case among many beneficiaries in the community. We believe there are several factors contributing to this. Beneficiaries working for the government were more likely to have had higher incomes than those not working in the government. Perhaps more importantly though was the common comment that the "wage" economy does not value the work of people who work on the land. Furthermore, beneficiaries working in the government are more aware of the progress that is being made, and also have a greater ability to influence key decision-making (particularly those at the senior levels that we were speaking to). This is why broad consultation of Inuit, to appreciate the concerns of all, is so important.

We also note that there is, in many cases, recognition of the failures to date. Through our discussions with senior representatives of INAC, GN and NTI, we have learned that some key decision-makers realize that the current process is not working, and that real change must be effected. We have also heard that most stakeholders involved are sincerely committed to understanding what the problems are, and implementing effective solutions.

1.2 Barriers to Effective Implementation

Differences in Interpretation Regarding Objectives and Obligations

In all cases where there are serious disputes, such as Article 24 (Federal Government Contracting), Articles 8 and 9 (Funding requirements for GN and IIBAs), the parties involved have substantially different views on the obligations.

Disputes over Funding

In many cases, stakeholders have recognized obligations or problems and worked collaboratively to develop detailed plans to address those. However, disputes over funding, approval of which is sought

after the detailed analysis and plans have been prepared have prevented these solutions from being implemented. Examples include implementation of NNI, the Government of Nunavut's new contracting policy, implementation of the Territorial Parks and Conservation Area IIBAs and funding for the IPGs. We do understand that NIP has recently agreed on funding for the IPGs, although the Government of Canada has not given final approval yet.

Differences in Opinions Regarding Realistic Expectations

We have frequently heard people say that expectations of financial and human resource commitments are financially impractical. We have also heard people say that expectations about how soon outcomes can realistically be achieved are impractical. There have been few definitions concerning what expectations concerning investment efforts and outcomes, over what time frames, are reasonable.

Lack of Regular and Ongoing Meetings and Communications

The Nunavut Implementation Panel had not been meeting regularly over the latter part of the period, beginning in the summer of 2003. In addition, each of the parties has indicated that there is not enough communication at the implementation manager level. Line managers used to have weekly calls, and only problems were bumped up to NIP level. All of this has "ground to a halt".

Lack of Monitoring

One of the key challenges for PwC in conducting this assignment was the lack of information on the ongoing monitoring of the implementation of the NLCA. We note that it is incredibly difficult to assess and proactively manage implementation without such monitoring information. It continually forces the parties to deal in a reactive fashion when things reach crises situations, rather than identifying problems and challenges while they are in the process of building.

Lack of a Collaborative Approach

In many cases where the parties are not able to resolve disputes, it is because they are not working collaboratively together. It is important to note that this lack of collaboration is tied in with differences in interpretation and a lack of monitoring. Each of the parties often have different interpretations and they are often not working together to identify these, or monitor the activities, and as a result it is only when there has been an excessively long time over which progress has not been made that people become aware of the problem. By this point in time, the various parties often have wide differences in their opinions about what has happened and what should happen.

Lack of Definition of what Constitutes an Appropriate Consultation Process

There is no agreed upon, documented description of what constitutes appropriate and sufficient "consultation". We repeatedly heard beneficiaries say that they are not consulted enough. At the same time, we have also heard government officials say that they have heard that they are over-consulting, and that this is placing an excessive burden on beneficiaries. We believe that part of the cause of the discrepancy may be due to the difference in views and expectations about how to consult. Much consultation is done with "representatives" of Inuit, for example through DIOs or HTOs. We understand that many of these people face continuing demands for consultation that they cannot meet. We have also heard Inuit say that it is important to provide all Inuit with an opportunity to express their viewpoint, and that it is not sufficient to consult with "representatives" only.

Lack of an Effective Dispute Resolution Process

Article 38 of the NLCA identifies Arbitration as the ultimate dispute resolution tool, should the Parties fail to reach agreement. However, the Article requires unanimous agreement from the DIO and the Government relevant to the dispute to proceed to Arbitration. The Government of Canada has refused all requests to send anything to Arbitration. As a result, disputes have persisted for years, with no apparent resolution in sight.

Lack of Understanding of how to Incorporate IQ into the Process

All parties agree that it is important to ensure that IQ is a significant factor in the design, development and delivery of all programs, services, regulations, etc. However, all of the people we spoke to – in the communities, in government, in NTI, etc – indicated that IQ is not taken into account enough and more importantly people do not know how to make this happen.

Language and Cultural Differences

Differences in language and culture make it very difficult (although definitely not impossible) to communicate effectively. English is not the first language for most Inuit. It is important to note that we generally found that it is Inuit who must speak in their second language (English), rather than English people speaking Inuktitut or Innuinaqtun. This puts an ongoing pressure on Inuit on a day to day basis, and makes it very difficult to communicate complex thoughts or nuances.

Perception of a Lack of Understanding of the Seriousness of the Problems

Many Nunavummiut believe that people in the "south" do not appreciate the severity of the situation. They report that they believe that government people in the 'south' do not appreciate how serious the social and economic distress is in Nunavut.

1.3 Recommendations

We found that the two most significant "categories" of issues were insufficient involvement of Inuit, and lack of defined principles and processes to monitor, identify problems and resolve disputes. We provide key recommendations in these areas here, and provide more specific recommendations in regards to each of the Articles, throughout the document.

Improve Consultation Process with Beneficiaries

We believe it is important to develop a working description about what should constitute consultation. This description should include who shall be consulted and in what manner. There should be various levels and types of consultation described, depending on the type of issue. SCDD should develop a strategy and a process (in consultation with government and Inuit) for what constitutes "consultation". More specifically, there should be a consultation process policy that documents what types of consultation are appropriate in what circumstances. SCDD's should focus on facilitating Inuit involvement, including advising government on how, when and where to consult Inuit.

Communicate Results of the Review to Beneficiaries

We believe that one of the most critical steps is for the parties jointly to communicate to beneficiaries their sincere joint commitment to achieving the objectives of the NLCA. Specifically, we believe the parties should share the findings of this review with all beneficiaries, and seek their feedback on it. We believe strongly that this should be done in an oral fashion, as is common to the Inuit tradition, as

opposed to just in writing. In order that all beneficiaries may partake, we suggest that the review be prepared in the form of an oral documentary to be aired through a series, on radio and/or television, and that there be call-in radio or television shows inviting Inuit to participate. We recommend that an announcement to this effect be included in the official release of this report. We believe this action is absolutely critical to address the concerns of beneficiaries, and to demonstrate, in the Inuit tradition, the commitment of the stakeholders to change.

Identify Strategic Priorities

The discussion on progress towards the overall objectives of the NLCA and in particular towards the objective of encouraging self-reliance and the cultural and social well-being of Inuit has illustrated that there are serious socio-economic challenges in Nunavut.

These problems do not necessarily reflect a failing of the NLCA. Rather, they illustrate that the residents of Nunavut were experiencing socioeconomic challenges in some areas to a much greater degree than other Canadians. This suggests that the Parties must work together, in implementing initiatives under the NLCA, and other federal and territorial programs, to address these challenges.

In particular, we believe it is important for the Parties to work together to identify strategic priorities for improving progress towards the overall objectives. More specifically, we believe it is important for the Parties to work collaboratively to develop a list of strategic priorities and key outcomes, indicators, and initiatives to improve those outcomes. We recommend that the annual report, produced by SCDD, should involve the collaboration of all Parties, and identify these strategic priorities, target outcomes, indicators and initiatives (including both recommended initiatives and assessments of initiatives implemented).

Dispute Resolution

Throughout this report, we have sought to provide recommendations at both the strategic and the practical level. In this section, we summarize some of the key thrusts of the recommendations in regards to resolving the major disputes.

- **Interpretation:** Each of the parties has different interpretations of many of the Articles, Parts or Sections of the NLCA. Too often, discussion appears to focus on what the parties should or should not do, but from their own interpretation of the Agreement. Where the parties have different interpretations, such efforts are likely to be fruitless. For example, the interpretation of the term "procurement policies respecting Inuit firms" is ambiguous: the parties cannot come to agreement on what should be done, until they agree on what the term "respecting" means, and/or what the overall spirit of the Section is. It is critical that the parties meet to discuss the overall expectations and the expectations regarding key problem areas.
- **Regular and fully documented communication at the NIP level.** Article 37 is clear in its indication that there shall be an "ongoing process for Inuit and government to plan for and monitor the implementation of the Agreement", and further directs that NIP shall "Oversee and provide direction on implementation". There must be ongoing meetings about implementation. We understand that in several critical areas discussions have been protracted and not led to resolution. We believe two factors have contributed significantly to this. First, there has been no documented process for how issues should be raised and resolved. Throughout this review we have found that information is often fragmented; consideration of key issues, including the background/context, the problem and the proposition of solutions, with input from all parties, has not been tracked in a consolidated way. Second, there has been no ultimate process for ensuring that resolution is reached. Because of the requirement for unanimous consent for any issue to go to arbitration, disputes have persisted. We believe the parties must commit to a process where they meet and document communications

regularly and where Arbitration as a final step provides certainty that these communications will lead to a resolution within a reasonable period of time.

- **Greater certainty and accountability is required on the part of GC.** We understand that part of the difficulty in concluding on key issues has been that there are sometimes many layers of federal approval required for final conclusion on key issues. In some cases discussions are held sequentially, and as new federal parties become involved, all of the stakeholders have to revisit certain issues. This process of attempting to invest time and effort in working together to find solutions, only to have a third party (e.g. another federal person or department) nullify, or severely reduce the plans does a disservice to all parties. This burden is borne disproportionately by GN and NTI. Their budgets are fixed, from previous negotiations with GC. For them to commit resources to engaging in activities which they have no influence or control over the outcome is not fair. This matter is also present with non-financial issues. In part, this is about building trust. But it is more than that. The problem is not that the people at the table cannot be trusted; most interviewees agreed that all of the people involved had the right intentions. The issue of trust, at least in terms of trusting the GC, is that the process itself conveys no certainty or accountability to the parties involved in working through problems and developing solutions.
- **There must be an effective dispute resolution process in place,** particularly given that issues around certainty and accountability are a serious barrier to successful implementation. There are many issues where the various parties have "dug their heels in" with a particular position. The inability to have anything go to an arbitration board, despite the clear intent of this as illustrated by Article 38 has resulted in problems and disputes persisting indefinitely.
- **Focus on the spirit and intent of the NLCA.** The contractual language is not likely a barrier itself, but rather can become one if relied on to the letter. If everyone understood the goals, their roles, and had the same spirit for implementing the Agreement, the contractual language would matter a lot less. When different parties are sticking to the letter of the law, rather than the spirit, then the language of the contract becomes even more important.
- **Ongoing comprehensive joint monitoring.** The Parties need to agree on a joint monitoring system that clearly identifies the actions, responsibilities and status assessments. NIP should consider engaging an independent professional evaluator to ensure that the structure will meet the evaluation Needs.

In summary, the key barriers, and thus recommendations in regards to resolving some of the major issues are differences in interpretations and expectations, a lack of effective communication, and a lack of an effective dispute resolution process. As such, we have provided a detailed description of “Key Tactical Recommendations to Improve the Effectiveness and Accountability of NIP” at the end of the section on Article 37.

2 Preface

PwC has prepared this review of the implementation of the NLCA, based on a review of documents identified by NTI, GN and the GC and interviews and focus groups with key informants and stakeholders.

Inuit have traditionally communicated orally, rather than just in written form. As such, PwC believes that, as agreed at the outset of this project, in order to further validate the interpretation of these findings and ensure buy-in to the findings, it is important to review the report in the oral fashion that is common to the Inuit tradition. More specifically, this report should be discussed orally with Inuit in its entirety and their feedback should be sought.

It is important to note that while this document identifies high-level barriers, efficiency assessments and strategic recommendations it does not offer tactical targets for moving forward on achieving objectives of the NLCA.

All Parties agree that Article 23 on Inuit Employment is of critical importance to the successful implementation of the NLCA. Due to both time and resource constraints and the importance of the Article, the Parties agreed that a review of Article 23 would be out of scope for this assignment, but would rather be conducted as a separate assignment subsequent to this one. We understand that GC has obtained approval to begin scoping out the cost of undertaking this review.

3 Note of Thanks

PwC would like to acknowledge the support of various individuals and groups in the production of this report. Peter Ittinuar and James T. Arreak, both beneficiaries of the NLCA, have been actively involved in conducting this review. They participated in all aspects of the research design, communication strategy, literature review, interviews, focus groups and analysis. Similarly, Scott Clark a consultant with extensive experience in Nunavut also participated in all aspects of the research design, communication strategy, literature review, interviews, focus groups and analysis. Aarluk Consulting, headquartered in Nunavut, served as a key advisor to us, reviewing and providing advice on various elements of the research design, communication strategy, and analysis. We are sincerely grateful to each of these people for their extensive efforts and commitment to this project. While PwC has had lead responsibility for undertaking this review, it would have been impossible to do without their knowledge, expertise and goodwill.

PwC would also like to thank the representatives of the Government of Canada, the Government of Nunavut, and Nunavut Tunngavik Inc. The representatives have been very helpful to us throughout the review, continually providing rapid assistance to all of our questions.

PwC would also like to thank all of the interview and focus group participants for sharing their time and thoughts. We found that in almost all cases, people were sincerely committed to providing extensive information and reviewing our notes.

4 Methodology Section

PwC has been contracted by NIP to conduct the second Five Year Review of the implementation of the Nunavut Land Claim Agreement. The study addresses the implementation of the NLCA between 1999 and July 2005.

Our team was comprised of several groups. PwC had lead responsibility for all planning, research, analysis and report writing. A number of individual Inuit subcontractors provided valuable assistance in planning, conducting interviews and focus groups, and analyzing the data. We also worked closely with consultants with experience in Nunavut to assist in planning and analysis.

In order to ensure a comprehensive and accurate assessment of implementation, preparation of this report involved several lines of research and analysis.

Literature Review

Each of the Parties identified key documents for us to review. Interviewees also referenced documents that were added to the review list. A full list of documents reviewed is included in the Reference section.

Interviews

Each of the parties identified a list of 25 or 30 recommended informants. We conducted interviews with approximately 80 senior representatives of government, IPGs, and DIOs. In addition, throughout the review, approximately 20 additional experts were identified and interviewed. Many of the interviews were conducted with two interviewers present (usually an Inuk and a non-Inuk). Interviews were conducted in the respondent's language of choice. Most interviews were recorded so as to facilitate accurate note taking. Summary notes were typically sent to the interviewee for their validation. The interview guide is included in Appendix A of this report. A list of departments and organizations from which interviewees were identified is provided in Appendix B.

Focus Groups

We conducted two types of focus groups: Nine were held with community members in hamlets in each of the three regions. We also conducted focus groups with specific committees and organizations whose work is related to implementation. We also conducted a host of focus groups with a variety of stakeholders, such as: Nunavut Water Board, Nunavut Sivuniksavut, the IQ Council, Nunavut Tourism, Nunavut Impact Review Board, and an economic development group. All focus groups (except one, due to weather problems inhibiting travel) were conducted with two focus group moderators present, including both an Inuk and a non-Inuk. The majority of focus groups were conducted in Inuktitut. The Inuit facilitator took notes in English; so in most cases the non-Inuk facilitator was able to follow. The focus group guide is included in Appendix A of this report.

Final Report

Based on information from the literature review, interviews and focus groups, the PwC team prepared two draft reports. These drafts were shared with GC, GN, NTI and Inuit. In addition various parts of each of the drafts were shared with interviewees and Inuit and northern sub-contractors providing an opportunity for them to identify missing information and/or comment on the findings. The final report is the responsibility of PwC.

Note on Conclusion as to Whether the "Obligation" or "Objective" has been Met

The Auditor General's report noted that GC often appeared to be focused on following the letter of the NLCA and meeting specific defined obligations, but not necessarily the objectives. In our review, GC, GN and NTI instructed that we should assess progress towards objectives and obligations. In our report, at the end of each Section, we provide an assessment. In general if the term "objective", "general right" or "principle" is included in the title of the Part or Section, or in the Section itself, we conclude on whether the "objective" has been met (or was being met if it was an ongoing objective or obligation). If no such terms are in the titles or the Sections, we conclude on whether the "obligation" has been met (or was being met if it was ongoing objective or obligation).

In general, if all elements of the obligation or the objective have been fully met, as indicated by interviewee responses and/or document review, we indicate that the objective has been met. Conversely, if none of the elements of the objectives or obligations have been met, as evidenced by interviewee responses and/or document review, we conclude that the objective or obligation has not been met. In many cases, the reality lies between the two extremes. Often certain actions will have been taken, but not all that were required; in this case we typically find that the objectives or obligations have been partially achieved (and given the situation apply a more or less qualifier as appropriate). Alternatively, sometimes there is a difference of opinion and no objective evidence. If the respondents were unable to provide any examples, we typically indicated that we were unable to reach a conclusion. The one exception to this general rule was that if objective evidence was required through monitoring and/or evaluation, and no evidence was provided, and some of the interviewees noted that the objective or obligation had not been achieved, we conclude that the objective or obligation was not met.

We further add that we understand that while many of the sections describe obligations, there are always objectives behind those obligations. Hence, in cases where the obligation has been met, but the intention (objective) behind the obligation has not been met (or vice versa); we also conclude on whether the objective has been met.

5 Findings

5.0 Preamble

5.0.1 Status and Progress Against Objectives/Obligations

5.0.1.1 Background

Throughout our interviews and focus groups we encountered people that thought their lives would be changed for the better once Nunavut came into being. They thought that they would be more involved in decision-making in the NSA; they thought IQ would be a key facet of all decision-making, they thought consultations would occur throughout the NSA; and they thought that social and cultural issues would be greatly improved on. The majority of people we spoke to were disappointed that these actions were not occurring on an ongoing manner.

The 2003 Auditor General's report stated that:

- INAC seems focused on fulfilling the letter of the land claims' implementation plans but not the spirit. Officials may believe that they have met their obligations, but in fact they have not worked to support the full intent of the land claims agreements. It also stated that land claims agreements are protected by section 35(1) of the Constitution of Canada. In that context, the Supreme Court of Canada stated … the Constitution should be interpreted in a liberal and remedial way. We cannot accept that that principle applies less strongly to aboriginal rights than to the rights guaranteed by the Charter, particularly having regard to the history and to the approach to interpreting treaties and statutes relating to Indians...

This sentiment was repeatedly stated by beneficiaries in the community. Many beneficiaries indicated that government, and more specifically GC, was not serious about achieving the objectives of the NLCA.

5.0.1.2 Assessment

Objectives 1 and 2

- *to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore;*
- *to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting;*

The first Five Year Review concluded that the provision for certainty and clarity of rights to ownership and use of lands and resource was largely being achieved. There was certainty and clarity of ownership of lands and resources in the NSA. Inuit and government land and resource use regimes were in place and would be improved on from then on. As for Inuit participation in decisions concerning land, water and resources, it was found that this was being achieved on IOL and Article 40 and 41 lands and resources. Outside of IOLs they noted that Inuit participation in government decision-making had improved, but the objective was only being partially achieved.

The first Five Year Review found that this objective was being partially achieved. Inuit have secured harvesting rights, although a common understanding of the exercise of those rights needs improvement. Inuit exercise their rights at local and regional levels. Inuit participate in decision-making at territorial and inter-jurisdictional levels through a variety of means. Government needs to distinguish between Inuit participation and IPG participation.

Certainty and Clarity

Most interviewees thought that the NLCA did provide for certainty and clarity with regard to land, water and resources (including wildlife). Some of the examples cited included: the RIAs' rights to control Inuit Owned Lands; the designation of the Institutions of Public Government (NPC, NWB, NWMB, NSRT, NIRB) and Inuit's right to sit on the Boards; free passage on lands (e.g., Inuit Owned Lands, parks, etc.), Inuit's first access to wildlife through basic needs levels.

An interviewee from NTI mentioned that the UN has indicated that it is a breach of human rights to negotiate the surrender of Aboriginal rights. According to United Nations Economic and Social Council, INDIGENOUS ISSUES, Human rights and indigenous issues, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum, MISSION TO CANADA – E/CN.4/2005/88Add.3 2 December 2004 at page 32:

> *It should be clearly established in the text and spirit of any agreement between an aboriginal people and a government in Canada, and supported by relevant legislation, that no matter what is negotiated, the inherent and constitutional rights of aboriginal peoples are inalienable and cannot be relinquished, ceded or released, and that aboriginal peoples should not be requested to agree to such measures in whatever form or wording.*

Decision-making and Participation

Throughout the course of our review, we repeatedly heard beneficiaries say that they thought that the implementation of the NLCA would give Inuit the ability to set their own priorities, develop their own policies, and implement them in a way that respected their culture. Many interviewees and participants in our focus groups repeatedly claimed that this was not happening. They indicated that there were many rules being set, and processes being established, and that they were not involved in the decision-making and they were not sufficiently consulted throughout. In addition, all too often we heard Inuit say that they believe their opinions, and most importantly the opinions of elders are neither solicited, nor respected. They also indicated that they feel "ignorant" because they are not kept informed nor, indeed, do they understand the NLCA itself.

There is no agreed upon, documented description of what constitutes appropriate and sufficient "consultation". We repeatedly heard beneficiaries say that they are not consulted enough. At the same time, we have also heard government officials say that they have heard that they are over-consulting, and that this is placing an excessive burden on beneficiaries. We believe that part of the cause of the discrepancy is due to the difference in views and expectations about how to consult. Much consultation is done with "representatives" of Inuit, for example through DIOs or HTOs. We understand that many of these people face continuing demands for consultation that they cannot meet. We have also heard Inuit say that it is important to provide all Inuit with an opportunity to express their viewpoint, and that it is not sufficient to consult with "representatives" only.

The importance of Inuit feeling left out cannot be overstated, as illustrated by the following quotes from focus groups.

- Inuit have good ideas, but no one listens,

- Inuit seem to be second class citizens,
- Elders aren't respected

Land Use

No territorial-wide land use plan has been developed, and only two of six planned regional land use plans have been produced. Moreover, the legislation for the Nunavut Planning Commission has not been enacted. The lack of land use plans, and in some cases legislation, is creating both confusion over decision-making and a concern, particularly among beneficiaries that economic development is taking precedence over protection of the land, wildlife, water and environment.

The one significant except is with regards to disputes with Manitoba and Saskatchewan Dene, as discussed in Article 40.

Water

Legislation was enacted, and the Nunavut Water Board (NWB) has the responsibilities and powers over the regulation, use and management of water in the Nunavut Settlement Area. While often overwhelmed with demands, the Board is generally seen to be functioning well, is providing services in Inuktitut, is integrating IQ into its decision-making process and has been maintaining a positive relationship with government.

Parks, Conservation Areas and Resource Inuit Impact and Benefit Agreements

IIBAs were concluded for National Parks in the Kivalliq and Baffin regions. Prior to the implementation of the NLCA, INAC requested that Federal Departments estimate the costs associated with achieving their respective objectives under the NLCA. Parks Canada invested significant resources into assessing what would be required to implement the IIBAs for National Parks, and negotiated $10.7 million with INAC prior to the implementation of the NLCA. Parks Canada then worked closely with NTI to develop the Agreements. They are currently being implemented.

An umbrella IIBA has been negotiated between NTI and GN for Territorial Parks. However, the implementation of the IIBA is conditional upon GN and GC agreeing on the appropriate amount of "incremental funding". The parties are off by a factor of almost ten in their budget estimates. Similarly, while IIBAs for the Conservation Areas had been negotiated between NTI and GC, there has been no agreement on funding.

The first IIBA for a diamond mine was negotiated between Tahera Mines Inc and the Kitikmeot Inuit Association for the Jericho Diamond mine project in the Kitikmeot Region. Several further agreements are currently being negotiated, and in each one the Inuit negotiators are learning more about how to ensure that Inuit participate in the benefits of mining activities.

NIRB has been reviewing all proposals for development activities, consulting with NPC, NWB, GN, GC and NTI, indicating terms and conditions. GC has so far accepted and approved most of its decisions

While Inuit are excited about the opportunities that mining activity can bring, many have several concerns. Many Inuit are concerned about the impacts on Wildlife, and on the environment; in particular they are concerned that economic progress may be taking precedence over concerns for wildlife and the environment. In addition, several have noted that they are not consulted enough, and that they are not satisfied with the amount of Inuit employment in these activities.

Offshore

Interviewees from the NWMB and GN noted that the provinces have the right to 80% to 90% of their adjacent offshore fishery quota. In contrast, Nunavut has only 27% of the Northern Shrimp quota, 31% of the Striped Shrimp quota, and only 60% of the Turbot quota (Ref. 17.1).

This Section represents a critical point of contention between GN and NTI relative to GC. At issue is the definition and practice of 'special consideration for principles of adjacency and economic dependence'. NTI took this issue to court, arguing that the words "special consideration" in this Section meant that residents of the Nunavut Settlement Area should be given priority to the fishery quotas. In the first hearing, the judge concluded that the DFO should have given more consideration to Nunavut interest. The Appeals court also found that the DFO was not fair enough, but concluded that "special consideration" did not mean priority, and that it is not the role of the court to impose a decision on the Minister unless the decision of the Minister was patently unreasonable. The federal government has taken a very different perspective on this than GN and NTI. This has been an ongoing problem and a resolution is required.

Wildlife

There are several factors to consider in assessing rights to and participation in wildlife.

The *Nunavut Wildlife Act* was passed December 3, 2003. The Nunavut Wildlife Management Board, the main instrument of wildlife management in the Nunavut Settlement Area and the main regulator of access to wildlife has conducted the Wildlife Harvest Study and begun to set the basic needs levels and total allowable harvests. It should be noted that this Act applies only to those species under Territorial responsibility and not to fish and marine mammals (responsibility of DFO under the Fisheries Act) or migratory birds (responsibility of CWS under the Migratory Birds Act) and that the Nunavut Wildlife Management Board is consulted in these areas as well.

In many ways the wildlife harvesting system has not changed much for Inuit. Non-Quota Limitations have been set, and there are some rules and processes that have been eliminated. With regard to limitations on the quantity of the catch, limitations on harvesting are only required for those species where there are concerns related to conservation, public health or public safety. While the basic needs levels and total allowable harvests are being set, the old quota system remains, but the principles guiding the setting of the quotas are based on the NLCA. There is little concern that the passage of the NLCA has further limited harvesting rights. However, there are concerns about how the study was done, and there are concerns that as the population grows, beneficiaries could be unfairly restricted.

The Nunavut Wildlife Management Board consults with each and every community. It posts information on all of its meetings, research and initiatives on the website in Inuktitut, English and French and it assists in supporting the Regional Wildlife Organizations and Hunters and Trappers Organizations.

Innovative management options have been developed, such as the Community Based Management (CBM) Program for narwhal and beluga. This refers to a system of wildlife management characterized to date by a removal of formal annual quotas and a transfer of initial management responsibility away from the NWMB and Government, directly to a community. Under this system, which is supervised by the NWMB and Government, the community Hunters and Trappers Organization (HTO) must establish and enforce appropriate by-laws and hunting rules to control harvesting by members. The HTO must also develop - in collaboration with Government - a reporting system to accurately record harvesting information, such as the number of animals struck, landed and lost.

There have been several challenges noted. Beneficiaries in the community and interviewees from NTI and GN report that the extent to which IQ is incorporated into wildlife management, including harvesting, is not sufficient. There is recognition that good science must be involved in gathering data on wildlife populations. At the same time, Inuit have been harvesting wildlife in the North for generations, and their knowledge is also important and relevant, and should not be discounted. They also note that there are too many rules and regulations.

- "Inuit do not need to be told how to hunt. [The Nunavut *Wildlife Act*] does not consider IQ, communities, and the Inuit harvester interests".
- "Inuit have the right to hunt without a license, but everything else is regulated, such as gun regulations".
- "Some people who are able and willing to hunt cannot deal with the [rules concerning] guns".
- Calculations are very complicated and hunters do not use maps or GPS.
- Elders are not being used as much as they should. IQ, Elders and traditional knowledge would all help move these and other issues along the right path.

Many focus group participants commented on their right to hunt and the supports in place to allow them to do that, especially the Nunavut Hunter Support Program (NHSP). Although the NHSP is not a program mandated by the NLCA, it is a program that provides snowmobiles and other implements to hunters, thereby enabling them to exercise their rights under the NLCA. Participants reported many problems with the way the program is run.

In summary, there has been a lot of work done, in developing the *Wildlife Act*, undertaking the Harvest Study, working with the HTOs and doing consultations in every community. However, wildlife is one of the most important issues to Inuit. According to one beneficiary, wildlife is an integral part of their past, present and future, in terms of nourishment, cultural activities and economic opportunity. There are serious concerns that they have not been involved enough; the HTOs were heavily consulted, but other beneficiaries, in particular elders, were not being consulted enough.

In summary, while there are some elements of the objectives being met, there is a lot more work to do, and a lot of changes to be made before beneficiaries will feel that these objectives are being fully, or mostly met.

Objectives 3&4

- *to provide Inuit with financial compensation and means of participating in economic opportunities;*
- *to encourage self-reliance and the cultural and social well-being of Inuit"*

The first Five Year Review found that the objective to provide Inuit with financial compensation has been achieved, via scheduled payments to the Nunavut Trust. As for providing Inuit with the means of participating in economic opportunities, the Review found that it was too difficult to determine the extent to which the objective has been met. They noted that progress had been made with partial implementation of the training and contracting opportunities, although the available monitoring data were inconclusive. They further noted that IIBA negotiations did not result in economic opportunities during the review period. With regard to encouraging self-reliance of Inuit and encouraging cultural and social well-being, they indicated that they were unable to determine whether progress was being made.

In conducting our review of progress on socio-economic outcomes, we did not just look at outcomes in regards to the specific obligations within the NLCA. This is because, while many of the obligations

within the NLCA do pertain directly to socio-economic outcomes, socio-economic outcomes are a result of a wide range of factors, including initiatives under the NLCA, other federal and territorial programs and the general functioning of the economy. For example, the NLCA does not contain obligations regarding housing (except in regards to Park IIBAs), or health. However, these factors are key in determining socio-economic outcomes. Furthermore, the Preamble of the NLCA states, as the fourth general objective, "to encourage self-reliance and the cultural and social well-being of Inuit", rather than "to provide for". Consequently, it is important to look at a broad range of socio-economic outcomes, rather than just those directly relating to the NLCA in order to assess self-reliance and cultural and social well-being.

The Annual Report on the State of Inuit Culture and Society 02-03, written by NTI, provides the following overview of the socio-economic issues in Nunavut:

> *"When Nunavut came into being on April 1, 1999, Inuit (as well as many of their fellow Canadians) had great hopes that this dramatic step in nation building would contribute tangibly to the well-being of their society. Today, though, there is growing unease over the trends that are evident in many key indicators of social well-being. In several areas, the word crisis no longer seems an overstatement. Certainly, that is the case with respect to the severe housing shortage that exists today in Nunavut, a shortage that adversely affects the health of Inuit, children particularly. The fact that Nunavut's rate of suicide is Canada's highest also invites use of the word crisis. The fact that many health indicators are getting worse similarly points to a crisis in Nunavut's healthcare system." (Ref. 6.11, p. xi)*

The Report further mentioned that:

> *"Perhaps our greatest sense of concern however, stems from a belief that the overall approach taken by government, particularly the federal government, to the problems faced by Nunavut today is not proportional to the seriousness of those problems. The people working on these issues, whether at the political or the bureaucratic level, need to ask themselves whether the investment of time, effort and resources put into Nunavut's situation is proportional to the magnitude of the problems. Is the investment made in education and training, housing and health for Inuit in proportion to the need, given Nunavut's population growth, to grow the economy? Or are we just tinkering?" (Ref. 6.11, p. xiii)*

The following sections describe the main issues that play a part in achieving these objectives.

Compensation

Nunavut Trust has been collecting government and royalty payments, and managing them on behalf of the beneficiaries. It is a good example of blending of Inuit culture with "southern knowledge". Trustees are recommended by the Regional Inuit Associations and NTI. There is an Advisory Board comprised of experienced individuals in asset management. The Trust has been managed to disburse and invest funds so as to preserve the capital of beneficiaries and achieve its target of $1.14 billion by 2007. In addition, the Trust visits approximately six communities per year, visiting the schools and explaining the mandate and performance of the Trust, and talking about the skills required for the organization. It represents an illustration of older Inuit teaching younger Inuit by way of example which is a key facet of IQ. Hence, Nunavut Trust's activities are geared towards contributing to objectives three and four, rather than just purely compensation.

It is also important to note that the RIAs have been negotiating compensation agreements for damages done to water or wildlife, and that $11 million in compensation to Inuit was agreed to through the IIBA for National Parks.

Means of Participating in Economic Opportunities

There are several key ways that people can participate in economic opportunities: they can work on the land, they can be employed or they can own a business and be self-employed.

- Currently, the biggest source of employment is the government. Given that a review of Article 23 is out of scope for this study, we cannot comment on this point.
- Another substantial source of economic activity is government purchasing. As discussed in the Section on Article 24, GN has developed a policy to encourage engagement of Inuit-owned firms and the hiring and training of Inuit staff. The results in terms of the percentages of contracts awarded to Inuit are low. However, this monitoring information is being used to assess performance, and the parties will continue to work towards understanding the barriers and developing and implementing policies and programs until such time as the success rates are higher. With regards to GC, no information on monitoring or periodic evaluation has been provided. While several interviewees in GC indicated that they are meeting their obligations and the objectives of Article 24, other interviewees in GC indicated that this was not the case, and interviewees from NTI indicated that it was not the case.
- Participation in major development projects is another key source of employment or contract opportunities. However, while IIBAs are being negotiated now, they have not been in place long enough to have provided substantial opportunities as of yet
- A fourth and important category is people who work on the land. Many beneficiaries noted that in this new "wage economy" people working off the land are not valued.

Self-reliance

The discussion on "means of participating in economic opportunities illustrated that while there are some developments in place that will lead to income streams for Inuit, these are not occurring yet. The GN still obtains the vast majority of its income from GC. Finally, participants in focus groups commonly stated that there had been no improvement since the NLCA. In fact, in some ways self-reliance has decreased, as fewer people, and in particular fewer youth, are involved in hunting activities.

There are a number of serious social and economic problems facing Inuit, limiting their ability to achieve self reliance.

Communication and Language

Two interviewees, and several focus groups, raised the issue of language. For the focus group participants, the emphasis appears to be on the survival of their languages, on the need for schools and the legislature to operate in Inuktitut and other Inuit languages to reflect their cultural heritage. This is also seen as a way to ensure that Elders are actively involved so that IQ has an integral part to play in education and decision-making. "Education and post-secondary education […] in Inuktitut have not been implemented and this creates a massive barrier to Inuit taking jobs and running things".

Several interviewees and focus groups also suggested that communication problems result from a lack of effective communications – written rather than oral communications. As one focus group participant said: "We don't read and we don't understand the Agreement".

The 2002/03 SCDD report (Ref. 6.11) noted that English is often the working language in day-care centres, educational facilities and work places. Both the GN and Nunavut Regional Office translate their public information materials into Inuktitut and Inuinnaqtun. However, we noted several examples in which federal and other information (e.g. contracts, notices) is not communicated in Inuktitut and Inuinnaqtun. In the course of conducting this review it took almost three months to obtain an electronic copy of the NLCA in Inuktitut, while the English version is commonly available. Similarly, the NTI website appears only to function in English. While we understand that there is no requirement that all information be communicated in Inuktitut and Innuinaqtun, when opportunities are communicated only in English, it limits the number of Inuit that can take advantage of the opportunity, which then has ramifications on social and economic realities of many Inuit.

Housing

There are no obligations or objectives in the NLCA directly in regards to housing (except in relation to parks, conservation areas and other initiatives involving Inuit Impact and Benefit Agreements). However, housing problems directly affect self-reliance and cultural and social well-being of Inuit, objective four. Housing problems were occurring throughout the NSA, where the average person-per-dwelling figure of 3.84 is substantially higher than the Canadian over of 2.65. As a member of one of the community focus groups put it: "housing is a lot harder to deal with now than in the past, we can't keep up with the housing requirements. That situation is getting worse." Another added that: "old housing [is] unhealthy and people are getting sick from them. I know there is a shortage of money [for housing] but there should be housing available for people to replace the old units."

Over the course of the current Review we also heard from several organizations across the NSA that the housing problems touches them as well, in terms of office space and the inability to hire new people who are coming from outside the community and require housing.

NTI has indicated that they find it particularly frustrating that while GC "refused to transfer responsibility for social housing to Nunavut during land claim negotiations, the federal government has provided no money for social housing in Nunavut since 1993, but has continued to build and repair social housing units in other aboriginal communities." (Ref. 6.11, p xv). A senior advisor and beneficiary from the GN noted that Inuit Beneficiaries are denied jobs solely on non staff housing provided for non-essential jobs within GN especially in the decentralized communities and Iqaluit."

Education

While educational offerings and educational attainment levels have increased substantially, there is a significant concern that Inuit culture and values are not sufficiently incorporated into the health care system. For example, "two-thirds of public school teachers and almost all the high school teachers are Southerners, most of whom receive no organized training in the Inuit way of life or orientation to the Inuit experience of being out on the land." (Ref. 6.11)

Health

Inuit have a significantly lower health status than other Canadians. According to the 2002/03 SCDD report (Ref 6.11), the average life expectancy at birth for Nunavut residents is 68 years old, compared to 78 for Southern Canadians. Infant mortality in Nunavut, at 16.3 deaths per 1,000 births is almost four times the national average of 4.6. The suicide rate in Nunavut is 6.8 times the national average.

Skills and Training

There are two areas in the NLCA that relate to skills development and training: Article 23 and Article 24. As noted previously, Article 23 is out of scope for this review. With regard to Article 24, Section 24.3.7 specifies that the government shall develop and maintain policies and programs related to training. Several examples of training initiatives were provided in the discussion on Article 24. Nevertheless, a lack of skills persists and more effort is required. It was also pointed out that while there are a host of federal programs that likely could be accessed, there was no clear understanding of how to ascertain what the options were.

Employment

Based on a review of data from Statistics Canada, we found that the unemployment rate in Nunavut in 2000 (the latest year for which data is available), at 17.4% was over two and a half times the national average of 6.8%.

Justice

Access to justice was raised as an issue of social well-being. Focus groups report that the Canadian justice system does not reflect Inuit social customs, and Elders should have a greater role to play. As one community focus group member put it: the "justice system has not been good for Inuit. White man's law does not work for us". Another mentioned: "The system hurts many people [..] it causes stress on the culture and on the family. The government should try harder to come up with a justice system that focuses on rehabilitation rather than sentences for penance".

Spending

Focus group participants raised the issue of the allocation of funding, questioning the use to which NTI has put its funds. One interviewee also questioned the wisdom of some of NTI's financial decisions (e.g. spending over $600,000 on an AGM). Another interviewee from the GN added that housing is a serious issue that was not addressed in the NLCA (although NTI had requested that it be), which is estimated to cost $1.9 billion to resolve.

Based on a review of data from Statistics Canada, we found that the unemployment rate in Nunavut in 2000 (the latest year for which data is available), at 17.4% was over two and a half times the national average of 6.8%.

These problems do not necessarily reflect a failing of the NLCA. Rather, they illustrate that the residents of Nunavut were experiencing socioeconomic challenges in some areas to a much greater degree than other Canadians. This suggests that the Parties must work together, in implementing initiatives under the NLCA, and other federal and territorial programs, to address these challenges.

While there are examples of progress being made in the development of policies and agreements, these have not translated into standards of living, or the ability to be self-sufficient enjoyed by other Canadians. In addition, there is concern about the pervasiveness of social and cultural values in government programs. Hence, these objectives were only being met to a limited degree.

5.0.2 Recommendations

The barriers and recommendations associated with achieving these objectives have been described in detail in the report and in summary form in the Executive Summary. We believe that two groups of recommendations are particularly important here.

Reporting on socio-economic outcomes and developing a defined consultation process

We note that the recommendations in regards to Article 32 are critical. Specifically:

- There needs to be more quantitative data on socio-economic outcomes, so as to be able to better assess outcomes and progress
- There should be a biannual report presenting this socio-economic data, together with a monitoring assessment of policy and program initiatives and recommendations.
- A consultation process policy should be developed to ensure more effective consultation

Identify Strategic Priorities

The discussion on progress towards the overall objectives of the NLCA and in particular towards the objective of encouraging self-reliance and the cultural and social well-being of Inuit has illustrated that there are serious socio-economic challenges in Nunavut.

These problems do not necessarily reflect a failing of the NLCA. Rather, they illustrate that the residents of Nunavut were experiencing socioeconomic challenges in some areas to a much greater degree than other Canadians. This suggests that the Parties must work together, in implementing initiatives under the NLCA, and other federal and territorial programs, to address these challenges.

In particular, we believe it is important for the Parties to work together to identify strategic priorities for improving progress towards the overall objectives. More specifically, we believe it is important for the Parties to work collaboratively to develop a list of strategic priorities and key outcomes, indicators, and initiatives to improve those outcomes. We recommend that the annual report, produced by SCDD, should involve the collaboration of all Parties, and identify these strategic priorities, target outcomes, indicators and initiatives (including both recommended initiatives and assessments of initiatives implemented).

5.1 Article 1 – Definitions

5.1.1 Status

5.1.1.1 Assessment

1.1.6 *Designations of the government to perform functions are not altered if one is designated to perform the function however the DIO shall be given notice of the designation.*

The first Five Year Review stated that there was no occasion to implement this obligation because Governments do not have formal procedures in place, should implementation be required.

During the current Five Year Review, interviewees **did not mention any problems or issues with this obligation**.

5.1.2 Barriers

At this time, there does not seem to be any concerns or issues with the implementation of this Article.

5.1.3 Recommendations

As there were no issues or concerns raised, implementation of this Article should proceed on an ongoing basis.

5.2 Article 2 – General Provisions

5.2.1 Status

5.2.1.1 Assessment

2.6.1 *Government shall consult closely with DIO in preparing and amending legislation.*

The first Five Year Review stated that this obligation had sometimes been met in the past, but was not being met at the time of the Review. Good cooperation resulting in close consultation was reported in the drafting of legislation to implement Article 4, Nunavut Political Development. There were serious concerns reported about the preparation of other implementation legislation. These concerns were addressed in more detail in Sections 5.4.3, Consultation and 5.4.4, Legislation Establishing the IPGs.

An interviewee indicated that this obligation was usually met by the GN through community consultation or directly with NTI. We conclude that **this obligation was being met on an ongoing basis**.

2.7.3 *Nothing in the Agreement shall:*

(a) be construed so as to deny that Inuit are an aboriginal people of Canada, or, subject to Section 2.7.1, affect their ability to participate in or benefit from any existing or future constitutional rights for aboriginal people which may be applicable to them;

(b) affect the ability of Inuit to participate in and benefit from government programs for Inuit or aboriginal people generally as the case may be; benefits received under such programs shall be determined by general criteria for such programs established from time to time; or

(c) affect the rights of Inuit as Canadian citizens and they shall continue to be entitled to all the rights and benefits of all other citizens applicable to them from time to time.

An interviewee pointed out that Inuit remain eligible for government programs available to other aboriginal groups in Canada, and GC interviewees note that many of the government programs and services that are available to Inuit are over and above what is provided through the NLCA.

We have learned of examples where Inuit have not had access to programs that have been offered to other Aboriginals (e.g. Aboriginal language funding as discussed in Article 32 or wharf and harbour programs run by the Federal Government). An example is the federal Aboriginal Fishing Strategy (AFS). NTI has argued that the AFS is applicable 'where DFO manages the fishery and where land claims settlements have not already put fisheries management regime in place.' NTI believes that 2.7.3 precludes DFO from defining the criteria for inclusion in the AFS in this way, based on the existence of a settled land claim. They argue that a significant part of the AFS's objectives go beyond 'fisheries management' (as per the exclusionary criteria) and provide economic opportunities to aboriginal groups. NTI claims that GC has expended well over a quarter of a billion dollars on the AFS since its inception. This includes somewhere close to $100 million under the AFS's Allocation Transfer Program which facilitates the voluntary retirement of commercial licenses held by non-aboriginals and the issuance of licenses to aboriginals, and provides direct economic benefits to aboriginal groups in terms of allocations, licenses, vessels, etc. DFO has identified the NLCA as the reason for Nunavut's exclusion from the AFS, even though the NLCA does not have any specific provisions to assist financially in the development of the Nunavut fishing industry. If Nunavut were included in this program, it would have a direct positive impact on the development of the Nunavut fishing industry, where Nunavut's inability to access quotas granted to

southern interests in Nunavut's adjacent waters is a major impediment to expansion of the Nunavut fishing industry.

In many cases, we understand that there is no national program per se, but rather a series of special initiatives. We have heard that in many cases, Nunavut's "share" of national programs or special initiatives is sufficiently small that it cannot be effectively implemented. We have also heard that there are federal government programs that, because of the specific terms and conditions, are not relevant to Nunavut.

Hence, we conclude that strictly speaking this **obligation has been met, but there is a need to review federal government programs to see if there can be a better way for Inuit and all Nunavummiut to better benefit from them.**

2.10.4 *Where the Agreement does not designate a particular person or body responsible for exercising a function of Government, the Governor in Council (for the GoC) or the Commissioner in Executive Council (for the GN), may designate a person or body to exercise the function. A DIO shall be given notice.*

The first Five Year Review stated that this obligation was being partially met on an ongoing basis. NTI had been sending DIAND and MAA the Dl0 listings on an irregular basis. Government had not made many designations. No established notification processes had been identified.

The interviewee speaking to this obligation was not aware any cases where the obligation had not been met. For this reason, it has been concluded that **this obligation was being met on an ongoing basis.**

5.2.2 Effectiveness of Implementation

Article 2 identifies general provisions of the NLCA. These provisions stretch across many of the Articles, and in most cases do not consist of specific obligations independent of these other Articles. Hence, given the fact that the other Articles are discussed in detail, we do not provide an overall assessment of all of the general provisions.

We do note that one area of concern is in regards to overlap with other programs and/or the relevancy of those programs (and the ability of Inuit to benefit from the inherent objectives of those programs) outside the NLCA. There are several challenges in regards to overlaps with other programs. GC has noted that in many cases NTI has tried to expand the scope of the NLCA, while GC argues that responsibility for those issues lies outside the claim.

This issue is particularly important for two reasons. First, objectives two and three, as stated in the preamble, indicated that a key overall objective of the NLCA was to improve the socio-economic status of Inuit. Second, as discussed in the Preamble section and the section on Article 32, there are "grave concerns" about the poor socio-economic status of Inuit.

5.2.3 Barriers

It seems that the key challenge with respect to accessing other programs lies in a lack of awareness or clarity about whether and how those programs can relate to Inuit.

5.2.4 Recommendations

One obvious recommendation would be to develop a comprehensive list of all federal programs and identify how they might apply to Inuit. However, such an initiative would likely be impractical as programs are continually evolving and it is unlike that an accurate inventory could be developed. What is more practical would be to identify the major areas, and key contact points for each. We believe this should be the responsibility of the Social and Culture Development Department (SCDD), as described in the section on Article 32.

5.3 Article 3 – Nunavut Settlement Area

This Section identifies the Nunavut Settlement Area. As this was agreed to at the time of the signing of the NLCA, no further review is required.

5.4 Article 4 – Nunavut Political Development

This Article specifies that the Government of Canada will recommend to Parliament, as a government measure, legislation to establish, within a defined time period, a new Territory (Nunavut), with its own Legislative Assembly and public government, separate from the Government of the remainder of Northwest Territories. The Government of Nunavut came into being in 1999. No further review is required.

5.5 Article 5 – Wildlife

5.5.1 Status

5.1.3 *This Article seeks to achieve the following objectives:*

(a) the creation of a system of harvesting rights, priorities and privileges that

(i) reflect the traditional and current levels, patterns and character of Inuit harvesting,

Prior to the implementation of the NLCA, the GNWT set quotas for the harvesting of each species. The new system has two parts:

- **Total Allowable Harvest (TAH)**: The new system involves setting TAHs. The allocation is set as follows: the basic needs level (BNL) of Inuit has first claim, personal consumption of other residents of Nunavut has the second claim, the continuation of existing sports and other commercial operations has the third claim, economic ventures has the next claim, and finally other uses have the remaining claim. The TAHs were to be set (were required due to Section 5.3.3) by the NWMB following the harvest study. The harvest study has only just been completed, so the vast majority of TAHs that will be set have not been set. Since the signing of the NLCA, quantitative harvest limitations followed a pre-NLCA quota system (see NLCA S.5.6.4) – but modified by the requirements of the NLCA.
- **Non-quota limitations**: All other harvest limitations (that is, non-quota limitations) followed the new "*NQL*" arrangement under the NLCA (see NLCA S.5.6.48-5.6.51). NQLs have been in place continuously since 1993, and are unaffected by the quantitative harvest limitation system.

The imposition of TAHs, quota limitations and NQLs has been subject to Section 5.3.3 since July 1993; that is, the NWMB and Minister can limit Inuit harvesting only to the extent necessary to meet one or more of the Section 5.3.3 conditions (i.e. Conservation, other provisions of the NLCA or public health or public safety).

There does not appear to be a concern that the continuation of the old system has impinged upon the rights, priorities and privileges that reflect the traditional and current levels, patterns and character of Inuit harvesting. The new system has been designed so that these objectives would be achieved, and interviewees agreed that the elements of the system, as defined by the NLCA are appropriate and well-intended. Interviewees were generally confident that the NWMB will ensure that TAH's are set according to the intent of the NLCA.

It is important to note that interviewees generally had more faith in the process than many of the beneficiaries that we spoke to in the community. Many beneficiaries were quite concerned that they were not adequately consulted in the process, and that IQ was not being adequately taken into account. More discussion on this is included in 5.1.3 b) v).

Consequently, it is **too soon to assess whether or not the objectives associated with the new system, will be achieved in practice. However, the objectives were being met by the old system as modified by the requirements of the NLCA.**

(ii) subject to availability, as determined by the application of the principles of conservation, and taking into account the likely and actual increase in the population of Inuit, confers on Inuit rights to harvest wildlife sufficient to meet their basic needs, as adjusted as circumstances warrant.

As stated above, the new system has been designed so that these objectives would be achieved. However, NTI has voiced a concern that these objectives would be compromised if several factors are not addressed. Specifically, an interviewee from NTI has identified several concerns about the study.

First, NTI has indicated that there is a strong and widely held belief (also reported by other interviewees) that there was significant underreporting of harvest levels. Under-reporting is a common phenomenon in surveys, particular with issues related to income. One rationale suggested by NTI for the under-reporting is that respondents were not made aware of how the information would be used. It is important to note that while the NLCA is a public document, and members of the community would have been able to see that this was the purpose of the Harvest Study, we learned through our community visits that many beneficiaries were not familiar with the NLCA. Without appropriate consideration of this underreporting, there is a risk that the BNL may be set artificially low.

This problem of underreporting, common with all surveys, is acknowledged in the Harvest Study. Part 5 (pages 35 – 42) deals with "Reliability of Harvest Estimates: sources and estimation of error". Under-reporting is recognized as a concern by the Study itself, and the Study goes on to suggest reasonable ways to correct for that, as well as for other errors. The following example illustrates NWMB's recognition of under-reporting and its desire to find appropriate solutions (taken from a 2005 NWMB letter to the DFO Minister, Ref. 18.5).

> "*The need to review the BNL*
> *Since 1995, turbot harvests in the Cumberland Sound winter fishery have been delivered to, and accurately recorded by, the Pangnirtung Fish Plant. [Footnote: Prior to the establishment of the Pangnirtung Fish Plant, harvesters delivered their catch to the HTO freezer or, in the early 1990's, to a private fish plant which briefly operated in the community]. A review of the Fish Plant's records clearly reveals that the harvesters consistently under-reported their catches in the winter area during the Harvest Study reporting period.*
>
> *Taking into consideration the under-reporting by harvesters during the Harvest Study, the significant harvests consistently recorded by the Fish Plant since that time, [footnote: in the four years from 2001 to 2004, the average harvest from the winter area was 139.4t per season] and the fact that the core area is considerably larger than the winter area, the NWMB is of the view that the BNL for this inshore stock needs to be reviewed at the earliest reasonable opportunity…*"

It is outside the scope of this study to provide a thorough review of the editing and imputation procedures applied to handle these issues. The important point is that NWMB recognize that there are some concerns among Nunavummiut (whether legitimate or not). It is not clear how widespread these are, although we do believe that the concerns came from knowledgeable people within NTI and from beneficiaries. It is our understanding that these concerns stem not from a disagreement with how NWMB has interpreted the data, but rather a lack of understanding about how the data has been treated to handle these problems.

Second, NTI believes that it is their understanding that the harvest study did not include the harvest that an Inuk can assign as per Section 5.7.34(a). For example, if an Inuk assigned their right to their non-Inuk spouse, this amount was not included in the harvest study. In addition, they note that the harvest study was also designed to promote maximum harvester participation (Section 5.4.3); however it only collected Inuit harvester data. As the harvest study only collected Inuit harvest for the determination of BNLs as per 5.4.5 (a), NTI argues that the lack of total harvest information could effect the application of Section 5.4.5 (b). It should be noted that this is a potential concern, not a certainty, and the point is that caution needs to be exercised and there needs to be ongoing dialogue to ensure that concerns are addressed.

Third, NTI has raised a concern that commercial harvests were not included in the harvest study. For example, they indicated that the Pangnirtung Winter Turbot Fishery lands about 300 tonnes of fish annually, much of which is distributed to national and international markets, but their basic needs level was estimated at just 1 tonne annually. NWMB has indicated that according to the Pangnirtung Fish Plant records, the average harvest from 2001 to 2004 was 139.4 tonnes. The BNL was set at 4.4 tonnes (Ref 18.4). Clearly there is a discrepancy here. With respect to this concern, the NWMB sent a letter to NTI (Ref 18.3) about their concerns over the BNL:

> Decision No. 2 – concern over calculation of the Basic Needs Level (BNL)
> You state that "*…there is no basis in the text of the NLCA to delete commercial and quasi-commercial uses from the calculation of BNLs…*" Unfortunately, the rationale provided for your position that the NLCA holds a contrary intention is only one sentence long. The NWMB therefore asks that NTI provide, prior to the end of November 2005, a thorough justification for the contention that commercial uses are to be included in the calculation of BNLs.[1] The Board also requests that your justification address the difference between the commercial uses contained within the BNL and the "*existing…commercial operations*", "*viable economic ventures*", "*commercial ventures*" and "*commercial… uses*" to be provided allocations from the surplus, as per NLCA Sections 5.6.38 to 5.6.40.
>
> The NWMB recognizes that NTI has raised a major issue with tremendous implications. Accordingly, the Board has, in a separate letter, asked that the other parties to the NLCA – the Government of Canada through the Department of Fisheries and Oceans (DFO) and the Department of the Environment (Canadian Wildlife Service), and the Government of Nunavut through the Department of Environment – also provide their positions in writing on the important matter of whether commercial uses should be included in the calculation of BNLs under the terms of the NLCA.
>
> Once the NWMB has received the views of the parties and has fully considered this issue, the Board will return to the specifics of the BNL calculation in Decision No. 2. In the meantime, the Pangnirtung Hunters and Trappers Organization (HTO) has been allocated the entire total allowable harvest (TAH) of 500 tonnes (t) of turbot for the current harvesting season.

We understand from all interviewees that the NWMB, and all parties, have clearly articulated the commitment to incorporating Inuit knowledge into the decision-making process. The NWMB's Vision Statement reflects the degree of importance placed on Inuit Qaujimajatuqangit (IQ) by the NWMB ("Conserving wildlife through the application of Inuit Qaujimajatuqangit and scientific knowledge"). An example of how this has been put into action is the NWMB's March 2005 refusal to approve the listing of polar bear, grizzly bear and wolverine under the *Species at Risk Act*, in part because of the lack of reliance on aboriginal traditional knowledge and community knowledge in assessing those species.

We have heard, through both our interviews and community focus groups, that there are concerns about the extent to which Inuit knowledge is taken into account in respecting the principles of conservation, as well as Inuit field knowledge in animal populations, the manner in which animal populations are calculated without Inuit involvement, and a strong feeling amongst Inuit that their knowledge is not respected by biologists and government.

It appears that Inuit do not believe, for the most part, that their right to meet their needs has been impacted now. It appears that the real potential for problems is more for the future than for the present. There is a concern that as the population continues to grow rapidly, conflicting opinions between southern biologists and Inuit hunters may lead to limitations on harvests that will affect the ability of Inuit to meet their BNL.

At this point in time it appears that the rights are being respected, and there is open dialogue about concerns. **The objectives were being met,** although there is concern about whether they will continue to be met in the future, partly because of concerns over the way the Harvest Study was conducted, and partly because of concern about whether there is sufficient consideration of Inuit knowledge in the process. Given the concerns about the treatment of underreporting, there should be clear descriptions about how under-reporting has been treated, in layman's terms, with all BNL and TAH decisions, so as to ensure confidence in the community.

> *(iii) gives DIOs priority in establishing and operating economic ventures with respect to harvesting, including sports and other commercial ventures,*

There are various examples illustrating how the DIOs are participating in economic ventures. The annual HTO walrus sport hunts, other HTO-led sport hunts, the developing Qikiqtarjuaq clam fishery, the inshore (NSA) shrimp fishery, the Pangnirtung winter turbot fishery, and other (initial and modest) attempts at exploring the possibility of an inshore turbot fishery are all ventures that have been led by HTOs. Generally, we have not heard of any examples in which case the DIO's rights were infringed upon. However, we have heard that in some communities the hunters feel ignored by a perceived lack of proactive effort on the part of DIOs.

We have also heard, through our community consultations, that hunters want to be more engaged in the process. They want people to come to them and ask them what they think. As will be discussed in 5.1.3 b) v), they want broad consultation of all of the people in the community, not just consultation with "representatives" such as HTOs.

Given this information, we conclude that **this objective was being partially met,** although there is interest in more proactive efforts.

> *(iv) provides for harvesting privileges and allows for continued access by persons other than Inuit, particularly long-term residents, and*

All interviewees were in agreement that **this objective was being achieved on an ongoing basis.**

> *(v) avoids unnecessary interference in the exercise of the rights, priorities and privileges to harvest;*

Most interviewees indicated that all the GN, NTI and NWMB have been working hard to achieve this. There is a perception that the government is not trying to unduly limit activity. **This objective was being achieved on an ongoing basis.**

> *(b) the creation of a wildlife management system that*
> *(i) is governed by, and implements, principles of conservation,*

All interviewees indicated that they believe that this objective is achieved on an ongoing basis. Numerous interviewees have indicated that biologists from the south often have a different perspective than Inuit. Many people – interviewees and focus group participants alike – indicated that good science is critical and that Inuit knowledge needs to be better integrated into the scientific research process. We further heard that understanding how to do this is quite a challenge, and that all parties are attempting to figure out how to do it. Hence, **the objective appears to have been achieved on an ongoing basis, subject to the qualification about incorporation of Inuit knowledge.**

(ii) fully acknowledges and reflects the primary role of Inuit in wildlife harvesting,

Most interviewees indicated that they believe that this objective is being achieved on an ongoing basis. On the positive side, there are a number of processes in place to enable this objective, such as: the holding of biennial Nunavut Wildlife Symposia, the process for deciding on wildlife research priorities, MOUs for polar bears, which are negotiated and agreed upon between HTOs, RWOs and the GN and the Community Based Management (CBM) Program for narwhal and beluga. A summary of the Community-Based Management Review (Ref. 18.2), describes the CBM system (as it then was), describes how the Community-based management system meets the objectives of the Section.

> "**The community-based management system**
> "*Community-based management*" refers to a system of wildlife management characterized to date by a removal of formal annual quotas and a transfer of initial management responsibility away from the NWMB and Government, directly to a community. Under this system, which is supervised by the NWMB and Government, the community Hunters and Trappers Organization (HTO) must establish and enforce appropriate by-laws and hunting rules to control harvesting by members. The HTO must also develop - in collaboration with Government - a reporting system to accurately record harvesting information, such as the number of animals struck, landed and lost.
>
> The concept of community-based management is firmly rooted in several fundamental principles and objectives underlying Article 5 of the *Nunavut Land Claims Agreement* (NLCA), in particular sub-sections 5.1.2 (e) and (h), 5.1.3 (a) (i) and (v), and 5.1.3 (b) (i), (ii), (iii) and (v). Essentially, this evolving system attempts to serve and promote the interests and efficiency of Inuit harvesters, and to encourage both their confidence and their participation in the Nunavut wildlife management system, by providing those harvesters with enhanced opportunities to be directly involved in responsible management decisions. At the same time, community-based management is intended to operate within the principles of conservation that govern all wildlife management under the NLCA."

However, once again, it is important to note that many beneficiaries indicated that they do not feel as engaged in the process as they would like to. Consequently, we conclude that **the objective, up to the present time, was being partially achieved on an ongoing basis**.

(iii) serves and promotes the long-term economic, social and cultural interests of Inuit harvesters,

As stated above, the harvesting activities have not been impacted by the new system to date, so the amount of real change has yet to be determined. The Nunavut *Wildlife Act*, which was designed to serve and promote the interests of Inuit harvesters, was recently approved. It should be noted that the Nunavut Wildlife Act and the associated Wildlife Regulations only apply to species managed by the Territory – they do not apply to those species managed by DFO or CWS (fish, marine mammals, migratory birds). However, it is important to appreciate that many beneficiaries have complained that there are too many rules and regulations and this is inconsistent with the Inuit tradition. This represents a real challenge, which will be addressed in greater detail in the barriers and recommendations section.

It is important to note that this Article is seen as a real opportunity by local hunters. For example, big game hunting is perceived to have potential where Inuit harvesters can benefit economically. However, community focus group participants indicated in several communities that their HTOs seemed to be underfunded, and together with the RWOs and the GN, have not developed a broader harvesting regime which would include commercial sales by Inuit into the meat and fish markets locally and outside of Nunavut. Finally, many people have reported that the role of hunters needs to be enhanced.

We concluded that **this objective was being partially achieved.**

> *(iv) as far as practical, integrates the management of all species of wildlife,*

The following is the process for setting TAHs and NQLs in the 25 Wildlife Regulations and Orders that are soon to come into force in Nunavut:

- A Working Group composed of the GN, NTI, the NWMB and the 3 RWOs met regularly for 16 months (until May 2005) to develop the Regulations and Orders;
- Three week-long regional consultation sessions led by the GN were attended by the HTOs, RWOs, NTI and the NWMB in October and November 2005;
- The NWMB organized a 3-day informal hearing on proposed TAHs and NQLs in November 2005, attended by the HTOs, RWOs, NTI, the GN and the NWMB;
- The GN has offered to continue to carry out consultations with individual communities;
- The NWMB is planning a public meeting in April 2006 where participants can make submissions to the NWMB concerning any of the proposed TAHs or NQLs, prior to the NWMB making its decisions; and
- In order for the NWMB to decide to establish a harvest limitation, the proponent must provide sufficient evidence to meet the test set out in NLCA S.5.3.3.

This process suggests the **objective of implementing an integrated management process was being met** with respect to wildlife government by the territorial Nunavut Wildlife Act. A discussion related to fisheries is included in the section on Article 15. We have not been provided with any information on the management of migratory birds.

> *(v) invites public participation and promotes public confidence, particularly amongst Inuit, and*

The NWMB has a very comprehensive website that presents a significant amount of information about meetings, research, funding, etc. Many interviewees reported that it consults widely throughout the communities. While recognizing this commitment to inviting public participation, NTI has noted the difference between public consultation and the board's decision-making process. NTI has identified two concerns with respect to Inuit participation in the decision making process.

First, NTI has expressed concern that NWMB has never held public hearings; they have drafted a process, and everyone agrees to it, but it has not been implemented. It should be stated that NWMB is not required to hold public hearings. Several interviewees have reported that hearings tend to be so formal that they can dissuade both pubic participation and openness of stakeholders. One interviewee indicated that: "Although the NWMB is not opposed to holding public hearings, it would rather proceed by way of cooperation and collaboration – a co-management approach. This approach is particularly in keeping with the IQ principle of Piliriqatigiingniq ("People must work together in harmony to achieve a common purpose" – see S.8 (e) of the *Wildlife Act*)."

Second, NTI indicated that:

> The NWMB's decision making process is open, however, in their opinion; it does not meet the requirements of "procedural fairness". For example, in the NWMB's written procedures of Public Hearings, there are timelines for notification of a hearing, posting of issues that will be subject to Board decisions and the requirement of public access to all the information/rational that will be considered by the Board in making a decision well in advance of the Board making a decision.

> This is where interviewees from NTI believe that the NWMB has fallen short. Until recently (the past year) the NWMB did not make the meeting agenda public, it was distributed to participants 2-3 weeks prior to the meeting, the written requests for decisions to the NWMB were made available to participants in the meeting at the most 1 week before and usually not until the binder was picked up at the meeting. This process does not allow Inuit or Inuit Organizations an opportunity to prepare or participate in the Boards decision-making process. Furthermore, the NWMB does not make notification that they have made a decision. More specifically, NTI believes that NWMB has interpreted 5.3.8 and 5.3.17 to mean that they can say nothing, however this does not allow Inuit or the public to be notified that the NWMB has made a decision and then be able to follow up with the Minister or NWMB after the 30 or 60 day period has lapsed. Hence, it can be a very closed and self regulated process where only the NWMB and Minister know what is happening. Hence, the 5.3.1 right to request a judicial review within the allowed time frame of 30 days of the Minister accepting, rejecting, or varying the decision, can be missed (and has been in the past). The NWMB should be required to make public that it has made a decision and the Minister should be required to notify or post publicly that the NWMB's decision has been accepted, rejected or varied to ensure that a person personally aggrieved or materially affected by the decision has the opportunity to request a Judicial review as per 5.3.1. The last point on NWMB decisions is that the accepted, rejected or varied decisions are not readily available to the public, all the Boards decisions are buried in the volumes of meeting minutes or in correspondence. NTI has requested that the NWMB log all their decisions in one listing that would be readily accessible to the public on the web site and available upon request from the NWMB office, to date there has been no response to this request.

An interviewee from the NWMB reported that the NWMB decision-making process is open, and not only allows but requires input from Inuit. As mentioned previously, the first step required for all proposed limitations is consultation with affected Inuit. Almost all harvest limitation decisions are made by the NWMB at in-person quarterly meetings. Every proposed harvest limitation must be accompanied by a Briefing Note setting out the relevant background, and the rationale for setting, modifying or removing the quota, TAH or NQL. The in-person meetings are always open to the public and NTI is always invited and provided sufficient notice. People/organizations can file materials beforehand, and can make submissions, challenge positions and ask questions at the meeting. The actual decision-making is done in camera – as required by the NLCA (see NLCA S.5.3.8 & 5.3.17).

It is also important to note that from community consultations we have heard that some beneficiaries believe that the decision making process is heavily controlled by terms and words that lawyers can only understand. Many hunters feel NWMB makes decisions too quickly. They argue that the authority that NWMB carries seems to be taken too hastily without the proper decision making process. There is a concern that decision-making authority should be spread out to more people so that the process has more credibility. In some cases, we have heard that HTOs are frustrated with this process and will reach a point where they become unwilling participants. There are many individuals who are genuinely interested and have good intentions to address the issues that involve wildlife. Elders and Hunters in particular are the ones who feel ignored. We have identified several quotes that we heard repeatedly that characterize some of the common feelings:

- Inuit have good ideas, but no one listens;
- Inuit seem to be second class citizens;
- Elders aren't respected;
- All biologists are conservationists.

Fundamentally, there appear to be differences in viewpoints about the extent to which the public are consulted. Many Inuit are saying they aren't consulted enough, while we've also heard numerous people,

often government representatives, say that they are hearing that they are over-consulting. We believe the challenge may be the following:

- It appears that much of the consultation is done with "representatives" of Inuit (e.g. HTOs). Many Inuit are not comfortable with speaking on behalf of other people; people who do so are rare and "over-consulted".
- We've heard some Inuit say that it is not the "Inuit way" to consult representatives of Inuit; rather the Inuit tradition is to invite comment from all people. Hence, beneficiaries, without any position in which they are acting as representatives, are not consulted enough.

Given interviewees agreement that NWMB has sought to reach out to the public, but that the concerns expressed by NTI over decision-making and the concern by beneficiaries that they are not consulted enough, we find that **the objective of this sub-section was being partially achieved.**

> *(vi) enables and empowers the NWMB to make wildlife management decisions pertaining thereto.*

Most interviewees agreed that this objective has been achieved on an ongoing basis. There was one instance where the Minister for Environment Canada made a recommendation to the Government in Council advising that the Peary Caribou, Dolphin-Union Caribou and Porsild's Bryum be listed under the *Species at Risk Act*. Following complaints from NTI and NWMB (Ref 18.5), that it was the NWMB's role to make listing approval decisions, the Minister withdrew the recommendation.

We have heard, once again, that many Inuit believe that not enough consultation has been undertaken with beneficiaries. We have frequently heard that decisions by the NWMB are made too quickly.

This represents a real challenge. The NWMB must make a large number of decisions in order to comply with the NLCA. Consulting everyone about everything would take an extremely long time. We believe that work needs to be done on finding the right balance.

We too conclude that the ultimate outcome has been that **this objective was being achieved on an ongoing basis,** but that greater attention to beneficiaries' concerns is required.

5.2.14 *The NWMB shall meet at least twice a year, and may meet as often as it deems fit.*

The NWMB conducts in-person meetings at least four times per year and meets frequently and regularly via conference call. **This obligation was being met on an ongoing basis.**

5.2.19 *The cost of the NWMB shall be the responsibility of Government. The NWMB shall prepare an annual budget subject to review and approval by Government.*

This is done every year. The NWMB is promised an overall funding amount for each "planning period". The initial planning period was 10 years (1993 to 2003). From that global amount, the NWMB develops annual budgets. However, the Implementation Contract permits sufficient flexibility that the Board can carry forward unused funds from one year to the next, subject to the approval of NIP. In addition, the NWMB's annual funding agreement with DIAND allows the Board to retain any unexpended balances at year's end if the NWMB has met all of its commitments under the funding agreement for that year. **The obligation of this Section was being achieved on an ongoing basis.**

5.2.20 *Each member shall be paid fair and reasonable remuneration for work on the NWMB.*

The first Five Year Review concluded that the obligation of this Section was "being met on an ongoing basis". It also stated that "The NWMB states the honoraria levels set for members do not reflect fair and reasonable remuneration given the complexity and breadth of their duties, and are lower than honoraria for boards with similar duties."

NTI commenced legal action against the Government of Canada. In January 2004, the court concluded that "PCO's decision not to reclassify the NWMB is not subject to judicial review because it did not have statutory authority to decide the remuneration of NWMB members. Even if it did, it did not make any legal errors or mistakes of fact that would justify the Court's intervention. Accordingly, this application for judicial review must be dismissed."

The Conciliator's Interim Report (Ref. 2.2, Pages 25 and 26) identified a number of considerations in this matter.

- "In the 1993 Implementation Contract, the parties agreed that the NWMB members should be paid $200 a day and the chairperson $275 a day."
- "Until 2000, Canada's guidelines for honoraria did not mention the NWMB. In that year, the NWMB was listed as what is known as a category IV agency and its member received an increase to $225 a day and the Chairman to $325 a day."
- "The federal "Remuneration Guidelines for Part-time Governor in Council Appointees in Agencies, Boards and Commissions" (Privy Council Office, October 1, 2000) do not purport to be binding: These guidelines set out the amounts and conditions of payment for the part-time services of persons appointed to office by the Governor in Council. They are not an authority in themselves. They set out what can be recommended routinely and without substantiation for the approval of the GIC. Each organization must obtain its own Order in Council for authority to pay."
- In February 2002, the government substantially upgraded the pay scales of Category II (NWB and NIRB) and Category III (NSRT), "which had previously been paid at the same scale as the NWMB". Under the new rates, NWB and NIRB board members would be paid 67% more than those of the NWMB.
- The Chairman of the NWMB subsequently requested a review of the board's classification.
- "The PCO decided that the NWMB should remain a category IV agency. PCO's refusal letter stated that "based on the evaluation criteria and in relation to other executive board positions, [NWMB] is appropriately classified as a Category IV board".

The report concluded that: this disparity is simply an aberration that must be corrected, for the sake of providing "fair and reasonable remuneration", as required by Article 5.2.20.

We have also considered information raised during interviews, we understand that the PCO wants to ensure consistency across the North. However, there is no other wildlife management board that has the scope of activities and responsibilities that the NWMB has. Furthermore, in our opinion, consistency within Nunavut, and across the IPGs created by the NLCA, would be more important than consistency across organizations of very different sizes and scope across a range of land claims.

On reflection, it appears that the NWMB has a very significant portfolio of activities that is at least as large as, if not larger than that of other Boards in Nunavut. In addition, wildlife was typically seen as the most important issue to Inuit (next to Inuit Employment as per Article 23): it has been, is, and is expected to be critical to both the health and livelihood of the population, as well as the cultural well being. We

have not seen any evidence to suggest that these board members should be paid less than other board members, and consequently, **we believe that the obligation of this article was not being met.**

5.2.33 *Recognizing that Government retains ultimate responsibility for wildlife management, the NWMB shall be the main instrument of wildlife management in the Nunavut Settlement Area and the main regulator of access to wildlife and have the primary responsibility in relation thereto in the manner described in the Agreement. Accordingly, the NWMB shall perform the following functions:*

(a) participating in research (Sections 5.2.37 to 5.2.38);

Most interviewees agreed that this obligation was being met. The Nunavut Wildlife Research Trust, which has the same Board as the NWMB, provides at least $700,000 per year to researchers and the Studies Fund provides $100,000 to $200,000 per year. The Research Trust provides funds for government research, while the Studies Fund provides funds for community-based research.

However, as stated in the Conciliator's Interim report (Ref 2.2, pages 23-24), "the Harvest Study, it seems agreed by the parties, needs to be updated and some of the methodology modified to benefit from the lessons learned in carrying it out". The report also found that "the Total cost of the Harvest study was approximately $7.3 million", with the largest part (about $5.3 million) spent on data collection. Finally, the report goes on to state that "It is not clear whether Canada's proposed budget for ongoing study of wildlife of $500,000 per year, or $ 5 million over the 10 year implementation period, is sufficient to conduct an adequate Nunavut-wide survey and to carry out other projects, such as ongoing IT research work, that might also fall within that line item in the NWMB's budget.

Given the management of the Trust by the Board of the NWMB and the fact that research has been undertaken at their direction, we find that **this obligation was being met on an ongoing basis,** but believe that there are concerns about whether it will be met in the future.

(b) conducting the Nunavut Wildlife Harvest Study (Part 4);

This study was conducted. However, as noted in 5.1.3 a) ii), NTI has expressed concerns that under-reporting (an issue common to all surveys) be addressed accordingly. Hence, **the obligation has been met,** and all parties will need to continue to assure themselves that potential problems associated with the Study are managed effectively.

(c) rebutting presumptions as to need (Sections 5.6.5 to 5.6.11); (d) establishing, modifying or removing levels of total allowable harvest (Sections 5.6.16 to 5.6.18); (e) ascertaining the basic needs level (Sections 5.6.19 to 5.6.25); (f) adjusting the basic needs level (Sections 5.6.26 to 5.6.30); (g) allocating resources to other residents (Sections 5.6.32 to 5.6.37); (h) allocating resources to existing operations (Section 5.6.38); (i) dealing with priority applications (Section 5.6.39); (j) making recommendations as to allocation of the remaining surplus (Section 5.6.40);

Given that the harvest study has just been completed, the actions described in these sub-sections have yet to be undertaken on a wide-scale basis. Hence, **it is not possible to assess the status at this time.**

(k) establishing, modifying or removing non-quota limitations (Sections 5.6.48 to 5.6.51);

This is being done. However, there are some situations in which non-quota limitations are being imposed that are of concern to some Inuit. For example, regulations cite the caliber of gun that must be used in

hunting. In some of these cases Inuit do not use guns, they use harpoons, and the continued use of harpoons put them in contravention of the law. More generally, we heard beneficiaries say that there are too many rules. Consequently, **we conclude that this obligation was being achieved,** but believe it is critical to ensure that these NQLs are not unduly limiting.

(l) setting trophy fees (Section 5.7.41); and

This is a discretionary function of the NWMB. In collaboration with the GN and NTI during the development of the new Nunavut *Wildlife Act*, it was decided to forego setting trophy fees and, instead, have that money go to the Conservation Trust Fund. Thus, hunters who would have paid a trophy fee will now pay a fee that will be put into the Conservation Trust Fund. **This obligation was being met.**

5.3.3 *Decisions of the NWMB or a Minister made in relation to Part 6 shall restrict or limit Inuit harvesting only to the extent necessary: (a) to effect a valid conservation purpose; (b) to give effect to the allocation system outlined in this Article, to other provisions of this Article and to Article 40; or (c) to provide for public health or public safety.*

Interviewees agreed that the only time that quotas or Total Allowable Harvests have been set is when there is a concern with regard to this section and Inuit harvesting can be limited only to the extent necessary to affect a valid conservation purpose. For example, TAHs have been set for: all 12 Nunavut polar bear populations, all bowhead whales, and turbot in Cumberland Sound within the Nunavut Settlement Area. Concern related to conservation has been the typical reason for setting quotas or TAHs. We conclude that **this obligation was being achieved.**

5.4.1 *A Nunavut Wildlife Harvest Study (Study) shall be undertaken in, and cover, each of the three Regions of the Nunavut Settlement Area. Terms of reference for the Study are set out in Schedule 5-5.*

The Study was completed in 2005. **This obligation has been met.**

5.4.5 *The purpose of the Study shall be to furnish data, to establish current harvesting levels, to assist the NWMB in establishing levels of total allowable harvest and, in general, to contribute to the sound management and rational utilization of wildlife resources in the Nunavut Settlement Area. To this end, the Study shall: (a) document the levels and patterns of Inuit use of wildlife resources for the purpose of determining the basic needs level; and (b) gather, review and analyze existing biological, ecological and harvest data pertinent to the management of wildlife in the Nunavut Settlement Area.*

Interviewees generally indicated that part a) was achieved. Interviewees also indicated that Part b) is an enormous project that will need to be undertaken on an ongoing basis and is unlikely to be comprehensively complete at any single point in time. **The obligation of this article was being achieved.** However, the concerns with the study, as noted in 5.1.3, may mean that the data is artificially low. We understand that ongoing discussions are needed between NTIA and NWMB to resolve differences in opinion.

It is also worth noting that a Nunavut Wildlife Resource Centres Coalition was established as a partnership between a number of agencies located in Iqaluit with a mandate or interest in wildlife management in Nunavut. The coalition has no responsibility in regards to the Harvest Study. However, the coalition facilitates the use of this information, along with other information, to enable researchers to

gather, review and analyze existing biological, ecological and harvest data. This partnership has expanded over the years and now includes 6 members: the Nunavut Wildlife Management Board, the Department of Environment (Government of Nunavut), Nunavut Research Institute, Department of Fisheries and Oceans (Government of Canada), Canadian Wildlife Service (Government of Canada), and Department of Economic Development and Transportation (Government of Nunavut). The collection of resource material in each agency's library/resource centre is catalogued into a common database, which currently holds over 7,000 records. This resource centre illustrates that in addition to the NWMB, a large number of stakeholders have access to this information to conduct their own research.

5.4.6 *Raw and interpreted data produced from the Study shall be fully and freely available to the Government of Canada, the Territorial Government and Inuit.*

Interviewees generally indicated that the raw data is available and the study is freely available. In addition, the online library through the NWMB provides a substantial amount of information. However, numerous interviewees believe that the data has not yet been analyzed to produce BNLs for all the species which will require BNLs (and therefore has not been "interpreted" yet). It is important to note that all information – both raw and whatever has been interpreted – has been freely and fully available. **This obligation was being partially achieved.**

5.4.7 *The NWMB shall ensure that the names of individual harvesters are not revealed when making available data pursuant to Section 5.4.6.*

Most interviewees indicated that **this obligation was being achieved**.

5.5.2 *The NWMB shall conduct an Inuit knowledge study to record sightings, location and concentrations of bowhead whales in the Nunavut Settlement Area. The study shall be completed within five years of the date of ratification of the Agreement. The amount of $500,000 shall be included in the NWMB budget for this study.*

All interviewees indicated that this study has been successfully completed. However, it took 7 years to complete at a cost of $750,000 - $800,000. The NWMB found the extra money to complete the study within its own budget instead of going back to the Government to ask for more money. This was noted as an example where there was good cooperation with government. The study, along with new aerial surveys and other scientific research lead to the conclusion that there is likely more bowhead than previously thought.

This obligation was being achieved.

5.6.1 *Where a total allowable harvest for a stock or population of wildlife has not been established by the NWMB pursuant to Sections 5.6.16 and 5.6.17, an Inuk shall have the right to harvest that stock or population in the Nunavut Settlement Area up to the full level of his or her economic, social, and cultural needs, subject to the terms of this Article.*

All interviewees agreed that this objective has been achieved to date. However, several interviewees also indicated that Inuit may not fully appreciate their rights (e.g. under the old system, if you went fishing for yourself, you could not sell your catch, but now you can sell your catch.) Once Inuit begin to realize these rights, there may be more pressure on the allowable harvest.

This objective was being achieved.

5.6.16 *Subject to the terms of this Article, the NWMB shall have sole authority to establish, modify or remove, from time to time and as circumstances require, levels of total allowable harvest or harvesting in the Nunavut Settlement Area.*

All interviewees indicated that the NWMB does have the authority as described here, and there have been no attempts at interfering with that. **This obligation was being met.**

5.6.20 *The basic needs level shall constitute the first demand on the total allowable harvest. Where the total allowable harvest is equal to or less than the basic needs level, Inuit shall have the right to the entire total allowable harvest.*

All interviewees reported that the NWMB is working on setting the BNLs and TAHs, although most of them have not yet been set. Furthermore, given the enormity of the task of setting these levels, NTI has raised a concern about whether the NWMB has the resources to do so. **These objectives have not yet been met,** but interviewees generally reported that they were confident that the NWMB was proceeding appropriately along the path to achieving these objectives.

5.6.25 *The NWMB shall establish the basic needs levels for beluga, narwhal and walrus within 12 months of the NWMB being established taking into account the fact that they are in short supply in some areas and therefore that the harvest by Inuit has been and is artificially low in relations to their needs and does not necessarily reflect their full level of needs.*

It is important to note that while it was understood that in general BNLs would be set based on the Harvest Study, there was an expectation and agreement that BNLs would be set as a priority (within 12 months of the creation of the NWMB. The first meeting of the NWMB was set up in 1994.

It is important to note that NWMB has stated that while it is true that this obligation has not been met, the NWMB has repeatedly sought and received the approval of NIP (NLCA 37.3.3(a)) over the years to extend the timeline for establishing BNLs for beluga, narwhal and walrus. With very little scientific data available on the populations of these species during the 1990's, and all of the harvests already being taken by Inuit (or their assignees in the case of walrus sport hunts), the NWMB felt it was pointless – even irresponsible - from a wildlife management perspective to essentially guess at the basic needs levels for Inuit. By 1996, NIP had decided that it was "*of the view that the NWMB is not obligated to set a harvest restriction or even to confirm any existing restriction, which is continued in effect by 5.6.4 of the Agreement.*" (Jan 11/96 letter from NIP (DIAND) member, Terry Henderson, to the NWMB Chair). In 1998, the NWMB – with the blessing of NIP – decided to concentrate on developing innovative management regimes for these species. As a result, the successful community-based management system for beluga and narwhal came into being. In that same year, the Board established a Walrus Working Group to assist it in ensuring the best management approach for walrus. With the completion of the Harvest Study, this obligation will likely soon be met.

Consequently, **while the obligation as stated had not been met, the Parties are in agreement with the actions taken in respect to this Section.**

5.6.26 *The NWMB shall periodically review the basic needs level for each stock or population and determine whether an additional allocation is required to meet any or all of: (a) increased consumption or use by Inuit; (b) intersettlement trade; and (c) marketing for consumption or use in the Nunavut Settlement Area.*

5.6.27 *In reaching its decision, the NWMB shall take into consideration the following factors: (a) population growth and demographic change on a community and regional basis, including the establishment of new communities; (b) changing patterns of consumption, assignment and other uses including adjustments for intersettlement trade and marketing in the Nunavut Settlement Area; (c) the nutritional and cultural importance of wildlife to Inuit; (d) variations in availability of and accessibility to species other than the species under consideration; and (e) current use of wildlife for personal consumption by other residents in light of their length of residency.*

As stated above, given that the Harvest Study has just been completed, it has not yet set all, or even most of the BNLs, and therefore it has not begun to adjust the BNL. Once again, it is important to note that, given the enormity of the task of setting these levels, NTI has raised a concern about whether the NWMB has the resources to do so. **These obligations have not yet been met, but interviewees generally reported that they were confident that the NWMB was proceeding appropriately along the path to achieving these obligations of this Section.**

It would seem that the recent agreement, by all NIP members, regarding funding, will substantially alleviate the challenges due to funding.

5.6.31 *The NWMB shall determine the allocation of the surplus in the following order and priority: (a) to provide for personal consumption by other residents as described in Sections 5.6.32 to 5.6.37; (b) to provide for the continuation of existing sports and other commercial operations as described in Section 5.6.38; (c) to provide for economic ventures sponsored by HTOs and RWOs as described in Section 5.6.39; and (d) to provide for other uses as described in Section 5.6.40.*

All interviewees indicated that specific provisions in the new Nunavut *Wildlife Act* have been developed cooperatively by the NWMB, GN and NTI to ensure the smooth application of the NLCA's surplus provisions. It is important to note that the Nunavut *Wildlife Act* and the associated regulations only apply to species managed by the Territory; they do not apply to those species managed by DFO or CWS (fish, marine mammals, migratory birds). Given the new provisions have not been implemented, we conclude that **these obligations have not yet been met, but there is no concern that they will not be met when the provisions are put in place.**

5.6.41 *A person other than an Inuk who harvests big game must: (a) hold a valid licence issued by the appropriate government agency; and (b) for at least two years following the acquisition of the licence, be accompanied by an Inuk approved as a guide by an HTO in accordance with any qualifications established by the NWMB.*

5.6.42 *The requirement for a guide referred to in Subsection 5.6.41(b) shall not apply where the HTO waives such requirement or where no guides are approved by an HTO.*

Interviewees indicated that the requirement for a) exists, although based on ad hoc discussions with people in the community, PwC learned that it has not been enforced in all cases. All interviewees reported that the NWMB has established the qualifications referred to in this section. The new *Wildlife Act* contains specific provisions addressing the requirements of Section.5.6.41. NTI has raised a concern that the HTOs do not have the resources to implement this obligation. We understand that the requirement in 5.6.41 b) "shall not apply where the HTO waives such requirement or where no guides are approved by an HTO", however, it seems to us that the implied objective is that HTOs appoint guides when they

believe it is necessary, and that not appointing guides because they do not have the resources contravenes the spirit of this Section.

Given that the obligations can by definition be met simply by the HTO waiving the requirement, **we find that the obligation was being met, but that the objective behind this obligation has not been fully met.**

5.7.2 *Each community, and each outpost camp that prefers a separate organization, shall have an HTO. Membership in each HTO shall be open to all Inuit residents in a community. Each HTO may, by by-law, provide for classes of non-voting membership and privileges that flow therefrom, and may distinguish between persons who are Inuit by descent or custom, but who are not enrolled under Article 35 and other persons. Existing community Hunters and Trappers Associations may, subject to their adaptation to the provisions of this Article, act as HTOs. Two or more HTOs may join together for the purpose of discharging their functions over any or all species of wildlife on a joint basis.*

All interviewees indicated that **this obligation was being achieved**. However, it has been concluded that there is high turnover, which limits the ability for the HTO function to be effectively carried out.

5.7.3 *The powers and functions of HTOs shall include the following: (a) the regulation of harvesting practices and techniques among members, including the use of non-quota limitations; (b) the allocation and enforcement of community basic needs levels and adjusted basic needs levels among members; (c) the assignment to non-members, with or without valuable consideration and conditions, of any portion of community basic needs levels and adjusted basic needs levels; and (d) generally, the management of harvesting among members.*

Interviewees indicated that this obligation has been partially or fully achieved. In cases where it was indicated to be only partially achieved, the caveat offered was that there is a lack of capacity at the HTO level. The Conciliator's Interim Report (Ref. 3.9), building on Aarluk Consulting Report of 2004 provided an extensive discussion illustrating the significant resource and funding challenges that the HTOs face. More specifically, a study of Inuit Participation in Wildlife Management in Nunavut: Structural Issues and Options (Ref. 3.9, page 4) concluded that:

> "Nunavut's wildlife management regime was originally conceived during the negotiation of the Nunavut Land Claims Agreement. The system represented the negotiators' best assumptions how about Lands management would function in the real, post-Claim territory. The mandates of the various organizations with wildlife-related functions and their relationship to each other have evolved significantly; demands placed upon local HTOs exceed the original expectations outlined in the Land Claim. Assumptions about the role and capacity of the government of Nunavut need to be reexamined. Serious issues in the areas of governance, policy making, accountability, and capacity have emerged. Additional needs have been identified in areas like program delivery, and new structures have emerged (including the hiring of Community Liaison Officers in all communities)." (P.4, Section 2)
>
> "The structural weakness of the wildlife management infrastructure becomes most visible when the system is called on to respond as a whole to a complex new demand, such as the need for consultation on the *Wildlife Act* or an organizational intervention: it's not clear who is expected to do what, or who should play a lead role in addressing emerging needs or crises." (P. 22, 5.2)
>
> "There is a need therefore to define the process and channels by which RWOs, HTOs, NTI and RIAs participate in the identification of policy needs, consultation, formulation of policy

options, agreement on final policy positions, and implementation of final policy recommendations on wildlife related issues on behalf of Inuit. Specific areas where input from every level is required include: establishing research priorities for NWMB; establishing government research priorities; input into the formulation of wildlife legislation territorially (e.g., *Wildlife Act* and regulations), nationally (e.g., on SARA, MBC, etc.) and internationally (e.g., CITES, etc.); participation in the resolution of specific implementation policy issues (e.g., assignment of rights, fisheries quotas, etc.)." (P. 26, Sec. 5.5)

Consequently, **we will believe the obligations of this section were being partially achieved.**

5.7.4 *Each Region shall have an RWO. The Kitikmeot Wildlife Federation, the Keewatin Wildlife Federation and the Baffin Region Hunters and Trappers Association may, subject to their adaption to the provisions of this Article, act as RWOs.*

Several interviewees indicated that this obligation was met. Each region technically does have an RWO but interviewees have reported that the administrative offices have failed. The administrative functions are now being carried out by the Secretariat based in Rankin. The RWO boards themselves are still in place. Given that each region did have an RWO, **we find that this obligation was being met.**

5.7.13 *Adequate funding for operation of HTOs and RWOs shall be provided by NWMB.*

Funding levels were set at the beginning of the first 10 year period, and simply administered by the NWMB. All interviewees concluded that the funding for HTOs and RWOs has not been adequate. As described in Ref. 3.9, "HTOs, which, for the most part, are one-person operations, are also responsible for a much broader range of obligations, programs and services than originally conceived, but without a concomitant increase in resources, staffing, training or policy support. Expectations and demands are growing: neither resources nor capacity, by and large, are keeping pace. The consequences are now being felt. Major management failures have occurred within several HTOs and within the last six months, in two RWOs. Organizations throughout the sector continue to experience high levels of turnover, with the consequent loss of corporate memory and impact on organizational effectiveness and inter-organizational communication." More specifically, as described in Ref. 3.9, the key challenges are:

- "Most organizations lack the capacity to carry out the two corporate functions most necessary to BUILD capacity: planning, and training.
- "There is no standard sectoral definition of the skills, knowledge, and affective skills associated with the key positions in wildlife management (e.g., HTO manager, RWO Board member, etc.)
- "NTI and RIAs have the policy and management capacity to design and implement major consultation and planning processes required to resolve the major outstanding issues in such areas as assignment of rights. RWOs and HTOs lack that capacity.
- "Due to resource constraints, salaries are not competitive: skilled, motivated people get hired away by GN or other, better-paying employers.
- "There is a lack of conventional scientific expertise within the DIOs managing wildlife."

We do understand that as per a letter dated February 6, 2006, that all members of NIP have come to an agreement on recommended funding increases. The levels of funding endorsed by NIP remain subject to the internal approval policies of each party to the Contract. It is expected that this additional funding will alleviate these problems.

While the NWMB has met its obligations in terms of turning over the prescribed funding to the HTOs, there appears to be general agreement that the funding levels were inadequate over the

period understudy. We further understand that given the recent agreement by the members of NIP, that better progress is expected in the future.

In general, interviewees agreed that this obligation was being met. One exception is that NTI and the Government of Canada are currently engaged in litigation over the question whether the Government can properly impose a requirement for firearms licenses and registrations in the face of this section. As the Firearms Act has not been amended to remove this requirement, (but an interim injunction is in place pending trial) NTI's position is that this provision is not being implemented.

5.7.26 *Subject to the terms of this Article, an Inuk with proper identification may harvest up to his or her adjusted basic needs level without any form of licence or permit and without imposition of any form of tax or fee.*

All interviewees indicated that **this obligation was being achieved** in particular at the conclusion of the review period (due to the injunction). While a General Hunting License used to be required, Inuit now just have to show their beneficiary card.

5.7.28 *Where any economic venture referred to in Section 5.6.39 has been approved in accordance with terms of this Article, a licence shall be issued forthwith by the appropriate Minister at a fair fee in accordance with the laws of general application.*

Most interviewees indicated that **this obligation was being achieved**.

5.6.29 *Inuit may be required to obtain a licence from the responsible management agency for the harvest of those species of cetaceans not regularly harvested during the 12 months preceding October 27, 1981. Such licences shall not be unreasonably withheld or subject to an unreasonable fee.*

5.7.31 *An Inuk may be required by the appropriate government agency to obtain a permit to transport wildlife outside the Nunavut Settlement Area. If such a permit is required, the federal or territorial government agency shall issue the permit upon demand, unless it has good cause for refusing, and the permit may contain terms and conditions as established by laws of general application. Unless the wildlife in question has been harvested from the surplus, any fee for such permit shall be waived.*

5.7.36 *Upon proof of a promise to assign under Sub-Section 5.7.34(b), a license shall not be unreasonably withheld from a promised assignee who is an Inuk, by descent or custom. Such licence shall be issued without charge.*

5.8.1 *DIOs shall have the right of first refusal to establish new sports lodges and naturalist lodges in the Nunavut Settlement Area subject only to the following conditions: (a) Government is under no obligation to disclose any matter in an application which has been submitted on the faith of it being kept confidential; (b) all material environmental and economic information available to any government agency independent of the application itself but pertinent thereto shall be made available to a DIO exercising the right of first refusal; (c) generally, the procedures and time requirements conforming to current practice and, specifically, the steps set out in Schedule 5-6 shall be followed; and (d) if a DIO exercises a right of first refusal, but subsequently fails to establish a new sports lodge or naturalist lodge in accordance with Schedule 5-6 without just cause, the Minister may declare that its right of first refusal has*

lapsed; in such circumstances, the area may be made available to other applicants and the DIO shall not have a further right of refusal over such applicants, except at the discretion of the Minister.

5.8.2 *Upon request, Government shall lease, at usual rent, adequate and suitable lands to DIOs as are reasonably necessary for the purpose of establishing and operating sports lodges and naturalist lodges.*

5.8.4 *DIOs shall have the right of first refusal to establish and operate facilities, other than government facilities, for the purpose of indigenous wildlife and reindeer propagation, cultivation or husbandry. The conditions referred to in Sub-sections 5.8.1(a), and (b) in relation to sports lodges and naturalist lodges shall apply. Procedures and time periods conforming to current practice and comparable to those set out in Schedule 5-6 shall apply.*

5.8.5 *Upon request, Government shall make available to DIOs, at nominal cost, such lands as are adequate, suitable and reasonably necessary for the purpose of establishing and operating facilities for propagation, cultivation or husbandry of indigenous wildlife or reindeer. The lands may be granted in fee simple, under lease or by licence of occupation or in such other manner as to implement the intent of Section 5.8.4. and this Section.*

5.8.7 *DIOs shall have the right of first refusal to market wildlife, wildlife parts and wildlife products in the Nunavut Settlement Area. The conditions referred to in Sub-sections 5.8.1(a) and (b) in relation to sports lodges and naturalist lodges shall apply. Procedures and time periods conforming to current practice and comparable to those set out in Schedule 5-6 shall apply.*

5.8.9 *DIOs shall have the right of first refusal to carry out any venture aimed at the commercial collection or processing of non-edible wildlife parts and wildlife products. The right of first refusal shall extend to non-edible wildlife parts and wildlife products available as a consequence of a kill or as recoverable in an inanimate form. The conditions referred to in Sub-sections 5.8.1(a) and (b) in relation to sports lodges and naturalist lodges shall apply. Procedures and time periods conforming to current practice and comparable to those set out in Schedule 5-6 shall apply.*

Most interviewees indicated that they didn't know if these objectives had been achieved, or that they had not heard of a problem to date. No one indicated having heard of a problem to date. With regard to 5.8.9 specifically, a formal assignment of this DIO responsibility has been made through a motion of designation under the authority of Article 39. This is all that had to be done until a specific case comes along. We conclude that **these objectives were being achieved.**

5.9.2 *The Government of Canada shall include Inuit representation in discussions leading to the formulation of government positions in relation to an international agreement relating to Inuit wildlife harvesting rights in the Nunavut Settlement Area, which discussions shall extend beyond those discussions generally available to non-governmental organizations.*

Interviewees responding to this question either responded that they did not know if the objective was achieved, or that it was partially achieved.

We are **unable to conclude whether this objective was being achieved.**

5.9.3 *Inuit representatives referred to in Section 5.9.2 shall be nominated by a DIO.*

Interviewees responded that this has been achieved, but no funding has been provided for participation in discussions. We conclude that **this obligation was being partially achieved.**

5.5.2 Effectiveness of Implementation

All of the interviewees, including representatives of the GN, GC, NTI, indicated that the implementation of this article has been mostly effective, given the large mandate and the very limited budget (particularly of HTOs that have been identified as very resource constrained). Similarly, interviewees indicated that the NWMB in particular had been mostly effective.

Several concerns have been raised:

- Wildlife, together with Inuit employment, is among the most important issues to Inuit. Wildlife represents the past, the present and the future to Inuit. Wildlife represents the nutritional base, it is key central to Inuit culture, and wildlife (especially fisheries) is believed to hold the key to economic prosperity. This is one of the Articles that Inuit are most concerned about. For the most part, interviewees and beneficiaries agree with the provisions of this Article – they believe that the spirit and intent is correct. However, many beneficiaries do not feel fully engaged in the process – they feel that they are not listened to when it comes to conservation. And they would like to see more proactive stances on economic development.
- Many people have argued that there are capacity issues at all levels particularly local HTOs that limits full implementation. It would seem that the recent agreement, by all NIP members, regarding funding, will substantially alleviate the challenges due to funding.
- Many beneficiaries would like to see more proactive efforts in regards to developing economic opportunities associated with wildlife.

5.5.3 Barriers

Aligning and Managing Expectations

There is a significant amount of work and consultation to be done. There are differences in opinions about the balance between effective, in-depth community consultation, and conducting activities in a timely and cost-effective manner. It is important to recognize that many beneficiaries have stated that it is more important to take time to do the right amount of consultation, than it is to get things done quickly. Similarly, there are differences of opinion between the NWMB and NTI on what should be included in the basic needs level. As is the case in other areas of the Claim, there are also misunderstandings at the community level about what the wildlife provisions of the Claim really mean, what powers and authority now reside with Inuit, and how those powers will be exercised.

Differences in Expectations about what Consultation Involves

It is particularly important to acknowledge differences in expectations about what consultation involves. As discussed above, there appear to be differences in viewpoints about the extent to which the public are consulted. Many Inuit are saying they aren't consulted enough, while we've also heard numerous people, often government representatives, say that they are hearing that they are over-consulting. We believe the challenge may be the following:

- It appears that much of the consultation is done with "representatives" of Inuit (e.g. HTOs). Many Inuit are not comfortable with speaking on behalf of other people; people who do so are rare and "over-consulted".
- We've heard some Inuit say that it is not the "Inuit way" to consult representatives of Inuit; rather the Inuit tradition is to invite comment from all people. Hence, beneficiaries, without any position in which they are acting as representatives are not consulted enough.

Resource Constraints

Virtually all interviewees indicated that resource constraints were a key barrier to achieving the objectives of this Article. Specifically, there is a shortage of funding, human resources, physical resources and training. In addition, turnover is cited as a significant problem. The high turnover is believed to be a function of resource constraints; it is difficult to keep people when conditions and supports are poor. Additionally, as described in Ref. 3.9, many of the smaller organizations in Nunavut, and most notably the HTOs, lack the resources, tools and/or capacity to carry out some of the management and governance functions necessary for effective operation. These functions include Planning, Financial Management, Policy and Procedures Development, Training, Program Delivery, and Organizational Support to the Community Lands and Resources Committees (CLARCs). Finally, we have heard that until the recent establishment of the Wildlife Secretariat, no single organization was clearly mandated to provide support to RWOs or HTOs for complex community consultation processes. It is expected that the new funding levels, as agreed to by NIP in the February 6 letter (Ref. 7.4), will resolve these resource problems (although approval by the three Parties is still required).

Concern over Future Growth

Inuit population growth is likely to outpace wildlife population growth. Hence, where many issues are not problematic now, there is a significant concern that they will become problematic in the future. There is a general feeling that Inuit are not currently being restricted in the quantity of harvesting activities, but as the population grows, tensions will arise. This is part of the reason why some people are so concerned about potential underestimation in base-line BNLs.

5.5.4 Recommendations

Align Expectations

As is the case with many of the Articles, it is important to clarify expectations and then actions about a host of things such as: consultation (what it involves, with who, balancing timing, etc.), economic opportunities, handling of concerns with harvest study, etc. For example, the *Wildlife Act* was enacted to promote Inuit rights and culture. However, despite the obvious good intention of this Act, many Inuit are concerned that there are too many laws and regulations, and these are inconsistent with Inuit tradition.

Resource Constraints

There are a number of options that should be considered to reduce resource constraints.

- Increase funding overall for the HTOs and the RWOs as recommended in the February 6th, 2006 letter.
- Increase human resources and reduce turnover: Capacity should be built through training, apprenticeships, job security, workshops, competitive salaries, etc.
- Improve efficiency: for example, assess whether centralization of certain activities (e.g. accounting, financial management) would improve efficiency.
- Annual operating budgets should be locally prepared, but use of a standard format and support for

the process would be very useful.

- Support, as documented in Ref. 3.3, and is the long-term plan of the Wildlife Secretariat, should be provided for:
    - Human resources management, including development of standard HR policies and procedures, job descriptions, development and implementation of a coordinated training strategy, HR training, and support for recruitment;
    - Communications, including development of materials and strategies for promotion of wildlife management principles;
    - Planning, including development of planning policies and procedures, and creation of a long-term sectoral strategic plan; and,
    - Sectoral coordination of the policy development process, including coordination of and support for consultations in communities when required.

Agree on Interpretation and Expectations

The parties need to come together and discuss and develop a plan that documents: realistic expectations of outcomes, identification of action plans and accountabilities, a monitoring process, a consultation process and funding requirements. A sub-committee, with representatives from the NWMB, Federal Government (Department of Environment, Fisheries and Oceans, INAC and HRSDC), NTI and the GN should be struck to develop such a plan. Either one party on the sub-committee or a group that it designates should be responsible for monitoring and reporting on the implementation of the plan on an annual basis.

More specifically, as described in Ref. 3.9, P. 26, Sec. 5.5: "There is therefore a need to define the process and channels by which RWOs, HTOs, NTI and RIAs participate in the identification of policy needs, consultation, formulation of policy options, agreement on final policy positions, and implementation of final policy recommendations on wildlife related issues on behalf of Inuit. Specific areas where input from every level is required include: establishing research priorities for NWMB; establishing government research priorities; input into the formulation of wildlife legislation territorially (e.g., *Wildlife Act* and regulations), nationally (e.g., on SARA, MBC, etc.) and internationally (e.g., CITES, etc.); participation in the resolution of specific implementation policy issues (e.g., assignment of rights, fisheries quotas, etc.)."

The Role of NTI needs to be Clarified

Ref. 3.9 (Page 20, Sect. 5.1) concluded that "NTI is the Inuit organization responsible for Inuit obligations under the Claim, including Inuit input into territorial and federal policy; and NTI is responsible for acting as the spokesperson for Inuit on wildlife management issues. NTI should be playing the lead role in formulating Inuit policy positions on major issues related to wildlife in Nunavut, with appropriate input from Regional Wildlife Organizations and HTOs. "The Nunavut Inuit Wildlife Secretariat" was created since this report was authored and is intended to carry out these recommendations.

Ensure Process for Involving IQ is Effective and Transparent

Numerous stakeholders reported that they were concerned about the extent to which IQ was taken into account in the decision-making process. A description of this process should be made available to the pubic. The associated consultation process must be Inuit-friendly.

Conduct work in Inuktitut

One of the key factors that drive Inuit to be so disengaged is the fact that most of the people doing the work around instituting legislation do not speak Inuktitut. This makes it very difficult for Inuit, the majority of whom prefer to speak Inuktitut to share their thoughts.

5.6 Article 6 – Wildlife Compensation

This article deals with compensation due to harm caused by developers, to claimants in relation to the harvesting of wildlife. Up until the summer of 2005, NTI was the DIO responsible for making claims. Six months ago, these responsibilities were transferred to the RIAs.

5.6.1 Status

6.2.3 The Government of Canada shall specify a person, a fund, or both, capable of assuming the liability for marine transportation imposed under this Article by Section 6.2.2, and that specified person, or fund, or both, shall be considered to be a developer and that marine transportation shall be considered to be a development activity for the purpose of this Article.

The last Five Year Review noted that the Government of Canada intended to meet implementation of this obligation through proposed legislation Bill C-62 Nunavut Waters and Nunavut Surface Rights Tribunal Act. The Bill received first reading in December 1998.

The federal land claims obligation datasheets state that: "This activity was completed with the passage of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and the enactment of Section 154(2) wherein is stated"…the Ship-source Oil Pollution Fund established under Part 6 of the *Marine Liability Act* is liable to the same extent that a developer would be liable under section 153….". NTI was fully involved when Legal Services drafted this provision. (M. Douglas)" (Ref. 1.4a)

During this review few interviewees from the GN, DIOs or NTI had heard of such a person or fund. **While the obligation has been met, the lack of knowledge of it represents a serious failing in the effective implementation of this obligation.**

6.3.1 *A developer is liable absolutely, without proof of fault or negligence, for loss or damage suffered by a claimant as a result of its development activity within the Nunavut Settlement Area in respect of: (a) loss or damage to property or equipment used in wildlife harvesting or to wildlife reduced into possession; (b) present and future loss of income from wildlife harvesting; and (c) present and future loss of wildlife harvested for personal use by claimants.*

There are several examples to consider in assessing this Principle:

- Two polar bears were killed in the Baffin region when a tour company led a "race to the magnetic pole". The tour company did not pay compensation to the community that lost their tags. The same company has applied to come back under a different name, thus deliberately attempting to avoid their responsibility.
- Four bears have been killed in the Kitikmeot region in the past six months as they were too close to exploration activities. In all cases, except one (compensation for the latest wildlife destruction have yet to be collected), the company negotiated a compensation settlement with KitIA.
- There have been no instances of wildlife being destroyed in the last five years that interviewees from KivIA are aware of. They note that there have been wildlife sightings at the exploration sites in the Kivalliq but there hasn't been any destruction of wildlife. In cases where wildlife does get dangerously close, the developers have used helicopters to scare wildlife away.

This objective was being met in some cases, but not all.

6.4.1 *A claimant, or a DIO or HTO on behalf of a claimant, shall make a claim for loss or damage in writing to the developer. If the claim is not settled within 30 days, the developer or the claimant, or a DIO or HTO on behalf of the claimant, may submit the claim to the Tribunal.*

There are several cases that are relevant here. For example, in the Baffin region, there was a polar bear killed and a grizzly bear killed. In both cases, the developer was required to pay a fine ($20,000 for the polar bear and $10,000 for the grizzly bear). In the Kitikmeot region, there were three incidences – one involving two grizzly bears, and one involving a polar bear. The KitIA negotiated a claim. This took longer than 30 days, but both sides agreed to continue negotiating, rather than sending it to a tribunal. In conclusion, this **obligation was being partially met.**

6.4.2 *For the purposes of this Article only, a claimant may also bring before the Tribunal claims in respect of development activities in Zones I and II and the claim will be dealt with in accordance with this Article*

6.4.3 *In hearing a claim, the Tribunal is not bound by strict rules of evidence and may take into account any material which it considers relevant. The Tribunal in hearing a claim shall give due weight to Inuit knowledge of wildlife and the environment and shall take into account the social, cultural and economic importance of wildlife to Inuit. The Tribunal may appoint experts and may call witnesses.*

6.4.9 *When the Tribunal decides where to hold a hearing, the convenience of the claimant shall be a major factor.*

6.4.11 *The expenses incurred by the Tribunal in determining claims under this Article shall not be borne by the claimant nor any DIO or HTO acting on behalf of a claimant. The costs incurred by an HTO acting on behalf of a claimant shall not be the responsibility of the NWMB.*

Interviewees could not site any instances in which claims were brought to the Tribunal. Hence, **there has been no occasion to implement these obligations.**

5.6.2 Effectiveness of Implementation

Many people were unaware of the objectives and obligations of this Article. Interviewees from the KitIA noted that the fact that there have been four bears killed in the last six months in the Kitikmeot region, but no claims filed before that, suggests that these rights were not being acted on.

5.6.3 Barriers

Lack of awareness is the biggest barrier to effective implementation of this Article. However, since the designation of the RIAs, concerns are being actively addressed.

5.6.4 Recommendations

No recommendations are offered, as the RIAs are actively addressing issues that arise.

5.7 Article 7 – Outpost Camps

5.7.1 Status

7.2.2 *From the date of ratification of the Agreement, Inuit may, subject to the exceptions mentioned in Sections 7.2.3 and 7.2.4, and also subject to the approval of the appropriate HTO or HTOs, establish and occupy new outpost camps in any lands in the Nunavut Settlement Area where Inuit enjoy a general right of access for the purpose of wildlife harvesting as granted by Section 5.7.16. The approval of the appropriate HTO or HTOs shall not be unreasonably withheld.*

Interviewees from the RIAs indicated that they were not aware of any instances in which Inuit had sought to leverage this right. A GC interviewee has reported that there is a process in place. Parks Canada has developed a draft application form that includes background information, a description of the process and the actual form (Ref. 27.1). It should be noted that approval is not required by GC and the application should not be seen as a sign that government may "disallow" the application unless it conflicts with other Sections within this Article. `

There has been no occasion to implement this objective.

7.3.2 *A tenancy-at-will shall continue until Inuit occupants receive notice from Government of an intention to make use of the lands so occupied for purposes that would be inconsistent with the presence of the camp, or would remove the lands from the general right of access by Inuit for wildlife harvesting as granted by Section 5.7.16. Upon receipt of written notice, the occupants shall have a reasonable period of time within which to remove their possessions.*

Interviewees from the RIAs indicated that they were not aware of any instances in which Government had sought to exercise this right. A GC interviewee confirmed that this issue has never come up, and has further stated that this would not occur without consultation with the DIO and the community. The former part of this objective, in regards to Inuit having access was being achieved. **Given that there have been no notices from the Government of an intention to make use of lands other than would be inconsistent with the presence of a camp, there has been no occasion to assess the performance of this objective.** However, it is important to note that interviewees reported that they believe that the Government wants to charge a fee for use of cabins, and Inuit do not believe they should have to pay a fee.

7.3.3 *Where Inuit notify Government of their actual or intended occupation of an outpost camp and where Government does not identify in writing any use or interest that would be inconsistent in the immediate future with the presence of the camp, Inuit may, notwithstanding anything in* Section 7.3.2, continue to occupy the camp until one year after Government has given notice in writing of an intention to make use of the lands.

All interviewees reported that this issue has never come up. **There has been no occasion to implement this obligation.**

7.4.1 *Upon request by potential occupiers of outpost camps or by a DIO on their behalf, governmental owners of lands in the Nunavut Settlement Area shall make available such lands*

as are adequate, suitable and reasonably necessary for the purpose of establishing outpost camps. The lands may be provided under lease or by licence of occupation or in such other manner as to implement the intent of this section. The term shall be for five years or such longer period as may be reasonable. Renewal of a lease, upon request by the occupiers or by the DIO on their behalf, shall not be unreasonably withheld. Where an outpost camp is requested for establishment in Parks and Conservation Areas, Section 7.2.4 will apply.

Interviewees from the RIAs indicated that they were not aware of any instances in which Inuit had sought to establish new outpost camps. A GC interviewee noted that this right is allowed. The only time that this might not be allowed is if there was a potential threat to culture or resources within the park around the proposed area. NTI has noted that the only such exemption is that the establishment of outpost camps is allowed in Parks except where inconsistent with the requirements of a management plan, and that site locations are to be determined by an IIBA. Furthermore, Parks Canada has developed a draft application form that includes background information, a description of the process and the actual form (Ref. 27.1).

There has been no occasion to implement this obligation.

7.5.1 *Inuit occupying or establishing outpost camps shall not be liable to pay any fee, levy, rent or like tax for the purpose of such occupation or establishment, associated with the purposes of wildlife harvesting.*

All interviewees reported that Inuit are not required to pay any fee. **This objective was being met.**

5.7.2 Effectiveness of Implementation

As stated above, in each of the regions, Inuit have not requested permission to establish new outpost camps.

GC has noted that there are processes in place should any party wish to exercise these rights, and has provided a copy of the draft application form. However, it is important to note that approval is not required by GC and the application should not be seen as a sign that government may "disallow" the application unless it conflicts with other Sections within this Article.

Given that there has been no occasion to implement these objectives, it is not possible to appropriately assess the effectiveness of implementation.

5.7.3 Barriers

Lack of Awareness

We have learned throughout the review that many beneficiaries are not familiar with all of their rights.

Dwindling Base of Hunters

Several interviewees have reported that there has not been increased demand for outpost camps as many young people are not following the hunting tradition of their elders.

5.7.4 Recommendations

Raise awareness: It is important to educate beneficiaries about their rights here. Moreover, while the participation in hunting has declined amongst youth, beneficiaries throughout the communities talked about the importance of youth becoming involved here. There are numerous discussions about how to reverse this trend. Should the trend reverse, there may be greater demand for outpost camps.

5.8 Article 8 – Parks

5.8.1 Status

5.8.1.1 Background

Four National Parks have been created in Nunavut - three in the Qikiqtani Region (Auyuittuq, Quttinirpaaq and Sirmilik) and one in the Kivalliq (Ukkusiksalik). Two IIBA agreements have been signed and are in the process of being implemented, one for the three Parks in the Qikiqtani Region, and one for Ukkusiksalik.

The parties determined that an umbrella IIBA, covering all Territorial Parks, would be desirable in implementing this Article as it pertains to Territorial Parks. Any unique impacts or benefits for individual Territorial Parks are to be dealt with as appendices to the main IIBA. The Territorial Parks IIBA was signed in May 2002. However, implementation funding has not yet been negotiated with the GC in the NLCA implementation contract funding negotiations for the NLCA's second planning period. At the time of this review, there were two categories of Territorial Parks: those established prior to the NLCA, those to be established after the conclusion of the IIBA

Parks established before ratification of the NLCA

- **Community Parks Order, R 1-3-95, Schedule "A"**
  - Ijiriliq, Meliadine Esker Community Park (Rankin Inlet)
  - Sylvia Grinnell Community Park (Iqaluit)
  - Pitsutinu Tugavik Community Park (Pangnirtung)
- **Historic Parks Order, R 054-95**
  - Kekerten Historic Park (Pangnirtung)
  - Qaummaarviit Historic Park (Iqaluit)

Parks to be established after conclusion of IIBA

- **Baffin region**
  - Katannilik Territorial Park (Kimmirut/Iqaluit)
  - Qililuqat Territorial Park (Pond Inlet)
  - Mallikjuaq Territorial Park (Cape Dorset)
- **Kitikmeot region**
  - Uvajuq (Mount Pelly) Territorial Park (Cambridge Bay)
  - Kuklok (Bloody Falls) Territorial Park (Kugluktuk)
- **Kivalliq Region**
  - Baker Lake Territorial Park (Baker Lake)

5.8.1.2 Assessment

8.2.6 *Where the Government of Canada at any time intends to redraw the boundaries of a National Park, or otherwise act, so as to remove lands from a National Park, it shall: (a) first conduct an extensive process of public consultation; and (b) offer the lands to the DIO (i) at a favorable price where the Government of Canada intends to dispose of the land, or (ii) at the election of the DIO, in exchange for a comparable amount of Inuit Owned Lands; but this election shall not apply in circumstances where the Government of Canada intends to remove the lands from National Park status solely for the purpose of establishing its own facilities or operations on the lands in question.*

The previous Five Year Review found that there was no occasion to implement this obligation.

The Parks Canada and GN interviewees reported that there has not been occasion to implement this article. One of the NTI interviewees indicated that discussions are underway to consider changing the boundary for the Ukkusiksalik National Park IIBA. In reviewing the IIBA, we have concluded that this clause does form part of this IIBA. **There has been no occasion to implement this obligation.**

8.2.8 *Subject to provisions of an IIBA in relation to a National Park, each National Park in the Nunavut Settlement Area shall contain a predominant proportion of Zone I - Special Preservation and Zone II - Wilderness.*

During the management planning process for Quttinirpaaq National Park, NTI objected to Designated Wilderness Areas" that are implemented through an Order in Council, as provided for under section 14 of the Canada National Parks Act, due to concerns about potential restrictions associated with such a designation. Parks Canada responded to these concerns and the draft management plan does not include a provision on "designated wilderness areas" created through order in council. They have noted that such a designation does not prevent the carrying on of traditional renewable resource harvesting activities where authorized by land claim agreements.

GC has further noted that the draft plan does respect section 8.2.8 of the NLCA in that the bulk of the park area is zoned as Zone I - Special Preservation and Zone II- Wilderness. These zone designations are made pursuant to Parks Canada Guiding Principles and Operational Policies and "do not preclude resource harvesting activities which are permitted by virtue of national park reserve status, land claim settlements and/or by new park establishment agreements."
Parks Canada has a letter of support from NTI for the proposed zoning plan that includes Zone I (9.68%) and Zone II (90.05%).

Both NTI and GC interviewees reported that consultations have taken place for two National Parks, and that such consultations will take place for the third and fourth parks.

In summary, **these obligations have not yet been met.** It is important to note that one of the things that we have heard throughout our study is that beneficiaries prefer that sufficient time be given to consultation with the communities; they do not want to see things approved too hastily. Consequently we believe it is important for this consultation to continue.

8.2.12 *Water use in the National Parks shall be regulated in accordance with park management plans and laws of general application. The jurisdiction of the NWB within National Parks shall be determined in relevant legislation. Where water use in National Parks affects Inuit water rights in Inuit Owned Lands, Inuit shall be entitled to compensation as set out in Article 20 or in relevant IIBAs.*

The last Five Year Review found that the obligation had not been met within the review period, but that Inuit water rights in Inuit Owned Lands were addressed in IIBAs for federal parks subsequent to the review period.

Management plans are being worked on for each of the national parks, but have only been finalized for one (Quttinirpaaq).

Legislation for NWB has recently been passed, but regulations are only just now being developed.

Inuit have not to date made any applications for water compensation in relation to National Parks, and interviewees were not aware of any concern with water affecting Inuit Owned Lands. Consequently, **obligations regarding Inuit Owned Lands and legislation have been met. While obligations regarding management plans have not been completed, NTI is satisfied with the progress that Parks Canada is making.**

8.3.2 *Where the Territorial Government at any time intends to re-draw the boundaries of a Territorial Park, or otherwise act, so as to remove lands from a Territorial Park, it shall: (a) first conduct an extensive process of public consultation; and (b) offer the lands to a DIO (i) at a favourable price where the Territorial Government intends to dispose of the lands, or (ii) at the election of the DIO, in exchange for a comparable amount of Inuit Owned Lands; but this election shall not apply in circumstances where the Territorial Government intends to remove the lands from Territorial Parks status solely for the purpose of establishing its own facilities or operations on the lands in question.*

The last Five Year Review found that there had been no occasion to implement this obligation.

Given that the Territorial IIBA has not been concluded and that the park boundaries would be specified in here, there had been **no occasion to implement the obligation to re-draw the boundaries**. However interviewees from the NTI and GN indicated that one change to an existing Territorial Park boundary may be proposed.

8.3.4 *The territorial government and Inuit agree to the general desirability of involving Inuit, and other local residents, in the planning and management of Territorial Parks in the Nunavut Settlement Area. Accordingly, in addition to all other rights and benefits of these provisions, Inuit and other local residents of the Nunavut Settlement Area shall be involved in the planning and management of Territorial Parks in the Nunavut Settlement Area.*

The last Five Year Review found that this was being partially met on an ongoing basis because Inuit are members of committees involved in planning and management of Territorial Parks, but found that the process for establishing such committees did not appear to benefit from the input of NTI and RIAs.

During the course of this Five Year Review, we have found that, according to GN, the IIBA with GN includes a commitment to involve Inuit through a Nunavut Joint Planning and Management Committee or a Community Joint Planning and Management Committee. However, the GN and NTI interviewees added that GC has yet to provide implementation funding for the IIBA, and this obligation cannot be fully implemented until funding is provided. However, even without the funding, GN has indicated that it continues to involve Inuit and other residents in the planning and management of Territorial parks through other means as they have always done,

In conclusion, we find that, **this obligation was being met.**

8.3.11 *In the event that the proposed Katannilik Territorial Park is not established prior to the date of ratification of the Agreement, the DIO shall have the right to acquire, as Inuit Owned Lands in the form described in Sub-section 19.2.1(b), any or all of Inuit Lands Identification Parcels LH-25K-O1, LH-25K-O1(SSO1) and LH-25NO1 as shown on the two maps titled Inuit Lands Identification Parcels on deposit with the registrar in exchange for an equal amount of Inuit Owned Lands within the South Baffin Land Use Region as defined in Schedule 19-3.*

Given that the park was not established by the date of ratification of the agreement, Inuit have the right to select (claim as Inuit owned lands) all or part of the parcels referenced in section 8.3.11. Inuit (QIA) have

notified GC and other interested parties that they intend to exercise their right to select part of the referenced parcels and have requested the GC to implement the exchange. This has been quite contentious due to the location of the proposed Park boundaries as well as municipal boundaries, which in some respects overlap with the Inuit selection. GN has noted that municipal lawyers, acting on behalf of the community of Kimmirut are arguing that the DIO does not have the right to select lands within the Municipal boundaries. QIA has noted that, even with the acquisition of IOL, the hamlet is utilizing only a small amount of the lands available to it for expansion. Conversely, GN has suggested that the Territorial Parks IIBA be used to achieve the land use goal of QIA, as opposed to exercising their right under 8.3.11.

Based on the current differences in opinions, **the implementation of this obligation remains unresolved.**

8.4.4 *Prior to the establishment of a Park in the Nunavut Settlement Area, the Government responsible for the establishment of the Park, and in the case of the Government of Canada, the Canadian Parks Service in concert with other affected federal government agencies, and a DIO shall negotiate, in good faith, for the purpose of concluding an IIBA. An IIBA negotiated under this Article shall include any matter connected with the proposed park that would have a detrimental impact on Inuit, or that could reasonably confer a benefit on Inuit either on a Nunavut-wide, regional or local basis. In particular, but without limiting the generality of the foregoing, the matters identified in Schedule 8-3 shall be considered appropriate for negotiation and inclusion within an IIBA in relation to a Park.*

National Parks

All interviewees agreed that IIBAs for National Parks have been agreed upon. NTI emphasized that the reason this obligation was met was largely because Parks Canada took a very proactive approach, even before the signing of the NLCA, and negotiated extensively with INAC to secure the appropriate funding.

Upon review of the two IIBAs, we found the following:

- Inuit Impact and Benefit Agreement for Auyuittuq, Quttinirpaaq and Sirmilik National Parks: Most elements of Schedule 8-3 were addressed in the IIBA. However, the following elements are not specifically addressed: 3, Employment rotation; 5, Labour relations; 7 Housing; and 15, Relationship to other IIBAs. Point 17, Enforceability was dealt with only minimally.
- IIBA for Ukkusiksalik: Most elements of Schedule 8-3 were addressed in the IIBA. However, the following elements are not specifically addressed: 3, Employment rotation; 5, Labour relations; and 7 Housing.

The wording "*In particular, but without limiting the generality of the foregoing, the matters identified in Schedule 8-3 shall be considered appropriate for negotiation and inclusion within an IIBA in relation to a Park"* is somewhat ambiguous as to whether these issues must all be included in IIBAs. Interviewees suggested that the likely reason that these issues have not been included is that there was agreement to exclude them. However, we believe that housing is a serious problem throughout Nunavut, and that it is a problem for staffing the National Park in the Kivalliq region.

Hence, **this obligation, with regard to National Parks, has been met.**

Territorial Parks

An IIBA for Territorial Parks was signed by GN, NTI and RIA in May, 2002. The IIBA addresses all points in Schedule 8-3 with the exception of point *7, Housing, accommodation and recreation for Inuit*

working in the park services and at park facilities and their dependents. Interviewees concluded that all of the parks are near established communities and there was no requirement for housing.

We understand that implementation depends in part according to the GN and NTI interviewees, on the conclusion of negotiations with the GC to provide the necessary funds. According to NTI, GN has estimated the cost of implementation at $22.3M over 10 years, while the GC has proposed $2.3M over 10 years. 'NTI and the RIAs have estimated the cost of implementing the IIBA at approximately $14 million'.

Not all aspects of implementation require additional funding. GN interviewees have noted that, where an Article of the IIBA can be implemented without incremental funding, the GN has done so. For example, the GN has:

Article 2

- completed and submitted to the Parties a Draft Park Specific Appendices (PSAs) Discussion Paper, and related Draft PSAs

Article 5 – Inuit Contracting and Business Opportunities

- developed a Park-Specific Contracting Procedures Policy that has been approved by GN Cabinet and is now included in the GN's NNI policy;
- established a Parks Contract Working Group (PCWG) which has been meeting regularly regarding Parks Contracts and continues to monitor the contracting process for each fiscal year for Territorial Parks;
- set up its Parks Contracts in keeping with Article 5 of the IIBA;

Article 6 – Education and Employment Benefits

- GN invites NTI participation in screening and interviewing for new hires of GN Park FTEs;
- GN Parks summer and casual employment policies give preferential treatment to beneficiaries; and

Article 7 – Park Information, Materials and Facilities

- Interpretative and signage programs are consistent with language requirements in the IIBA.

Article 15 – Implementation and Review

- Completed and submitted to the Parties a Draft Implementation Plan;
- Completed and submitted to the Parties a Draft Work Plan;
- Prepared and submitted numerous proposals for funding from other sources to implement IIBA obligations.

In addition, GN interviewees noted that co-management is a cornerstone of both the NLCA and IIBA as it relates to Territorial Parks. The Territorial Parks IIBA provides for Territory-wide and local involvement in the development and management of Territorial Parks. Under the terms of the IIBA, the GN, along with NTI, QIA, KitIA and KIA, appoints representatives to these co-management committees. Appointments for the territory-wide committee have now been completed by the Parties; however, these appointments presume Federal support by way of implementation contract funding.

NTI has indicated that there are many more things that GN could and should be doing.

In conclusion, an umbrella IIBA for the Territorial Parks has been developed. However, there has been no agreement on funding for this IIBA, and as such it has not been fully implemented. Park-specific

appendices have not been developed (or agreement reached that they are not required). We also understand that there is an ongoing debate between GN and NTI about what GN can implement without agreement on the incremental funding from GC. Since a Territorial Parks IIBA has been largely concluded, but adequate implementation has not yet occurred, **the obligation and objectives associated with this Section has been largely unmet.**

8.4.5 *If the Government responsible for the establishment of the Park and the DIO cannot agree on the terms of an IIBA in a reasonable period of time, they shall select a conciliator who shall submit a report to the Minister, for his consideration and decision. The obligation to conclude an IIBA with respect to any proposed Park, shall endure only as long as the other party is acting in good faith and reasonably. This Section shall not derogate from the requirement of Sections 8.4.11 to 8.4.14.*

Interviewees indicated that there had never been a need to bring in a conciliator. Hence, **there has been no occasion to implement this obligation.**

8.4.6 *With respect to Territorial Parks that have been established prior to and continue to exist at the date of ratification of the Agreement, the Territorial Government and DIO are obligated to conclude an IIBA prior to the fifth anniversary of the date of ratification of the Agreement.*

While the Territorial Parks IIBA was not concluded within five years, the IIBA has now been negotiated for all existing and future Territorial Parks. Implementation of the IIBA requires federal support and funding. Park Specific appendices are a requirement of the IIBA; PSAs may not necessarily be required for all Parks. It may be, subject to Article 2 of the IIBA, that no PSA is required at all for a specific Park or group of parks, or it may be that a group of Parks may be captured under one PSA.

It should also be noted that the main IIBA addresses thoroughly all matters that are to be considered in an IIBA, and that a PSA is meant to address "one off" management issues that might arise, establishment of CJPMCs, access to IOL parcels through Territorial Parks, or access to Territorial Parks for mineral resources or the citing of infrastructure. We also note that the GN has completed and submitted to the Parties a Draft PSAs Discussion Paper, and related Draft PSAs.

We therefore conclude that the **obligation of this section has not been concluded within the required timeframe,**

8.4.7 *Except where an IIBA in good standing indicates otherwise, every agreement shall be re-negotiated at least every seven years.*

This provision is captured in the Territorial Parks IIBA, although there has not yet been occasion to re-negotiate an IIBA.

In conclusion, **there has been no occasion to implement this obligation.**

8.4.8 *Where Government intends to contract for the establishment, operation or maintenance of park facilities in the Nunavut Settlement Area, Government shall: (a) give preferential treatment to qualified Inuit contractors where Government proposes to tender such contracts; and (b) ensure that all contractors give preferential treatment to Inuit.*

Territorial Government

For the past four years, GN has provided the Parks Contract Working Group (PCWG) with a list of upcoming work. The PCWG is then expected to respond with a list of Inuit firms capable of completing the work. However, GN interviewees have reported that it sometimes takes a long time to obtain a list of firms. GN applies the NNI policy (which gives preferential treatment to qualified Inuit contractors and increases the likelihood that all contractors give preferential treatment to Inuit, by penalizing companies that do not make Inuit employment targets).

Reference documents 25.1 and 25.2 provide the following summary information on contract awards:

- In 2003/04, 12 Parks contracts were awarded; 8 were awarded to Inuit firms and 4 were awarded to non-Inuit owned Nunavut based firms.
- In 2004/05, 13 Parks contracts were awarded; 8 were to Inuit firms, 4 were to non-Inuit owned Nunavut-based firms (in three of these cases the selected bidder was one of only two licensed dealers for the relevant software package in Iqaluit) and one was awarded to a Southern firm

Given that GN does give preferential treatment to Inuit firms and contractors employing Inuit, **this obligation was being met**.

Federal Government

The Parks Canada interviewee indicated that for any contracts that can be done locally, they go to the communities first and the only time this does not happen is for specialized contracts where Inuit contractors are not available in the communities. They noted that Article 24 is followed in the procurement process/tender contracts. Parks Canada also stated that the parks continue to be maintained by Parks Canada; they have not put out any contracts for major capital works for maintenance on the parks. NTI interviewees also indicated that they believe GC was meeting this obligation.

However, we found that according to Article 24.8.1, both levels of government are required to monitor and periodically evaluate the obligations in regards to hiring of contractors. We have been provided no such information by GC.

Given the lack of objective monitoring and evaluation information required, but the positive interviewee comments from NTI we conclude that **the obligation of this Section was likely being met,** but that the information as required by 24.8.1, should still be provided in the future.

8.4.9 *A DIO shall have the right of first refusal to operate all business opportunities and ventures that are contracted out with respect to Parks in the Nunavut Settlement Area. Upon request, Government shall make available to a DIO all reports and other materials in its possession relevant to the analysis of the economic feasibility of business opportunities and ventures in Parks in the Nunavut Settlement Area.*

There is a provision for compliance with this section in the Territorial Parks IIBA, and the Parks Canada interviewee indicated they comply. While NTI was not aware of any problems, they had also indicated that they were not aware of how this was being applied. Given that there were no specific problems found, we conclude that **the obligation of this Section has likely been met, but Parks Canada should provide a description of the process.**

8.4.11 *A joint Inuit/Government parks planning and management committee ("the Committee") shall be established through an IIBA when requested either by Government or a DIO. The Committee shall consist of equal numbers of members appointed by the appropriate DIO and*

the appropriate territorial or federal Minister responsible for Parks. There shall be separate committees for Territorial and National Parks.

The Territorial Parks IIBA provides for Joint Planning and Management Committees (JPMCs) at the Territorial and Community levels. The NJPMC has been named, but funding has not been provided by Canada for IIBA Implementation, which would include funding the JPMCs.

According to the Parks Canada interviewee, there are three committees for the Baffin IIBA and one committee for the Ukkusiksalik IIBA, all of which have equal DIO and Parks Canada representation.

We therefore conclude that **the obligation has been met with respect to National Parks, but not to Territorial parks (due to a lack of agreement on funding).**

8.4.13 *Management plans for Parks shall be developed within five years of the establishment of a Park or of the date of ratification of the Agreement, whichever is the later date, by the Canadian Parks Service for National Parks and by the Territorial Government for Territorial Parks. Such plans shall be based on the recommendations of the Committee, where such a Committee is established, taking into account the recommendations of other interested persons or bodies. Upon review by the Committee, Park management plans shall be forwarded to the Minister for consideration and approval. Park management plans shall be reviewed and may be revised as provided in the plan.*

National Parks

Management plans are being worked on for each of the national parks, but have only been finalized for one (Quttinirpaaq). NTI is reasonably satisfied with the process, despite the fact that the plans have not been done within the required time frame. Hence, **the obligation to produce the plans was in the progress of being met, but the obligation to do it within the required timelines was not met.**

Territorial Parks

According to the GN interviewees, the implementation of this section depends on the establishment of co-management committees called for in the Territorial Parks IIBA, which have not yet been set up. Currently, management of the parks is undertaken by a department of the GN. **The obligation of this section was not being met.**

8.4.15 *In addition to any other rights of access and use enjoyed by or flowing to Inuit, Inuit have entry at no cost into Parks.*

According to all interviewees, **this obligation was being met.**

8.4.16 *Government shall make available Inuktitut translations of its publications that are aimed at informing the Canadian public about Parks in the Nunavut Settlement Area, and any information disseminated or communicated to the public within any Parks in the Nunavut Settlement Area shall be equally prominent in one or more of Canada's official languages and in Inuktitut.*

GN and GC interviewees noted that all signs, brochures and websites have been translated. The Parks Canada interviewee added that every document for committees or communities, or that is intended to be distributed Nunavut-wide, is translated. However, NTI noted that complete translations were sometimes not available until 2004 and 2005 (e.g. New Parks North). **The obligations of this section was not**

always being met throughout the earlier part of the period but was being met towards the latter part of the period.

8.4.18 *Appropriate recognition shall be made of Inuit history and presence as part of the process of the establishment and operation of a Park.*

There is a provision in the Territorial Parks IIBA to respond to this section. All interviewees indicate **the obligation of this section has been fully met.**

5.8.2 Effectiveness of Implementation

The essential elements of this Article have been only partially implemented, namely, the conclusion and implementation of National Parks and Territorial Parks IIBAs. National Parks IIBAs have been concluded and implementation appears to be ongoing. An umbrella IIBA for the Territorial Parks has been negotiated, but there has been no agreement on funding, and the park-specific agreements have not been developed.

A key limiting factor in the implementation of the Territorial Parks IIBA is that GN and GC have not yet agreed on funding for the implementation of the IIBA, as required by the NLCA. The Federal Government has an underlying and ongoing responsibility to ensure adequate incremental funding is available to the GN to meet its obligations under the NLCA. This is referenced in Article 37.2.6 of the NLCA and The Memorandum of Understanding (MOU) on Comprehensive Land Claim Implementation between the Government of Canada and the Government of the Northwest Territories (GNWT), dated July 7, 1992. The word 'Incremental' is taken directly from the MOU:

> *5(a) The Government of Canada shall provide funding to the Government of the Northwest Territories to cover its incremental costs including those costs:*
>
> > *(i)arising as a result of the Government of the Northwest Territories implementing obligations contained in comprehensive land claim agreements as it agrees to implement and as set out in implementation plans; or*
> > *(ii) which in the absence of a comprehensive land claim final agreement are costs that would not have been incurred by the Government of the Northwest Territories.*

NTI has noted that the process of concluding the National Park IIBAs has gone very well. They credit this largely to Parks Canada's efforts, even before the NLCA was signed, to acknowledge their responsibilities here and proactively negotiate with INAC. The one area of significant concern is that information on monitoring and evaluations of Article 24 (with respect to Section 8) are not available.

With respect to the Territorial Parks, it took significantly longer to negotiate the umbrella agreement, and there is still no agreement on funding with GC; nor agreement among the parties as to effective implementation in the absence of such funding (see above). This has prevented the IIBA from being fully implemented. In contrast to GC, the one area that there has been good work done is the tracking of contract awards to Inuit firms, and reasons why contracts were not awarded to Inuit firms.

With respect to both Territorial and National Parks, NTI has noted that there should be monitoring going on more frequently.

5.8.3 Barriers

Financial Resources have been Delayed

Some provisions of the NLCA state that implementation will be done in conjunction with the funding agreement. Because the funding agreement has not been struck, implementation for the territorial parks has not commenced in a substantial way.

Information on Evaluation and Monitoring has not been Provided

This information is required in order to assess performance in this area.

5.8.4 Recommendations

Monitoring should be Undertaken

Article 12.1.1 of the Baffin IIBA and Article 14.1.1 of the Ukusiksallik IIBA require the parties to monitor implementation of the IIBA. We are not aware of any monitoring reports. These provisions should be implemented by the parties, and reports circulated. GC must evaluate and periodically monitor its performance. It must comply with Section 24.8.1 and must provide evidence to demonstrate its actions in regards to Section 8.4.8

The Funding Issue with Regards to the Territorial Parks must be Resolved as Soon as Possible

The fact that it has not been resolved has created negativity that affects other areas, especially at the higher levels. The present circumstances make it difficult for decision makers. The parties should adopt an implementation plan and conduct annual reviews of the implementation of the IIBA, as required by the IIBA. The parties' review should examine the status of the implementation of all provisions of the IIBA to date, how funding limitations affect implementation, and how the GN has allocated its Territorial Parks budget since 2002, in relation to its IIBA obligations versus other expenditures.

Park Specific Appendices should be developed or agreement reached that they are not required for all Parks, should be concluded.

5.9 Article 9 – Conservation Areas

5.9.1 Status

There are thirteen specific categories of Conservation Areas referenced in section 9.1.1 of the NLCA, all of which, subject to section 9.4.2, require IIBAs.

"Conservation Area" means any Conservation Area in existence at the date of ratification of the Agreement listed in Schedule 9-1, and any of the following areas when established under legislation;
(a) National Wildlife Areas;
(b) Migratory Bird Sanctuaries;
(c) International Biological Program Ecological Sites/Ecological Areas;
(d) Man and the Biosphere Reserves;
(e) World Heritage Convention/Natural and Cultural Sites;
(f) Wildlife Sanctuaries;
(g) Critical Wildlife Areas;
(h) National Historic Sites;
(i) National Historic Parks;
(j) Wetlands of International Importance for Waterfowl (Ramsar);
(k) Canadian Landmarks;
(l) Canadian Heritage Rivers;
(m) Historic Places; and
(n) other areas of particular significance for ecological, cultural, archaeological, research and similar reasons.

For all existing Conservation Areas, IIBAs were required to have been concluded by 1998. None have been concluded. IIBAs are also required before new Conservation Areas can be established. Two National Historic Sites and one National Wildlife Area were established without IIBAs having been concluded as required by the NLCA.

Canadian Wildlife Services and NTI have concluded on the terms of an IIBA for Migratory Bird Sanctuaries and National Wildlife Areas have been developed. However, agreement on funding for the implementation of the IIBA has not been concluded. In addition, the DIOs, GC, through DIAND, and GN have also agreed to negotiate an umbrella IIBA for three existing and one proposed Canadian Heritage Rivers.

5.9.1.1 Assessment

9.2.1 *In addition to Parks, other areas that are of particular significance for ecological, cultural, archaeological, research and similar reasons, require special protection. Inuit shall enjoy special rights and benefits with respect to these areas.*

Interpretation as to whether this obligation has been met is complicated by the ambiguity of the term "special rights and benefits". NTI has taken the view that this obligation has not been met because no IIBAs for Conservation Areas have been concluded. However one GC interviewee felt the obligation has been achieved. We do understand that Inuit are permitted into parks free of charge, but are not aware of what other special rights and benefits, if any were conferred or required. Hence, we cannot **conclude whether the obligations were being met or not**.

9.3.1 *Government in consultation with Inuit shall conduct a study to determine the need for new legislation or amendments to designate and manage Conservation areas. Study shall be completed and published within 2 years of the ratification of Agreement*

While a study was done by Nigel Banks, a professor in Calgary, it has not been implemented. A working group was formed a number of years ago, but has not been active. Strictly speaking, since this section called only for the conduct of a study, **the obligation of this section has been met**. However, the implicit obligation here is that the study would be done and acted upon. Consequently, all parties should consider and act on the findings o the study.

9.3.2 *The establishment, disestablishment or changing of the boundaries of Conservation Areas related to management and protection of wildlife and wildlife habitat shall be subject to the approval of the NWMB pursuant to Sub-section 5.2.34(a). Conservation Areas shall be co-managed by Government and the DIO as provided in Section 9.3.7.*

Due to the fact that no funding for implementation has been agreed upon, and therefore that the IIBA has not been concluded, **this obligation has not been met.**

9.3.7 *Sections 8.4.11 and 8.4.12 shall apply in like manner to Conservation Areas except that where an IIBA is not concluded in the process of establishing a Conservation Area, the Committee referred to in those sections shall be established when requested by Government or a DIO.*

Given that the IIBAs have not been concluded **this obligation has not been met**. One interviewee from GN reported that neither DIOs nor government have requested co-management committees for Conservation Areas under the management of the GN.

9.4.1 *Sections 8.4.2 to 8.4.10 shall apply in like manner to Conservation Areas and to government agencies having responsibilities with respect to Conservation Areas. Notwithstanding Sections 8.4.2 to 8.4.4, in cases of emergency, such as the establishment of a critical wildlife area, the IIBA may be concluded forthwith upon, rather than prior to, the establishment of the protected area.*

9.4.2 *Notwithstanding Sections 8.4.2 to 8.4.4, the obligation to conclude an IIBA with respect to Conservation Areas shall: (a) not apply to a Conservation Area so long as the Conservation Area does not raise any matter that would have a detrimental impact on Inuit or that could reasonably confer a benefit on Inuit; (b) with respect to Conservation Areas that have been established prior to and continue to exist at the date of ratification of the Agreement, be an obligation to conclude an IIBA prior to the fifth anniversary of the date of ratification of the Agreement; and (c) apply in any situation where it is intended that a Conservation Area established for one purpose be re-established for a different purpose where such re-establishment would have a detrimental impact on Inuit or could reasonably confer a benefit on Inuit.*

Prior to the current review period, in 1997, a draft IIBA was concluded between the Canadian Wildlife Service and the Nangmautaq Hunter and Trappers Organization, as DIO for the proposed Igaliqtuuq National Wildlife Area for Migratory Bird Sanctuaries and National Wildlife Areas. NTI interviewees have reported that the draft IIBA contained no significant financial commitment or benefits to Inuit. They further noted that minutes of meetings with the HTO revealed that CWS represented to the HTO that CWS's authority did not include providing economic benefits to Inuit in an IIBA. At NTI's request, the

draft IIBA was abandoned, and thereafter, CWS and NTI, on behalf of the Nangmautaq HTO and the three RIAs, agreed to negotiate an umbrella IIBA for 13 existing and proposed National Wildlife Areas and Migratory Bird Sanctuaries. From that time until 2002, however, negotiations did not proceed because CWS did not have a financial mandate to negotiate the IIBA. In 2002, CWS obtained the necessary direction allowing the parties to agree to a specified amount of funding for the umbrella IIBA. From 2002 through 2004, the parties negotiated the details of the IIBA, based on the agreed funding amount, until negotiations were halted in early 2005 while CWS sought approvals from DIAND and TBS for an inflation adjustment mechanism to be included in the IIBA. This approval was finally obtained in November 2005. CWS has still not signed off on the agreement-in-principle, advising that DIAND has not approved the funding amount CWS committed to in 2002. According to NTI interviewees, neither a satisfactory explanation of the delay, nor an anticipated approval date has been provided.

The DIOs, GC, through DIAND, and GN have also agreed to negotiate an umbrella IIBA for three existing and one proposed Canadian Heritage Rivers. These negotiations have been proceeding for about 1.5 years. We understand from NTI that the parties recently agreed to form a working group to determine appropriate funding for items agreed to in the draft IIBA, and other matters as agreed in the IIBA. Because NTI believes that it and GC both lack the necessary expertise to cost out appropriate benefits, NTI has proposed that the parties utilize expert advice to identify appropriate funding based on actual estimated costs to fund items previously agreed in the draft IIBA as being reasonable benefits, and other matters as agreed. GC has indicated that they would prefer to work together on this, rather than have an independent party do the work.

The DIOs and Parks Canada have also agreed to negotiate an umbrella IIBA for National Historic Sites.

NTI and the Kivalliq Inuit Association have also requested that GC commence negotiations for an IIBA for the Thelon Wildlife Sanctuary. The Minister of DIAND has responded that DIAND is not responsible for negotiating the IIBA for this territorial Sanctuary. NTI and the GN maintain that DIAND is responsible under the NLCA as it established the Sanctuary.

In view of the fact that IIBAs, which were required to have been concluded by 1998, have not been concluded for any federal or territorial Conservation Areas, we find that **this obligation has not been met.**

9.5.1 *On the second anniversary of the date of ratification of the Agreement, Inuit Owned Lands Parcel BL-44/66C shall cease to constitute a part of the Thelon Game Sanctuary, unless, prior to that anniversary date, the NWMB determines that the continued sanctuary status of that portion is integral to the conservation purpose served by the Sanctuary as a whole.*

This article was implemented, by default, since the NWMB did not take steps to declare that portion "integral to the conservation purpose served by the Sanctuary as a whole".

9.5.2 *The Territorial Government shall, within five years of the date of ratification of the Agreement, coordinate the preparation of a management plan to jointly conserve and manage the Thelon Game Sanctuary. This shall entail applying the process set out in Sections 8.4.11 and 8.4.12 for that part of the Sanctuary in the Nunavut Settlement Area, and coordinating that process with a process applicable in that part of the Sanctuary which is outside the Nunavut Settlement Area. The Thelon Game Sanctuary Management Plan shall be based on recommendations of the DIO and affected communities. This plan shall be subject to the approval of the federal and territorial governments. No changes will be made to the status of the Thelon Game Sanctuary or its boundary, until the Sanctuary management plan is approved by the federal and territorial governments. Following approval of the Sanctuary*

> *management plan, proposals to change the boundary of the Thelon Game Sanctuary, to disestablish the Sanctuary, or to alter its status shall be subject to joint public review by the NWMB and the agency having jurisdiction over management and protection of wildlife and wildlife habitat in that part of the Sanctuary which is outside the Nunavut Settlement Area. Section 9.3.2 applies to any decision of the NWMB respecting that part of the Sanctuary that is within the Nunavut Settlement Area.*

The Thelon Wildlife Sanctuary Management Plan was not completed within five years. GN coordinated the development of the Plan, and in 2003 submitted it to the NWMB for approval. The NWMB approved the Plan in 2004, and INAC accepted the approval in 2005.

The Management Plan states that the new Management Authority for the Sanctuary should be established within 6 months of the approval of the Plan by a formal agreement among the parties, and that it is anticipated that the GN will provide funding for the Management Authority through enhanced funding received under the Implementation Contract. We have heard that there has been an effort to enter into a formal agreement to establish the Management Authority, but there has been no agreement on funding for the Management Authority. Therefore, implementation of the Plan, which was to have been concluded in 1998, has not yet occurred.

We conclude that **while a plan has been developed, it was not done within the appropriate time frame and there has been no agreement on funding**.

5.9.2 Effectiveness of Implementation

The Conservation Area IIBAs took a very long time to negotiate, in part because several parts of the process had to be reinitiated as CWS gained a greater understanding of what was required of them under the NLCA. The continued debate over funding means that Inuit continue to lose out on benefits that are required as part of the NLCA.
There are also concerns about these issues from the communities. Not all beneficiaries were familiar with this Article. Some beneficiaries participating in community focus groups noted that IIBAs are important instruments that will bring benefits to the community". There was also concern expressed that the IIBAs have not been concluded and that the communities have not been consulted enough.

In summary, the progress has been slow, inefficient and ineffective.

5.9.3 Barriers

Lack of agreement on financial resources means that agreements cannot be concluded and implemented.

The negotiation process has been delayed because of GC's decision-making process. Some departments (e.g. INAC, TBS) which must approve proposed agreements are not present during negotiations and yet exercise the ability to delay approval of agreements reached by the negotiating parties.

Lack of transparency. NTI has also reported frustration at the GC's unwillingness to provide adequate explanations of its internal process, or expected timelines for obtaining approvals, or even to answer correspondence. They perceive this as a failure to be open and transparent in its dealings with the Inuit parties and indicate that it has resulted in feelings of mistrust.

NTI also reported that GC and GN have concluded a memorandum of understanding on the Heritage Rivers IIBA, but have refused to disclose any of its terms. The Inuit parties do not object to negotiating positions being confidential, but they believe that the non-disclosure has gone beyond that, and that elements of agreements between the two levels of government that relate to, in particular, funding issues that affect the Inuit parties should be disclosed. GC has noted that the fact that the Government of Canada will not provide a copy of the Memorandum of Understanding with the Government of Nunavut to NTI is more related to the rules and policies under which the agreements operate rather than a trust issue and that the terms of the Memorandum of Understanding have been broadly discussed during the negotiations. NTI has indicated that the broad terms have not been shared with them.

The lack of clarity in wording in the NLCA is also a barrier to efficient and effective implementation of this Article. For example, Article 9 lists Heritage Rivers as requiring an IIBA, yet the same article states: "Conservation Area" means any Conservation Area in existence at the date of ratification of the Agreement listed in Schedule 9-1, and any of the following areas when established under legislation. Canadian Heritage Rivers were not created under legislation, a fact that was noted by Nigel Bankes in his report "Review of conservation area legislation in Nunavut, 1998, prepared to satisfy the requirement of section 9.3.1.

5.9.4 Recommendations

- **Resolve disputes over funding and establish agreement for a timeline for all IIBAs required by this Article to be completed**. In the recommendations under Article 37, we have proposed a dispute resolution process. We recommend that these issues proceed through this process to come to a timely conclusion. IIBA funding should be based on actual estimated costs to confer a reasonable level of benefits, and address impacts, at the community level. If the parties do not have sufficient expertise to estimate these costs, it is recommended that the parties work together and involve outside experts as they do so.

- **Ensure better awareness and coordination within GC**. Better understanding of its obligations by the responsible federal department (CWS) and early involvement of INAC, is essential to meeting these obligations in a more timely fashion. The difference between the National Parks IIBA and this process is illuminating, and a key difference appears to lie in the knowledge of Parks Canada in regards to what its responsibilities were.

- **Ensure better transparency in GC decision-making**. It is not clear why, after years of negotiating, INAC has put a halt on decisions regarding funding. These reasons need to be made clear to NTI.

- **Thelon Wildlife Sanctuary IIBA and Management Plan:** DIAND and the GN should promptly resolve the dispute over which level of Government is the proper party to negotiate this IIBA with Inuit. A formal agreement on the Management Authority and its funding should promptly be negotiated by the GC, GN, NTI and other relevant parties in accordance with the Management Plan.

5.10 Article 10 – Land and Resource Management Institutions

5.10.1 Status

5.10.1.1 Background

The first Five Year Review of the NLCA identified the failure to enact legislation regarding the IPGs as a major problem with the implementation of the Agreement. The report's authors described the failure as an "extraordinarily frustrating and unproductive process that has been followed for the development of stand-alone pieces of federal legislation, as contemplated by Article 10 of the NLCA, to supply each of the key resource management bodies (other than the Nunavut Wildlife Management Board) with more precise descriptions of their roles and activities..."

The first Five Year Review goes on to state that "The Government of Canada made a solemn undertaking in section 10.1.1 of the NLCA to establish four institutions of public government in accordance with the Agreement within a specified period of time, specifically, the Nunavut Surface Rights Tribunal (NSRT), by January 9, 1994, and the Nunavut Water Board (NWB), Nunavut Impact Review Board (NIRB), and Nunavut Planning Commission (NPC) by July 9, 1995. The Government is required to set out the substantive powers, functions, objectives and duties of these institutions in statute (s.10.2.1)." According to the review, the Government of Canada was in breach of its obligations from 1995.

All of the IPGs are functioning as legal bodies. Legislation has been enacted for NWMB, NWB and NSRT, but it still being developed for NIRB and NPC. NIRB and NPC have not been incorporated but continue to carry out their respective mandates as IPGs (subject to certain problems experienced particularly by NPC over the last year; see below). While the IPGs are all functioning, the first Five Year Review pointed out that the absence of legislation "creates a public perception of uncertainty with respect to resource management in Nunavut, which the settlement of land claims had promised to eliminate" despite the fact that the NLCA identifies the responsibilities of these organization. We have found that this perception of uncertainty has persisted. Specifically, the lack of legislation has created some confusion and concern (even if unwarranted) in the eyes of some resource development companies that are not sure what organizations have final legal authority.

10.1.2 *Without in any way limiting the obligation of the Government of Canada, the institutions referred to in Section 10.1.1 shall be established by legislation of the Legislative Assembly to the extent that it has jurisdiction.*

This obligation has not been fully achieved. Legislation is in place for the Tribunal and NWB. However, legislation for NIRB and NPC is currently in the process of being developed. The legislative working group, which comprises representatives of DIAND, NTI, GN, NPC and NIRB and is currently in its fourth year of operation, estimates that a draft bill for both NIRB and NPC will be ready in 2006. It is anticipated that the final bill will be introduced sometime in 2008. NIRB and NPC continue to operate according to their mandates as set out in the Agreement.

The obligation Section 10.1.2 has not been fully implemented. This continues to be a significant problem with the implementation of the NLCA.

10.8.1 *Government shall consult closely with the DIO and the relevant institution referred to in Section 10.1.1 prior to taking any initiative under Sections 10.6.1, 10.7.1 or 10.7.2. The*

appropriate DIO or institution shall, upon request, be given an audience with the appropriate Minister as part of such consultation.

There has not been an occasion to implement section 10.8.1.

10.9.1 *The Agreement shall in no way prejudice the ability of Inuit to benefit from any programs of intervener funding that may be in place from time to time.*

Interviewees from DIAND and the GN indicated that contribution agreements and budgets are in place and that all IPG hearings are covered by DIAND. The process involves each IPG forwarding a funding request to NIP, which then approves the request and forwards it to DIAND for payment.

Inuit organizations may apply for and benefit from intervener funding from programs not directly associated with the NLCA; however, funding is not guaranteed in these cases. It was reported in the Pond Inlet focus group that there are numerous federal programs directed towards "Aboriginal" programming, but they generally do not access them because they perceive that the targeted audience excludes Inuit.

NTI has noted that the *Canadian Environmental Assessment Act* allows for intervenor funding, and NTI has argued implementing legislation in Nunavut should not be less generous.

This obligation was being implemented to the extent that the NLCA does not prejudice Inuit access to intervener funding.

10.10.1 *Where the legislation to establish any of the institutions referred to in Section 10.1.1 is not in effect by the first anniversary of the date specified for their establishment, (a) in respect of the Tribunal, the Minister shall appoint persons as members of the Tribunal; and (b) in respect of NIRB, the NPC or the NWB, the provisions of the Agreement respecting the appointment of the members of that institution shall be considered to be in effect on that anniversary date, and upon their appointment, those members shall be considered to have, for all purposes of law, all the powers and duties described in the Agreement.*

This section was a one-time requirement referring to the first anniversary date of the IPGs. In the case of NPC and NIRB, legislation was not in place in 1996; however, the necessary appointments were in place with the requisite authorities to carry out the mandate of the organizations.

There is, however, a related issue regarding timeliness in the appointments process. A GN interviewee stated that there are major problems with the appointments process, including the fact that there are not enough women nominees (although this is not a requirement of the NLCA). Second, as pointed out by many interviewees, the process is perceived to be unduly long due to a combination of factors, including recruitment, security checks in Ottawa, and the timeliness of approvals by the GN Cabinet, NTI, and the federal Minister. The process can take over six months. One of the most serious aspects of this problem is not just that it takes long, but that there is uncertainty associated with it. There have been several occasions where recommendations have proceeded all the way to the Minister's office and then been rejected. Typically the most common reason has been due to a security check problem. However, GN has noted that there have been some people rejected by the federal minister's office and they are unaware of the reason.

On the positive side, the GN interviewee said that the GC and the GN are beginning to advertise more widely and regularly and thus are seeing a larger number of applications. As well, in an internal process Nunavut MLAs are asked to submit names for possible nomination.

This obligation has been implemented with the qualification that there continue to be delays in the appointments process.

10.10.2 *Without in any way limiting Section 10.2.1, or any other relevant provisions of the Agreement, where an institution is established under Section 10.10.1, Government may provide, by regulation or order, for any matter in relation to that institution, not inconsistent with those powers and duties, to facilitate the operation of that institution.*

Interviewees from NPC, NWMB, NTI, the GN and DIAND indicate that in the absence of legislation, as in the case of NPC and NIRB, regulations could be set out under section 10.10.2 as a way to provide operational direction. However, neither GC nor the GN has set regulations for NPC or NIRB. (Nor has the government set regulations for NWMB or the Surface Rights Tribunal, both of which have legislation in place.) According to the interviewee from NPC, this places NPC and NIRB in a gray area with respect to their status, and other agencies and outside interests are unsure as to how to approach NPC and NIRB. The standard response is that they are IPGs; however, the meaning of that identifier is unclear to outside interests especially. What is the relationship of NPC and NIRB to the Crown, for example? What is their situation regarding indemnity? Can they be sued?

There are various possible explanations for the absence of regulations for NPC, NIRB and the Tribunal. As an NTI respondent indicated, it is difficult to identify the statute that would enable regulations to be created. As well, the Boards have been functioning on the strength of the NLCA, even in the absence of legislation and regulations. The NTI interviewee also suggested that, in view of the complicated nature of regulation drafting, it might simply be more straightforward to draft and enact legislation, especially now that that the legislation process is in effect. According to a GN interviewee, a lack of capacity within the GN has limited its ability to develop regulations. Other interviewees have suggested more specifically that time constraints and other priorities may be preventing the GN Department of Justice from turning to the matter.

Section 10.10.2 of the NLCA has not been implemented. However, while regulations are not being drafted by either the GC or the GN, legislation is being developed and all Parties agree that this is the appropriate course of action.

5.10.2 Effectiveness of Implementation

The key sections of Article 10 have been implemented to a limited degree. Implementation has been limited most significantly with respect to sections 10.1.2 and 10.10.2, whereby legislation is to be enacted and regulations possibly created for the operation of IPGs. While legislation has been enacted for NWB, and NSRT, neither legislation nor regulations have been enacted for NPC and NIRB. Legislation is currently being developed but is not expected be introduced until 2008. In the absence of legislation for NPC and NIRB, these organizations continue to operate in a gray zone as far as their legal status is concerned. In addition, an NTI respondent indicated, the creation of regulations would be difficult and of questionable value in light of the fact that legislation is currently being developed. Aside from the questions of legislation and regulations, NPC continues to have other ongoing problems that affect its ability to operate effectively (see analysis for Article 11). In addition, NPC continues to have other ongoing problems that affect its ability to operate effectively.

5.10.3 Barriers

Slow Progress

Respondents are unclear as to the reasons for the slow progress of government in enacting legislation for NPC and NIRB. One possibility, expressed by an interviewee from an IPG, is that legislation is simply a low priority for the federal Cabinet. This might diminish the willingness of federal officials to invest the required time and effort in the process, knowing that Cabinet would not deal with the matter. The same IPG interviewee, as well as a GN respondent, suggested that the absence of regulations for NPC and NIRB may be due to a lack of capacity in the GN, as well as other, more pressing priorities.

Resource Constraints

There is a general concern among all interviewees regarding Article 10 (and other Articles) that the GN and the IPGs do not have adequate capacity in terms of human resources to carry out their responsibilities effectively (e.g. participation in draft legislation). GN and IPG interviewees acknowledge this, but they identify lack of funding as a critical issue with respect to human resource capacity. We understand that, as per a letter dated February 6, 2006 (Ref. 7.4), all members of NIP have come to agreement on recommended funding increases for the IPGs. The levels of funding endorsed by NIP remain subject to the internal approval policies of each party to the Contract. It is expected that this additional funding will alleviate these problems.

Insufficient Communication and Collaboration

There is common agreement that ineffective communication and collaboration among the three parties affects the implementation of many NLCA Articles, including Article 10.

Delays in Board Appointments

Several significant problems in Board appointments have been encountered. First, concerns over criminal histories have often led to a rejection of nominees. Second, the appointments process continued to be a barrier to appointing Board members to IPGs. Lengthy delays in recommendations and appointments are problematic, as were a lack of diligence to ensure nominees of all parties were on the Board. Third, there have been concerns about a lack of transparency in regards to why nominees are rejected. Finally, GC has indicated that GN has not always fully cooperated with Canada and NTI in moving names forward in a timely manner, and had never sent letters of concurrence for appointments to the Nunavut Arbitration Board.

5.10.4 Recommendations

Enact Legislation

Specifically with respect to Article 10, legislation governing NPC and NIRB must be enacted as soon as possible. Because no one party has the ability to unilaterally meet the obligations of this Article, there must be collaboration among the parties as well as better communication.

The Appointments Process

The Parties should clearly identify and examine each element of the appointment process. They should then agree on reasonable timelines for each step, and one party should be responsible for ensuring that each step is conducted efficiently. In addition, there should be clear rules indicating what background

characteristics are acceptable and what are not. GC should provide a written explanation of why any nominated candidate is rejected. There should also be a shortened process for emergency purposes to ensure that Boards always have a quorum.

Adopt Examples of Successful Collaboration

The working group on the Nunavut Resource Management Act is an example of a highly inclusive process of legislative drafting, involving NTI, GN, GC and the IPGs. Being inclusive and collaborative takes a great deal more time than working in isolation, and this is part of the reason the work on the NRMA has taken four years to get to the point of drafting. The guiding principles of the NRMA working group are referenced repeatedly by NTI and GN as a good model for collaboration on implementation issues. While the process has been time-consuming, this is because it has also been highly collaborative and inclusive.

5.11 Article 11 – Land Use Planning

5.11.1 Status

5.11.1.1 Background

A significant gap in the implementation of the NLCA continues to be the lack of legislation relevant to the Nunavut Planning Commission and the Nunavut Impact Review Board (section 10.1.2). This problem was identified in the first Five Year Review and has yet to be remedied. Respondents indicate that legislation is currently being developed, but, according to an NPC interviewee, the legislative working group is estimating the introduction of a bill in 2008. As the authors of the first Five Year Review suggested, the lack of legislation may undermine the credibility of NPC, NIRB and the entire NLCA. While the IPGs are all functioning, the first Five Year Review pointed out that the absence of legislation "creates a public perception of uncertainty with respect to resource management in Nunavut, which the settlement of land claims had promised to eliminate" despite the fact that the NLCA identifies the responsibilities of these organization. We have found that this perception of uncertainty has persisted. Specifically, the lack of legislation has created some confusion and concern (even if unwarranted) in the eyes of some resource development companies that are not sure what organizations have final legal authority.

A further issue with regard to the provisions of Article 11 is the fact that land use plans are still incomplete. Only two of six plans (Keewatin and North Baffin) have been prepared and approved.

The first Five Year Review identified concerns on the part of NTI regarding the draft regional land use plans and the planning process. Specifically, the concerns related to the Ministerial approval process outlined in sections 11.5.4 to 11.5.7 with respect to the draft plans for the Keewatin and North Baffin. NTI's position was that both the federal and territorial Ministers did not follow the process as prescribed, and that their actions undermined the validity of the public consultation process. At the time, NTI indicated that NPC should work cooperatively with NTI to address outstanding concerns. The problems have been remedied since the first Five Year Review.

In August, 2005, Aarluk Consulting Inc. submitted a report prepared for the Nunavut Planning Commission entitled "Report from a Management Review of Nunavut Planning Commission Governance Policies and Procedures". The report's authors stated: "The review of NPC polices and procedures has identified serious issues and gaps within the governance and policy structure of the organization." (Ref. 4.1, p.3) The details of NPC's operations are not directly linked to the text of the NLCA; however, structural and organizational problems could compromise the ability of NPC to carry out its mandate effectively. Aarluk also said the following: "Ultimately, responsibility for renewal and revitalization of the NPC lies not only with the Commission in dealing with the governance and policy issues … but also with the Government of Canada, the Government of Nunavut and Nunavut Tunngavik Inc." (Ref 4.1, p.3) In other words, the partners in the land claim have a responsibility to ensure that the organizations established according to the NLCA can effectively carry out their NLCA mandates.

11.2.1 *The following principles shall guide the development of planning policies, priorities and objectives: (a) people are a functional part of a dynamic biophysical environment, and land use cannot be planned and managed without reference to the human community; accordingly, social, cultural and economic endeavours of the human community must be central to land use planning and implementation; (b) the primary purpose of land use planning in the Nunavut Settlement Area shall be to protect and promote the existing and future well being of those*

persons ordinarily resident and communities of the Nunavut Settlement Area taking into account the interests of all Canadians; special attention shall be devoted to protecting and promoting the existing and future well-being of Inuit and Inuit Owned Lands; (c) the planning process shall ensure land use plans reflect the priorities and values of the residents of the planning regions; (d) the public planning process shall provide an opportunity for the active and informed participation and support of Inuit and other residents affected by the land use plans; such participation shall be promoted through various means, including ready access to all relevant materials, appropriate and realistic schedules, recruitment and training of local residents to participate in comprehensive land use planning; (e) plans shall provide for the conservation, development and utilization of land; (f) the planning process shall be systematic and integrated with all other planning processes and operations, including the impact review process contained in the Agreement; and (g) an effective land use planning process requires the active participation of both Government and Inuit.

All interviewees acknowledge the importance of the principles contained in section 11.2.1. There is disagreement, however, between the GN and NPC that has resulted in the failure of sub-section (g) concerning the active participation of Government as well as Inuit. An NPC interviewee indicated that in January, 2005, the GN withdrew from the West Kitikmeot land use hearings with the intention of staying away from all future hearings for an indefinite period. The GN withdrew from the process on the basis of its dissatisfaction with the manner in which sub-section 11.4.1 (a) was being carried out. Section 11.4.1 (sub-section (a)) states the following: "A Nunavut Planning Commission (NPC) shall be established with the major responsibilities to: (a) establish broad planning policies, objectives and goals for the Nunavut Settlement Area in conjunction with Government…." (Ref. 7.3) The view of both GN and NPC interviewees is that the GN was not satisfied with the degree of its involvement and the input it was being accorded by NPC in the planning process. Consequently, Cabinet made the decision to withdraw from the process.

We have also heard from numerous people that there is a concern that Inuit are not consulted enough.

An NTI interviewee commented that NPC should establish broad planning policies, objectives and goals for the Nunavut Settlement Area according to sub-section 11.4.1 (a). This would require that NPC and the GN work together (sub-section (g)).

In conclusion, while we understand from NPC that they have indicated that they are taking these factors into account, we note GN's concern with the process and the concern of over consultation of Inuit more generally, and conclude that **these objectives were only partially being achieved.**

11.2.3 *In developing planning policies, priorities and objectives, factors such as the following shall be taken into account: (a) economic opportunities and needs; (b) community infrastructural requirements, including housing, health, education and other social services, and transportation and communication services and corridors; (c) cultural factors and priorities; (d) environmental protection and management needs, including wildlife conservation, protection and management; and (e) energy requirements, sources and availability.*

All interviewees reported that the various Parties to the claim are committed to taking into account the factors identified in section 11.2.3. The challenge is in the capacity of NPC and the other stakeholders, including the GN, to adequately address all the factors. In this case, capacity refers both to in-house expertise and to available time to do the work. Financial resources are part of the answer, but longer-term capacity development is essential for all parties.

This objective was being partly implemented; however, increased capacity among NPC and the stakeholders is required to ensure the article works effectively.

11.4.3 *The costs of the NPC shall be the responsibility of Government. The NPC shall prepare an annual budget, subject to review and approval by Government.*

Respondents agree that this objective was being achieved. The concern of NPC and NTI interviewees is not with responsibility or process but with the levels of federal funding; both NPC and NTI believe more funding is needed. In his interim report Conciliator Thomas Berger stated the following:

> The parties [to the negotiation of the next 10-year period of implementation funding] do not agree about what is adequate funding, and Canada has thus far been unwilling to submit funding issues to arbitration. By adopting this position, the Crown can effectively frustrate the negotiation of funding levels for the IPGs. (Ref. 2.2, P. 16) Based on Justice Berger's reading of the situation, the implications of DIAND's approach could prove very difficult for the IPGs. The interviewee goes on to say, "…what is at issue is the funding for the basic operations and primary activities of the IPGs."(Ref 2.2, p.16)

The process identified in Section 11.4.3 has been implemented. However, funding levels continue to be a critical issue.

11.4.4 *Roles and Responsibilities of NPC shall include the following: (a) identify planning regions; (b) identify specific planning objectives, goals and variables that apply to planning regions and are consistent with the broader objectives and goals; (c) contribute to the development and review of Arctic marine policy; (d) disseminate information and data; (e) solicit opinions from municipalities, residents and others about planning objectives, goals and options of the region; (f) prepare and circulate draft land use plans; (g) promote public awareness and discussion and conduct public hearings and debate throughout the planning process; (h) recommend plans to the Ministers; (i) consider modifications requested by the Ministers in the event that a draft plan is rejected; (j) consider amendments to a land use plan in accordance with Part 6; (k) determine whether a project proposal is in conformity with a land use plan; (l) monitor projects to ensure that they are in conformity with land use plans; and (m) report annually to the Ministers and the DIO on the implementation of land use plans.*

The interviewees from the Parties to the Agreement vary in their views regarding section 11.4.4.

The view of interviewees from the GN is that the section has been implemented in varying degrees. According to a GN interviewee, sub-section (a) has been fully implemented; sub-Section (b) has not been implemented at all because the NPC has not identified broad planning goals, which are a prerequisite to specific planning goals; sub-Section (c) has not been achieved by the NPC because it was not consulted by government on the Arctic marine policy; regarding sub-Section (d) the NPC has not been effective in disseminating information and data, although the reasons are unclear; sub-Section (e) is implemented infrequently and only in the areas where the NPC has done land use plans; sub-Section (f) has been fully implemented, although slowly; sub-Section (g) is usually implemented but not very effectively, in part because it happens so slowly; sub-Section (h) has been fully implemented in the two cases where plans have been developed; sub-Sections (i) and (j) have been implemented but there are neither a framework nor timelines to accompany the process; the implementation of sub-Sections (k) and (l) are dubious because it is unclear whether monitoring is happening or not due to a lack of expertise and staffing in the NPC.

An NPC interviewee is of the view that the sub-Sections have been implemented by NPC, with qualifications on (c) and (j). Regarding sub-Section (c), the respondent's view is that NPC could have contributed more to the development and review of Arctic marine policy if a functional Nunavut Marine Council had been established. We note that all parties would like to proceed with a Marine Council but lack the money to do so. The inability of the four IPGs to agree on how to strike a council mandate prevented the formation of such a body. With respect to sub-section (j), the NPC respondent is of the view that the amendment process has been hampered by the GN's withdrawal from the process. According to the same respondent, there would ideally be a review of each plan every five years; however, this is not realistic without the participation of the GN.

An NTI interviewee made the general comment that NPC has been slower than intended in realizing its responsibilities in section 11.4.4 because of the significant amount of time required for the process to see completion.

DIAND interviewees noted that the successful implementation of section 11.4.4 is qualified by the fact that only two land use plans have been completed and approved.

We conclude that this objective was being partially met. The gaps are with respect to (i) NPC's responsibility to engage in regional planning in a manner consistent with broader objectives and goals, which have not been established; and (ii) NPC's role in contributing to an Arctic marine policy, which has not occurred.

11.4.5 *The size and makeup of the membership of the NPC may vary, but the Government of Canada and Territorial Government shall each recommend at least one member and the DIO shall nominate a number of members equal to the total number recommended by Government. The NPC members shall be appointed by the Minister of Indian Affairs and Northern Development from the above-mentioned recommendations and nominations.*

Until recently this section was fully implemented, although sometimes there were delays in recommendations by the appointing bodies, leaving one or more vacancies on the Commission. Since summer, 2005, however, there have been no GN nominees on the NPC. Two GN members were expected but had not been nominated. We understand that GN has nominated appointees, and that the nomination is awaiting approval from the federal minister.

This obligation was not being met.

11.4.15 *The NPC shall conduct its business in Canada's official languages as required by legislation or policy and, upon request of any member, also in Inuktitut.*

It was reported by interviewees from NPC, DIAND, NTI and the GN that this section was being implemented. Interviewees reported that that the meetings are usually conducted in Inuktitut because the membership comprises Inuit elders. NPC could contract for interpretation/translation services in French if the need arose.

This obligation was being met.

11.4.17 *In conducting its hearings, the NPC shall: (a) at all times, give weighty consideration to the tradition of Inuit oral communication and decision making; and (b) allow standing at all hearings to a DIO.*

An NPC interviewee noted that NPC takes its responsibility in the area very seriously, in part because the planning process depends on Inuit participation. Elders sit with the Chair in hearings and there is a time on the agendas for Elders to comment. Interpretation services are always available to facilitate participation by Inuktitut speakers. As well, the room set-up at hearings is tailored to help community members, especially Elders, feel comfortable and a part of the process. Interviewees from DIAND, NTI and the GN agree that this section has been implemented.

This obligation was being met.

11.5.1 *A Nunavut land use plan shall be formulated by the NPC in accordance with Section 11.5.4 to guide and direct short term and long term development in the Nunavut Settlement Area. Regional or sub-regional components of the land use plan shall be implemented where approved pursuant to Section 11.5.9.*

Views vary on the extent to which section 11.5.1 has been implemented, and it is clear that there is concern. The primary point of contention is that a Nunavut-wide land use plan remains to be formulated. According to the NPC respondents, the NPC sees the process as involving the development of regional land use plans first, to be followed by a territory-wide plan. However, the GN, DIAND and NTI have indicated that NPC should have started with developing a full Nunavut plan, to be followed by the creation of regional plans. A further frustration, according to interviewees from the GN, DIAND and NTI, is that NPC has thus far only completed two of six regional land use plans.

Section 11.5.1 is not clear on the point of timing, and its interpretation has thus become a serious issue. The primary issue is the ability of the parties to agree to an approach to land use planning. Specifically, the question concerns whether the regional plans or a territory-wide plan should be completed first. In addition, we have also heard that the plans required significant redrafting, thus extending timelines.

This obligation has not been met.

11.5.4 *The NPC shall: (a) conduct public hearings on the draft plans; (b) evaluate the draft plans in light of representations made at the public hearings; and (c) as appropriate, revise the draft plans.*

11.5.5 *Upon completion of the process in Section 11.5.4, the NPC shall submit the draft plan as revised along with a written report of the public hearings to the Minister of Indian Affairs and Northern Development and the Territorial Government Minister responsible for Renewable Resources. The NPC shall also make the revised draft land use plan public.*

11.5.6 *Upon receipt of the revised draft land use plans, the Ministers jointly shall, as soon as practicable: (a) accept the plan; or (b) refer it back to the NPC for reconsideration accompanied by written reasons; the NPC may make the reasons of the Ministers public.*

Sections 11.5.4 through 11.5.8 have been applied successfully in the cases of the Keewatin Land Use Plan and the North Baffin Land Use Plan. These two regional plans were approved according to the process prescribed.

A respondent for NPC found that the Keewatin Plan was submitted in November, 1998 but was not approved until June, 2000. This is seen as an administrative problem that will be resolved by the time the

next plan is submitted for approval. According to interviewees from the GN, DIAND and NTI, on the other hand, those bodies are concerned with the slowness of the process in developing land use plans. According to one interviewee, this might be explained by the fact that the NPC is working on many plans at once in different areas.

The obligations Sections 11.5.4 through 11.5.8 were being met, although the timeliness of the process remains in question.

11.5.7 *The NPC shall reconsider the plan in light of written reasons and shall resubmit the plan to the Ministers for final consideration.*

11.5.8 *Upon accepting a plan, the Minister of Indian Affairs and Northern Development shall seek Cabinet approval and commitment, and the Territorial Government Minister responsible for Renewable Resources shall seek approval and commitment of the Executive Council.*

The two plans submitted thus far have not required reconsideration or resubmission. **Hence, there has been no occasion to implement the obligation regarding what must be done if the plans are not accepted by the Minister.**

11.5.9 *Upon approval by Cabinet and the Executive Council, the plan shall be implemented on the basis of jurisdictional responsibility. All federal and territorial government departments and agencies shall conduct their activities and operations in accordance with the plan as approved.*

Concerns exist regarding the implementation of the two regional plans according to the responsibilities of the various jurisdictions. In part, this is a resource or capacity issue. As well, it is due to the federal and territorial departments and agencies questioning the mandate of the NPC to specify activities and responsibilities in their plans. It may also be due to some difficulty on the part of GN and federal bodies to coordinate their own roles and responsibilities with regard to the plans. The legislation working group is attempting to clarify these points through the new legislation.

Due to the fact that the plans that have been developed were being implemented, but there is concern over how this was being done, this obligation was being partially achieved.

11.5.10 *The NPC shall review all applications for project proposals. Upon receipt and review of a project proposal, the NPC or members thereof or officers reporting to the NPC shall: (a) determine whether the project proposals are in conformity with plans; and (b) forward the project proposals with its determination and any recommendations to the appropriate federal and territorial agencies. The land use plan may make provision for the NPC to approve minor variances.*

An NPC respondent indicated that NPC staff members review all applications for project proposals, determine the degree of conformity of proposals with land use plans, and forward the proposals with the NPC determination and recommendations to the appropriate federal and territorial agencies. This interviewee also commented that the challenge for NPC in this process is in its staff shortage. While project proposals are always reviewed, NPC is concerned that staff shortages could lead to reviews not being done as effectively as desired.

This obligation was being met, but there are concerns over the thoroughness of the work.

11.6.1 *Government, a DIO, or any person affected by a plan, may propose amendments to the plan to the NPC.*

11.6.2 *The NPC shall consider a proposed amendment and, if it deems a review appropriate, review the proposal publicly.*

11.6.3 *Upon completion of the process in Section 11.6.2, the NPC shall recommend to the Minister of Indian Affairs and Northern Development and the Territorial Government Minister responsible for Renewable Resources that: (a) the proposed amendment be rejected in whole or in part; or (b) the proposed amendment be accepted, in whole or in part.*

There has not been occasion to date to implement sections 11.6.1 through 11.6.3. The procedure could have been tested in response to Coral Harbour's request for an amendment to the Keewatin Plan; however, it was not initiated in view of the GN's withdrawal from the land use planning process.

There has been no occasion to implement these obligations.

11.7.3 *In the development of a regional land use plan, the NPC shall give great weight to the views and wishes of the municipalities in the areas for which planning was being conducted.*

11.7.4 *The NPC and municipal planning authorities shall cooperate to ensure that regional and municipal land use plans are compatible.*

With respect to sections 11.7.3 and 11.7.4, there is a lack of clarity as to whether a land use plan prepared by the NPC can address issues within municipal boundaries. While NPC involves both municipalities and relevant government departments in the planning process, it is important that the respective roles and responsibilities be identified, and that the planning processes of NPC and the municipalities are compatible and complementary. An NPC interviewee stated that the legislative working group is attempting to address these issues and the new legislation should clear up any lack of ambiguity.

Sections 11.7.3 and 11.7.4 are being implemented; however, greater clarity is required to improve the process. The issues are intended to be addressed in the new legislation.

11.9.1 *The NPC shall identify and prioritize the requirement to clean-up waste sites in the Nunavut Settlement Area, including hazardous waste sites, inactive mining sites, abandoned DEW Line sites, and non-hazardous sites near communities. The NPC shall consider waste sites in the Kitikmeot region on a priority basis. To the extent possible, this initiative shall be co-ordinated with the development of land use plans.*

From the perspective of an INAC interviewee, this section has been only partially implemented. While DIAND and NPC are working on the problem, and while DIAND does have a contaminants program with a list of sites for clean-up, the coordination with land use plans is problematic due to the fact that only two of the six plans have been completed. According to an NPC interviewee, to the extent that the federal government has funds for this purpose, section 11.9.1 authorizes NPC to advise government on priorities for clean-up. This is seen as an integral aspect of the planning process and the fact that only two land use plans have been completed should not hamper efforts to clean-up waste sites, especially in the regions currently covered by land use plans.

Section 11.9.1 has been only partly implemented to date.

5.11.2 Effectiveness of Implementation

Responses with respect to the implementation of Article 11 ranged from mostly effective to mostly ineffective. The factors that most influenced respondents' assessments were the following:

- Certain Articles of the NLCA are interpreted differently by the various parties, including the IPGs. From the perspective of the IPGs, this can lead to a misunderstanding regarding their mandates. In the case of NPC, the interpretation of Article 11.4.1 (a) is an example. Ultimately, this is seen as causing unwillingness to work in cooperation with the NPC and, therefore, to the undermining of the land use planning process.
- The GN and NTI respondents suggested that their organizations are critical of NPC's ability to effectively "establish broad planning policies, objectives and goals for the Nunavut Settlement Area in conjunction with Government" (sub-section 11.4.1 (a)). The GN, NTI and DIAND (especially the GN and NTI) are critical of the fact that NPC has chosen to do land use planning first on a regional basis rather than a territory-wide basis, and that only two regional land use plans have been completed. This has led to questioning of NPC's ability to carry out its mandate and to the withdrawal of the GN from the hearing process.
- All parties see a greater need for capacity building and increased communication and cooperation.

5.11.3 Barriers

Several barriers were identified regarding the implementation of Article 11. They can be summarized as follows:

- **Delays in finalizing legislation:** The absence of legislation governing NPC and NIRB has been a barrier. Similarly, according to NPC, the absence of regulations respecting NPC operations, at least until legislation is enacted, is also a shortfall in terms of providing clarity to the status of NPC. **Resource and capacity issues**: Interviewees had noted that there continues to be a shortage of financial support for the IPGs, including NPC, to carry out their mandates. Greater federal financial support is required to build capacity. The problem of capacity is a significant factor affecting the timeliness with which NPC has been able to complete land use plans. Similarly, capacity issues affect the ability of the GN and NTI to participate in planning and to respond to draft plans. We understand that, as per a letter dated February 6, 2006 (Ref. 7.4), all members of NIP have come to agreement on recommended funding increases for IPGs. The levels of funding endorsed by NIP remain subject to the internal approval policies of each party to the Contract. It is expected that this additional funding will alleviate these problems.
- **Delays in Board appointments**: The Board appointments process continued to be a barrier. Lengthy delays in recommendations and appointments are problematic, as did lack of diligence to ensure nominees of all parties were on the Board.
- **Communication challenges**. There are a variety of communication challenges:
    - Several interviewees have indicated that there is a lack of willingness, and perhaps capacity, to communicate and to work together toward positive ends.
    - An NPC interviewee indicated that the GN's decision to withdraw from the hearing process has made the job of the NPC more difficult month-by-month. Efforts to resolve the impasse are being made; however, progress is slow. While resolution attempts are underway, the GN will not participate in the planning process.
    - There are many stakeholders involved in the land use planning process. This is good in that it maintains a tension of checks and balances between, for example, the land use planning

function (NPC) and the environmental assessment function (NIRB). However, the plethora of institutions (federal, territorial, Inuit and municipal) with distinct interests places a significant pressure on NPC as it attempts to find the best options for land use planning.
    - The GN and NTI are seen by one NPC respondent as failing to listen to what the communities are saying through the NPC consultations. According to the NPC respondent, the GN and NTI hold their own consultations separate from those of the NPC and the parties have arrived at different conclusions. This is seen as consistent with the lack of understanding of the NPC mandate by the GN and NTI. It is also seen to negatively affect support for the work of the NPC by the other parties.
- **Differing perspectives on mandate and strategic direction**: One NPC respondent expressed the view that both the GN and NTI take a narrow perspective on the mandate of the NPC; i.e., they focus on the development of non-renewable resources and generally ignore renewable resource development and conservation. Another NPC respondent stated that it acceptable for the GN and NTI to take these perspectives and to express them to NPC, but that they should not be couched in terms of the NPC mandate (sub-section 11.4.1 (a)) or, as in the case of the GN, result in withdrawal from the planning process. Similarly, we understand that NPC believes it is appropriate to do regional land use plans first, while GN believes NPC should do a Territory-wide plan first.
- **Lack of understanding of roles and responsibilities**: In the 2005 document entitled Report from a Management Review of Nunavut Planning Commission Governance Polices and Procedures, Aarluk Consulting Inc. found that many of the Commissioners viewed their role as Board members, rather than Commissioners. According to Aarluk, Commissioners need to understand their roles and responsibilities as independent members of a Commission and not a representative organization. The NPC need specific definitions of the powers, functions and a strengthened orientation package and process and need regular ongoing contact between the Chair and Commission members.
- **Lack of good operational and management practices**. The Aarluk report also addressed other management issues concerning the NPC. Aarluk found that as of August 2005, policy documents are not current, nor was adherence to a policy validated. Budgets were not developed or managed efficiently. Aarluk concluded that DIAND could play a stronger role in support of the IPGs, including the NPC, on assessing needs, planning, management, etc. NPC policy documents required reviewing and updating, and validation of adherence was required. These are serious issues that should be addressed by the NPC and DIAND together. The GN and NTI should also be party to the discussion to determine what roles they can play. Generally, the NPC Board requires assistance in building management capacity and a better understanding regarding governance.

5.11.4 Recommendations

Legislation and regulations regarding NPC and NIRB: The absence of legislation governing NPC and NIRB is in direct contradiction to the NLCA. The parties should make every effort to develop, introduce and enact the relevant legislation as soon as possible.

Communications and a willingness to work together: All parties must work more effectively as partners in the NLCA generally and with respect to Article 11, in particular. A priority item for discussion should be the differing interpretations of the IPG mandates, including that of NPC. The parties should consider establishing an ongoing working group consisting of representatives of the NPC, NIRB, NTI, the GN and DIAND. Points of contention could first be addressed by the working group, then, if not resolved, taken to NIP as described in the recommendations discussion in the Article 37 section. It is also important to recognize the concerns that Inuit are not consulted sufficiently.

The GN and NPC should continue to attempt to resolve the impasse on the participation of the GN in the land use planning hearings. Specifically, the respective roles of the GN and NPC with respect to

Article 11.4.1(a) should be discussed and resolved. In the meantime, the GN should reconsider its decision not to participate in the hearing process while the resolution process is taking place.

Board Appointments: Recommendations for Board members, as well as the actual appointments by the federal Minister, must be done in a timely manner. Each Party should ensure that the appropriate number of nominees representing that party sit on the Board.

NPC management issues: The NPC should consider the contents of the 2005 Aarluk Consulting report and act on the recommendations as appropriate. NIP should be providing support to IPGs, as required in 37.1.1 e).

Assistance to IPGs: The Parties should be providing assistance to IPGs to ensure that they adopt and maintain good governance and sound operating practices. It is critical that this assistance be in the form of identifying objectives, and potential tools, and not imposing "southern" practices in situations in which these would be inappropriate. Hence, the parties must work together to develop solutions that are consistent with Nunavut realities, Inuit culture, and the objectives of good governance.

Funding: We recommend that each of the three parties approve the funding increases for the IPGs as per the letter dated February 6, 2006, wherein NIP endorsed increases in funding levels.

Consolidation: We have heard there are certain efficiencies that could be achieved by the consolidation of IPG administrative systems. Consolidation is covered by Articles 10.6 and 10.7 of the NLCA. Opportunities for improving efficiency through consolidation should be considered by the parties. However, it should only be implemented after the legislation for NPC and NIRB is in place.

Land Use Planning: The goals and objectives of NPC are broad and complex. All are important, although not all can be addressed completely at present (e.g., the work on an Arctic marine policy). However, it is essential that the Parties agree on the best practices regarding land use planning. Specifically, agreement should be reached on whether to continue with regional plans or to tackle a territory-wide plan first.

5.12 Article 12 – Development Impact

5.12.1 Status

5.12.1.1 Background

Several of the issues discussed in the background to Article 11 also apply to Article 12 in that legislation regarding IPG (in this case, NIRB) has not been enacted. As the authors of the first Five Year Review suggested, the lack of legislation undermines the credibility of NPC, NIRB and the entire NLCA. (Refer to Background in the analyses of Articles 10 and 11 for an elaboration of this issue as contained in the first Five Year Review.)

Respondents for this Five Year Review indicate that legislation is currently being developed for NIRB and NPC, but, according to an NPC respondent, the legislative working group is estimating the introduction of a bill in 2008 at the earliest.

The first Five Year Review identified jurisdictional and other issues that were interfering with NIRB's ability to fulfill its Article 12 mandate. It appears that these issues have been resolved since the time of the First Five Review.

The first Five Year Review noted the issue of DIAND referring environmental screenings in Nunavut to federal departments or agencies under the *Canadian Environmental Assessment Act* (CEAA). It was stated that legislation under Article 10 should address the relationship of the CEAA to the Nunavut Settlement Area as a priority matter. This issue remains unresolved.

The first Five Year Review also identified the need for DIAND to enter into discussions with NTI, the RIAs and NIRB regarding the feasibility of NIRB carrying out screening and review of proposals on Inuit Owned Lands. According to GN respondents, this matter is currently being addressed by the legislative working group and information will be forthcoming after the enactment of legislation respecting NPC and NIRB.

Another major Article 12 issue identified by the first Five Year Review concerned the unfulfilled responsibility of the Government of Canada to negotiate an interjurisdictional agreement for collaboration in the review of the Diavik proposal for a diamond mine in the Coppermine watershed outside the Nunavut Settlement Area. This matter has been dealt with in the intervening years, resulting in the first diamond mine approval in Nunavut.

12.2.5 *In carrying out its functions, the primary objectives of NIRB shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of residents of Canada outside the Nunavut Settlement Area.*

NIRB is carrying out its duties with respect to Section 12.2.5. Conciliator Thomas Berger makes the general statement in his Interim Report that "The only dispute in the case of NIRB is dollars and cents; all agree the Board is doing what it should be doing." (Ref. 7.4) Interviewees from GC, NTI and the GN indicated that NIRB is fully achieving the objectives of this Section. The only qualification came from one DIAND interviewee and a respondent from NIRB. This concerns the last clause of the Section,

which refers to NIRB's responsibility for residents outside the NSA. It appears that this is not always done, although NIRB has worked with the Mackenzie Valley Impact Review Board in the case of the Bathurst Road and Port Project, according the GC interviewee. According to the interviewee from NIRB, the need does not normally exist because most of NIRB's business is within the NSA. This respondent indicated that NIRB attempts to inform and share project information with organizations with responsibility outside the NSA, although they perhaps do not consult enough.

We find that this objective has been almost fully achieved. The qualification concerns the extent of consultation regarding impacts on residents outside the NSA.

12.2.24 *In designing its by-laws and rules of procedure for the conduct of public hearings, NIRB shall: (a) to the extent consistent with the broad application of the principles of natural justice and procedural fairness, emphasize flexibility and informality, and, specifically: (i) allow, where appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence, and (ii) give due regard and weight to the tradition of Inuit oral communication and decision-making; and (b) with respect to any classification of interveners, allow full standing to a DIO.*

Interviewees from DIAND, the GN and NTI all stated that NIRB is fully achieving the obligations of Section 12.2.24. The NIRB interviewee reported that in previous years the objectives were not being fully achieved because NIRB did not see options other than public hearings to share information with the public. Since that time, a hearing coordinator position has been created. This individual is responsible for going to the schools and working with local organizations like HTOs. NIRB has also started to break the public sessions into a technical session, which is more for governments and DIOs, and a non-technical session for community members, which is structured in a circle and has no formal agenda.

This obligation has been fully achieved.

12.2.26 *NIRB shall conduct its public hearings in Canada's official languages as required by legislation or policy, and, upon request of any member, applicant or intervener, also in Inuktitut.*

Interviewees from DIAND, the GN and NTI all stated that NIRB is fully achieving the obligations of Section 12.2.26. Interviewees from DIAND and NIRB indicated that hearings are not conducted in French, although there has been no requirement so far. Hearings are conducted in Inuktitut, Innuinaqtun and English and could be carried out in French by hiring a translator if needed.

Section 12.2.6 has been fully implemented, with the qualification that hearings in French have not been requested but could be held if necessary.

12.2.31 *The costs of NIRB shall be the responsibility of Government. NIRB shall prepare an annual budget subject to review and approval by Government.*

DIAND and NTI interviewees indicated that NIRB is fulfilling its part of this Section by preparing and submitting an annual budget. The concern, as expressed by the NTI respondent, is with the level of funding provided by the GC. Conciliator Thomas Berger's statement is worth repeating: "The only dispute in the case of NIRB is dollars and cents; all agree the Board is doing what it should be doing."(Ref 2.2, p. 34) A NIRB interviewee said that the level of funding is definitely not adequate to enable NIRB to carry out its mandate effectively. This respondent noted that the ten-year funding arrangement is currently being negotiated, although the process has been slow and difficult. NIRB keeps

running into deficit situations because they need to hire additional staff to handle the workload. Additional staff brings additional associated costs. Conciliator Thomas Berger says the following:

> *Like the NWB and the SRT, the NIRB's workload is externally driven, having to consider social, economic and environmental impact as each case is brought before it. NIRB has increased its staff from 9 to 12 since 2003. Its rent has doubled. It is strapped – its members have limited their honoraria to $100 a day when meetings are held by teleconference.* (Ref. 2.2, p.34)

The NIRB interviewee said that GC is not fully convinced the additional positions are essential, but for the most part the GC has been supportive. In a focus group with NIRB Board members, it was pointed out that the core budget continues to be inadequate. However, they continue to manage because they can apply for money for hearings separately from the yearly core funding. In the case of separate requests for funds for hearings, INAC negotiates with TBS on a project-by-project basis. This has enabled NIRB to continue its hearing process.

We find that Section 12.2.31 has not been fully implemented, as disputes over funding levels persist.

12.3.1 *Where the NPC determines, pursuant to Section 11.5.10, that a project proposal is in conformity with the land use plans, or a variance has been approved, the NPC shall, subject to Sections 12.3.2, 12.3.3 and 12.4.3, forward the project proposal with its determination and recommendations to NIRB for screening.*

There was some disagreement among respondents on this Section. Interviewees from DIAND, the GN and NTI responded that this obligation has been fully achieved. However, an interviewee from NIRB suggested that the Section has not been fully implemented due to the fact that not all the land use plans are in place. Consequently, sometimes no conformity is required and applications fall through the cracks (i.e., sometimes applications are not forwarded to NIRB). A GN interviewee agreed that his could be a concern. According to Section 12.3.5, "In the absence of a land use plan, all project proposals other than those that fall within Schedule 12-1 shall be referred directly to NIRB for screening." In the NIRB Board focus group it was confirmed that these referrals occur.

We conclude that this obligation has been partially achieved.

12.3.2 *Project proposals falling within Schedule 12-1 shall be exempt from the requirement for screening by NIRB. The NPC shall not forward such project proposals to NIRB.*

12.3.3 *Notwithstanding Section 12.3.2, the NPC may refer a project proposal falling within Schedule 12-1 to NIRB for screening, where the NPC has concerns respecting the cumulative impact of that project proposal in relation to other development activities in a planning region.*

An interviewee for NPC reported that the GN disagrees with some NPC decisions to send an otherwise exempt proposal (under Schedule 12-1) to NIRB for screening. Also, the NPC interviewee and a NIRB interviewee said that the GN wanted to expand the exemptions list under Schedule 12-1. On a positive side, the NIRB Board, as well as the other Parties, was reviewing the process associated with exemptions under Schedule 12-1, particularly part 7 which refers to the exemption of project proposals in "Such other categories of activities and projects as may be agreed upon by NIRB and the appropriate Minister." In part, NIRB and the other Parties have been induced to think about expanding the exemptions under Schedule 12-1 because of the great number of proposals being developed. According to a NIRB interviewee, the review is viewed positively by the GN, NTI, the RIAs, DIAND, industry and the hamlets.

We find that these obligations were being met.

12.4.2 *In screening a project proposal, NIRB shall be guided by the following principles: (a) NIRB generally shall determine that such a review is required when, in its judgement, (i) the project may have significant adverse effects on the ecosystem, wildlife habitat or Inuit harvesting activities, (ii) the project may have significant adverse socio-economic effects on northerners, (iii) the project will cause significant public concern, or (iv) the project involves technological innovations for which the effects are unknown; (b) NIRB generally shall determine that such a review is not required when, in its judgement, the project is unlikely to arouse significant public concern and (i) the adverse ecosystemic and socio-economic effects are not likely to be significant, or (ii) the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology; and (c) in determining whether a review is required or not NIRB shall give greater weight to the provisions of Sub-Section 12.4.2(a).*

According to interviewees from NIRB, DIAND, the GN and NTI, the objectives of all aspects of Section 12.4.2 have been fully achieved. As the NIRB interviewee put it, "Part 4 is "the meat and potatoes" of the work of NIRB. Sub-Section 12.4.2 (a) (i) is the screening principle that applies most clearly for NIRB. Article 12 is effective in this regard because it provides a balance between questions being resolved through Part 4 screening rather than through the more costly and time consuming review process. The NIRB interviewee stressed that the Board weighs the options very carefully when screening proposals.

We find that this objective was being fully implemented.

12.4.4 *Upon receipt of a project proposal, NIRB shall screen the proposal and indicate to the Minister in writing that: (a) the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5; (b) the proposal requires review under Part 5 or 6; NIRB shall identify particular issues or concerns which should be considered in such a review; (c) the proposal is insufficiently developed to permit proper screening, and should be returned to the proponent for clarification; or (d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.*

According to interviewees from NIRB, DIAND, the GN and NTI, the obligations of all aspects of Section 12.4.4 have been fully achieved. A NIRB interviewee stated that most proposals fall under 12.4.4(a). The interviewee further indicated that every determination under this sub-Section is sent out with terms and conditions. The terms and conditions have been adapted over the years to reflect the realities facing industry and the changing nature of research.

We find that this obligation was being met.

12.4.6 *Where NIRB indicates to the Minister that a proposal may be processed without review, the proposal shall be processed under relevant legislation, unless the Minister decides to refer it for such a review.*

Interviewees from NIRB, DIAND, the GN and NTI stated that **this obligation was being been fully met.**

12.4.7 *Where NIRB indicates to the Minister that a proposal requires review, the Minister shall: (a) where required, by law or otherwise, refer the proposal to the Minister of the Environment for review by a federal environmental assessment panel; such review shall include both socio-economic and ecosystemic impacts; (b) where a proposal is not to be reviewed by a federal*

environmental assessment panel, refer the proposal to NIRB for a review of the ecosystemic and socio-economic impacts in the Nunavut Settlement Area; or (c) where the proposal is not in the national or regional interest, inform the proponent that the proposal should be abandoned or modified and resubmitted to NIRB to be dealt with in accordance with Section 12.4.4.

Interviewees from NIRB, DIAND, the GN and NTI stated that **the obligation was being met.**

12.4.9 *Where NIRB indicates to the Minister that a proposal should be modified or abandoned, the Minister, after consultation with NIRB, shall: (a) return the proposal to the proponent for modification and resubmission to NIRB to be dealt with in accordance with Section 12.4.4; (b) where it appears to be in the national or regional interest that a proposal be reviewed, refer the proposal for review as provided in Sub-Sections 12.4.7(a) or (b) accompanied by written reasons for that decision; or (c) inform the proponent that the project should be abandoned.*

Interviewees from NIRB, DIAND, the GN and NTI stated that the obligations of Section 12.4.9 are being fully achieved. The use of this Section has been limited to one application of 12.4.9(a) in the case of the Doris North gold mine. In that case, the proposal was returned to the proponent for the provision of additional relevant information. From the NIRB perspective, the experience was somewhat frustrating. The proponent returned the proposal with the required information to the Minister but refused to work with NIRB to pass on the information to the Board. We believe that while the process may not have worked perfectly for NIRB in this instance, the Section as it is written was being implemented.

This obligation was being met.

12.5.4 *The Minister may propose priorities and reasonable time frames for completion of the reviews.*

Interviewees from NIRB, DIAND, the GN and NTI stated that the obligations of Section 12.5.4 are being achieved. The NIRB interviewee indicated that when the Doris North gold mine proposal was returned to the proponent and then refiled, the Minister asked NIRB to focus on five issues and to complete its assessment in a timely manner.

This obligation was being met.

12.5.6 *After reviewing the project proposal, NIRB shall issue a report to the Minister and the proponent containing: (a) its assessment of the project and its impacts; (b) its determination as to whether or not the project should proceed based on its assessment under (a); and (c) in the event the project were to proceed, terms and conditions reflecting the primary objectives set out in Section 12.2.5.*

Interviewees noted that **the objective of this Section was being met.**

12.5.7 *Upon receipt of the NIRB report, the Minister shall: (a) accept the report of NIRB as to whether or not the project should or should not proceed, including terms and conditions; (b) where NIRB has determined that a project should proceed, reject that determination on the basis that the proposal is not in the national or regional interest; the proponent shall be so advised by NIRB; (c) where NIRB has determined that a project should proceed, reject the report on the grounds that (i) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level the ecosystemic and socioeconomic*

impacts, or (ii) the terms and conditions are so onerous that they would undermine the viability of a project that is in the national or regional interest, and in such situations NIRB shall reconsider terms and conditions under which the project should be approved in light of the Minister's reasons; (d) where NIRB has determined that a project should not proceed, reject that determination on the grounds that the project should have been approved because of its importance in the national or regional interest; thereupon, the Minister shall refer the report back to NIRB to consider terms and conditions which should be attached to any project approval; or (e) where the report is deficient with respect to ecosystemic and socio-economic issues, refer the report back to NIRB for further review or public hearings; upon such further review or hearings, NIRB shall submit a further report to the Minister which shall be accepted or rejected in accordance with Sub-Sections (a), (b), (c) or (d).

The Minister normally accepts the reports of NIRB, including the terms and conditions. According to a NIRB interviewee, in one case, the Board included a set of fifty terms and conditions which the Minister returned on the basis that the GC could not commit to spending funds for a period greater than one year. The Board and DIAND negotiated an agreement whereby the terms and conditions would stand but that the funding would be reviewed each year. It is not clear that this arrangement fell under any particular sub-Section of 12.5.7. Sub-Sections (b), (c), (d) and (e) have not yet been tested.

This obligation was being fully implemented, to the extent that its sub-Sections have been required to be tested.

12.5.8 *Upon considering or reconsidering the terms and conditions of a project approval further to Sub-Sections 12.5.7(c) or (d), NIRB shall: (a) within 30 days, or such time as agreed upon with the Minister, make any alterations it considers appropriate; (b) refer its revised report back to the Minister; and (c) make its revised report available to the public.*

12.5.9 *Upon receipt of a revised NIRB report under Section 12.5.8, the Minister shall: (a) accept the terms and conditions; or (b) reject or vary the terms and conditions, in whole or in part, on the grounds set out in Paragraphs 12.5.7(c) (i) and (ii).*

Interviewees noted that **there has been no occasion to implement the obligations associated with this Section.**

12.5.10 *The Minister shall supply NIRB with written reasons for every decision.*

Interviewees indicated that the Minister supplies NIRB with written reasons; however, the NIRB interviewee reported that it can take an unreasonably long time for the Minister's letter to reach NIRB.

This obligation was being implemented, however there is concern over the length of time that this takes.

12.6.1 *Where the Minister under Sub-Section 12.4.7(a) decides to refer a project proposal to the Minister of the Environment for public review by a federal environmental assessment panel, the panel shall conduct its review in accordance with the provisions of this Part and with any other procedures, principles and general practices that provide at least the same opportunity for an open and comprehensive public review as provided by the Environmental Assessment and Review Process Guidelines Order (S.O.R./84-467, 22 June, 1984).*

12.6.9 *Upon completion of its review, the panel shall forward its report to the Minister of the Environment and the Minister, who shall make it public and who shall forward a copy to NIRB.*

12.6.10 *Upon receipt of the report of the panel, NIRB shall have 60 days to review the report and forward its findings and conclusions to the Minister with respect to ecosystemic and socio-economic impacts in the Nunavut Settlement Area. NIRB may identify deficiencies in the panel report, additional terms, conditions and mitigative measures that should be attached to any project approval, additional data requirements, and any other conclusions deemed pertinent by NIRB including whether or not the project proposal should proceed. In so doing, NIRB shall be guided by the primary objectives set out in Section 12.2.5.*

12.6.11 *Upon receipt of the panel report and the recommendations of NIRB the Minister shall: (a) accept the report with the terms and conditions proposed by the panel insofar as they apply to the Nunavut Settlement Area; (b) accept the report insofar as it applies to the Nunavut Settlement Area with modifications proposed by NIRB; or (c) reject the panel report or any part thereof insofar as it applies to the Nunavut Settlement Area on the following grounds (i) the project proposal should be rejected on the grounds that the proposal is not in the national or regional interest, in which case the proponent shall be so advised by the Minister, (ii) the project proposal should be allowed to proceed because of its importance in the national or regional interest, in which case NIRB shall consider the terms and conditions with respect to the Nunavut Settlement Area which should be attached to any approval, or (iii) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level of ecosystemic or socio-economic impacts of the project, in which case, NIRB shall thereupon reconsider the terms and conditions with respect to the Nunavut Settlement Area in the light of the Minister's objections.*

There has been no occasion for these obligations and objectives to be implemented.

12.6.12 *In considering or reconsidering the terms and conditions of a project approval, NIRB shall, within 30 days or such other period as agreed upon with the Minister, report back to the Minister, with respect to the terms and conditions which should be attached to any project approval.*

12.6.13 *Upon receipt of NIRB's report further to Section 12.6.12, the Minister shall: (a) accept the terms and conditions; or (b) reject or vary the terms and conditions, in whole or in part, on the grounds that (i) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level the ecosystemic and socio-economic impacts in the Nunavut Settlement Area, or (ii) the terms and conditions with respect to the Nunavut Settlement Area are so onerous that they would undermine the viability of a project which is in the national or regional interest.*

12.6.14 *The Minister shall supply NIRB with written reasons for every decision insofar as it applies to the Nunavut Settlement Area.*

Interviewees noted that **there has been no occasion to implement the obligations associated with this Section.**

12.7.6 *There is a requirement for general monitoring to collect and analyse information on the long term state and health of the ecosystemic and socio-economic environment in the Nunavut Settlement Area. Government, in co-operation with the NPC, shall be responsible for developing a general monitoring plan and for directing and co-ordinating general monitoring and data collection. The NPC shall: (a) in accordance with the plan, collate information and data provided by industry, government departments and agencies, amongst others; (b) in accordance with the plan, report periodically on the ecosystemic and socio-economic environment of the Nunavut Settlement Area; and (c) use the information collected under Sub-Sections (a) and (b) to fulfill its existing responsibilities under Article 11.*

A general monitoring plan is not yet in place. A NIRB interviewee stated that it is possible that relevant information was being collected through the land use planning process, but that it was not being utilized for general monitoring. The respondent said that the main challenge for NPC in participating in the development of a plan is inadequate funding.

The draft Annual Report on implementation for 2001-2004 states that "Canada owns more than 80 percent of the surface and an even greater share of the sub-surface of the Nunavut Settlement Area (NSA); it is critical that the federal government take the lead in implementing this important provision [Section 12.7.6]. To date, however, INAC has not … tabled a monitoring plan for the NSA that would meet the requirements of Article 12.7.6."(Ref. 8.4)

NTI filed a petition with the Office of the Auditor General of Canada in September, 2004, stating that INAC "*has not established a general monitoring program in Nunavut as required under the NLCA*". INAC submitted a response in February 2005. This response provided a description of a variety of monitoring activities in the North. It also described some of the land use planning activities it was involved in (some of these with other partners, such as the NPC). Finally, the response indicates the steps it is taking towards developing a General Monitoring Plan for Nunavut. They noted that they have developed a number of potential options. They indicated that they were developing a discussion paper to identify expectations of interested parities, summarize the obligations of GC under the NLCA and outline options for moving forward. It further notes that once the discussion paper is complete, consultations will be undertaken with stakeholders.

Both GC and NTI have acknowledged the importance of developing a general monitoring plan, and both agree that the development of the plan must involve all Parties. The points of differentiation are two-fold: NTI has indicated that they do not believe GC has gone far enough yet, and they have not been involved enough.

We conclude that this obligation to monitor has not yet been implemented, given that the plan has not yet been developed.

12.9.2 *Without limiting the generality of Section 12.9.1, the terms and conditions of NIRB project certificates shall, in accordance with the authorities and jurisdictional responsibilities of government departments and agencies, be incorporated in relevant permits, certificates, licences or other government approvals that the proponent may require. Government departments and agencies shall discuss with NIRB how best to implement the terms and conditions of NIRB project certificates and may provide NIRB with drafts of permits, certificates, licences and other government approvals.*

A NIRB interviewee said that only recently have regulatory departments met with NIRB to work on how best to integrate the terms and conditions into their appropriate licencing instruments. NIRB still does not receive any instruments voluntarily and it requires some persuasion to convince the federal departments to

work with them. An INAC interviewee reported that, while the interviewee could only speak for INAC and not for other departments such as DFO or NRCAN, the interviewee believed that his department usually complied with this Section. A second INAC interviewee confirmed that the Regional Office works closely with NIRB on the certificates for mines and roads.

We find that this obligation was being only partly implemented, due to the reluctance of some departments and agencies to work closely with NIRB.

12.10.1 *No licence or approval that would be required in order to allow a proposed project to proceed shall be issued in respect of a project that is to be screened by NIRB until the screening has been completed and, if a review pursuant to Part 5 or 6 is to be conducted, until after that review has been completed and a NIRB project certificate has been issued by NIRB pursuant to these provisions.*

According to interviewees from INAC, the GN, NTI and NIRB, this obligation was being implemented. A NIRB interviewee concluded that most agencies now understand the requirements of the system.

This obligation was being met.

12.10.2 *Notwithstanding Section 12.10.1, where a project proposal has been referred for review pursuant to Part 5 or 6, approvals or licences for exploration or development activities related to that project may be issued if: (a) the activity falls within Schedule 12-1; or (b) the activity can, in the judgement of NIRB, proceed without such a review.*

Interviewees from INAC, the GN and NTI are of the view that this obligation was being fully implemented. A qualification comes from a NIRB interviewee who said that the requests for approvals or licences under this Section are sometimes not valid. It is therefore important for NIRB and other agencies to monitor such requests closely and to reject them when they are not valid (e.g., if they do not fall under Schedule 12-1).

This obligation was being met.

12.10.3 *Where permits, certificates, licences or other government approvals which implement or incorporate the terms and conditions of a NIRB project certificate have been issued, the responsible government department or agency shall continue to be responsible for the enforcement of the permit, certificate, licence or other government approval.*

Respondents from INAC, GN and NTI indicate that this obligation was always applied. A NIRB interviewee said that the departments and agencies do their best but that sometimes enforcement is weak and things fall through the cracks. These failures in enforcement are likely due to a lack of capacity in the departments and agencies to monitor activities on an ongoing basis.

This obligation was being met with the exception that departments and agencies must work to ensure that their enforcement is effective.

12.10.4 *Responsible government departments and agencies shall apply effective techniques at their disposal for enforcement under Section 12.10.3 and in applying such techniques; they shall not be confined to prosecution or to the suspension of any permit, certificate, licence or other government approval.*

While INAC, the GN and NTI respondents see 12.10.4 as being fully implemented, the NIRB interviewee does not. The interviewee believes the GN is not meeting its obligations in regards to monitoring. This respondent maintains this is largely due to capacity issues – large staff turnover and many vacancies in the departments. However, this interviewee also believes that the GN is not fully aware of its own responsibilities; therefore it is hard to monitor others, especially in terms of the *Wildlife Act*.

We find that this obligation was not being fully implemented.

12.11.2 *Without limiting the jurisdiction of NIRB or EARP as set out in this Article, the Government of Canada and the Territorial Government, assisted by NIRB, shall use their best efforts to negotiate agreements with other jurisdictions to provide for collaboration in the review of project proposals which may have significant transboundary ecosystemic or socio-economic impacts.*

This Section was being implemented, though not fully. An INAC interviewee reported that the Minister instructed NIRB to work with the Mackenzie Valley Impact Review Board with regard to the Bathurst Road and Port Project. As well, NIRB worked with Hydro Quebec regarding the Rupert-Eastmain Hydro Development Project and its possible impacts on Sanikiluaq. A NIRB interviewee pointed out that there were no agreements negotiated to provide for joint reviews; however, opportunities arose to share research information and training. The interviewee indicated that these kinds of relationships could be more frequent and could be taken farther in terms of cooperation. For example, while there is not an agreement with the Inuvialuit, there are transboundary issues that could be addressed on a cooperative basis.

We find that this obligation was being implemented, but that ongoing relationships and cooperation should be established with other jurisdictions where there are likely to be ongoing transboundary issues.

5.12.2 Effectiveness of Implementation

This Article deals with ensuring a process exists to protect the ecosystem in Nunavut. More specifically, it indicates that NIRB shall be responsible for reviewing development proposals. In so doing, it shall consult with stakeholders such as NPC, GN, GC, NTI, other jurisdictions, and the public. It shall screen proposals, advise on whether a review is required, assess the proposal and advise on terms and conditions. The obligations to conduct these reviews were being met. However, the following summary points are also critical to note.

Interpretation of the NLCA

Certain Articles of the NLCA are interpreted differently by the various parties, including the IPGs. From the perspective of the IPGs, this can lead to a misunderstanding regarding their mandates. In the case of NIRB, the federal government's interpretation of Article 12 is an example. Though it has not happened yet, the dual process of screening (federal and territorial) could lead to serious contradictions in the process, and ultimately affect NIRB's credibility with industry and the public.

Cooperation and Communication

All parties see a greater need for improved working relations among the three major stakeholders – NTI, the GN and the GC – as well as between those stakeholders and the IPGs. Failures in this regard have adversely affected the implementation of the NLCA in general, and Article 12 in particular.

Capacity

Challenges in building capacity, especially in the GN, the IPGs and the DIOs are a factor affecting the implementation of the NLCA. In the case of NIRB, recruiting and retaining individuals with the needed skill sets (science, engineering) is a problem. The shortage of housing for new NIRB employees adds to the problem.

Funding

IPGs continue to be under funded by the GC and therefore continue to have problems in developing capacity and in carrying out their review processes. NIRB, in particular, is faced with inadequate funding on an ongoing basis. In Justice Berger's assessment, the implications of INAC's approach could prove very difficult for the IPGs. The interviewee said, "…what is at issue is the funding for the basic operations and primary activities of the IPGs."(Ref 2.2, p.16) While this has not yet affected NIRB's ability to implement the relevant Parts of Article 12, this continues to loom as a possibility, especially as increasing numbers of proposals are submitted.

5.12.3 Barriers

The barriers outlined below refer to Article 12.

The Appointments Process is Long and Unpredictable

The appointments process for Board members remains problematic. In this Five Year Review, respondents from NTI and NIRB, as well as NIRB members, stated that the federal appointments process is too slow and is causing significant difficulties for NIRB. Board members say that it typically takes six or seven months even for re-appointments of members who have been with NIRB for several years. For example, the Board has had vacancies for up to three years. The GC appoints six of eight Board members but is not familiar with the nominees as individuals. As well, the security clearance process is seen to be intense and often blocks the appointment of Nunavut nominees. The security process takes several months, and if a nominee is rejected as a result, the nomination process begins again. It is clear that the GC, the GN and NTI must review the appointments process. In the process of this Review, the NIRB suggested that the nominator could provide more background information on nominees so that the GC would have more information to work with. There should also be open dialogue about why people are rejected.

Inadequate Funding for NIRB

Funding for NIRB to carry out its mandate continues to be a problem. Core funding is inadequate (see Conciliator Thomas Berger's Interim Report) and NIRB must apply for funds to support hearings on a project-by-project basis. These requests have been approved so far; however, there is no certainty that INAC or TBS will agree to a particular request. Further, it takes time to prepare individual funding requests, a challenge for NIRB staff members who are already overburdened. We understand that, as per a letter dated February 6, 2006 (Ref. 7.4), all members of NIP have come to agreement on recommended funding increases for IPGs. The levels of funding endorsed by NIP remain subject to the internal approval policies of each party to the Contract. It is expected that this additional funding will alleviate these problems.

The challenges to managing a consultation process in the North are substantial. The costs and logistics of holding hearings in the smaller communities are difficult. Often NIRB is limited to paper techniques for

the consultations, which contradicts the idea of oral tradition. According to the NIRB interviewee, the GC does not fully recognize these challenges.

NIRB is a very technical organization and requires people with science and engineering backgrounds, and this formal technical training is unusual in the North. Therefore, NIRB is forced to hire from the South. A related challenge is to ensure that traditional knowledge is not lost in the science. Generally, like other agencies in Nunavut, NIRB finds it difficult to attract and retain staff. A staffing related issue is the lack of available housing. The Board is not allowed to acquire assets, including housing, which means that hiring new staff is especially difficult in a housing-short community. However, INAC and NIRB are currently working on an agreement to acquire housing to meet the needs of NIRB.

We understand that an agreement on funding was reached by NIP in January 2006, and is awaiting approval by GC. It is expected that this funding will alleviate much of the IPG resource problem.

Federal Policy re: Screening (Parts 5 and 6)

There are concerns and differences in opinion about the overlap between NIRB and GC.
NIRB and NTI have serious concerns over potential contradictions between Part 5 (Review of Project Proposal by NIRB) and Part 6 (Review by a Federal Environmental Assessment Panel). According to NIRB, NPC and NTI, INAC gives as much weight to the *Canadian Environmental Assessment Act* (CEAA) as it does to the NIRB process. NIRB sees the aims of both processes as the same but that INAC will continue to send project proposals to the federal process regardless. The NIRB respondent believes this is because without legislation covering NIRB, the GC is obliged to take both routes (federal and territorial). In the meantime, there is a potential for federal and territorial screening bodies to disagree on whether a proposal should go to review or not. This has not happened yet, although it could happen in the case of the Doris North project. NIRB interprets the NLCA as saying that NIRB is all that is required for screening in Nunavut and that federal legislation need not apply. Indeed, it is possible to build the CEAA screening criteria into the NIRB process. Therefore, according to the NIRB Board, only one screening process is necessary. A NIRB interviewee says that NTI is in agreement with the idea of a single screening process. The situation is a significant problem for NIRB, partly due to the fact that NIRB's credibility in being questioned by industry and by the public. At the same time, industry is frustrated with the prospect of facing two screening processes. A NIRB respondent expressed the hope that new legislation covering NIRB would address the issue clearly.

GC has stated that its efforts are limited to its regulatory triggers on CEAA Comprehensive Studies and so dramatically limits any overlap between CEAS and the NIRB processes. They have also indicated that they work with NIRB and the proponent to reduce any extra effort that may arise due to the possibility of a CEAA Comprehensive Study on top of a NIRB review. They further note that in the most recent case where this arose, the proponent wanted to have both reviews done.

Lack of Legislation and Regulations

The lack of legislation for NIRB (and for NPC) is seen as a barrier to the full implementation of the NLCA. In particular, it creates gray areas with respect to roles and responsibilities in certain areas; e.g., Parts 5 and 6 of Article 12.

Public Understanding and Education

There is a lack of public understanding of the NLCA, including the role of NIRB. The interviewee believes that the NLCA should be built into the education system. The respondent feels that if more people understood the NLCA and NIRB's role, they might be more inclined to attend meetings and

hearings. The interviewee believes that NTI and the RIAs have a responsibility to educate Nunavummiut about the NLCA.

5.12.4 Recommendations

Legislation and Regulations Regarding NIRB and NPC

The absence of legislation governing NIRB and NPC is in direct contradiction to the NLCA. The parties should make every effort to develop, introduce and enact the relevant legislation as soon as possible. All Parties agree that the implementation of legislation for NIRB can address the concerns regarding potential duplication of reviews and efforts on the proponent's part.

Communications and a Willingness to Work Together

All parties must work more effectively as partners in the NLCA, including Article 12. A priority item for discussion should be the differing interpretations of the IPG mandates, including that of NIRB. The parties should consider establishing an ongoing working group consisting of representatives of the NPC, NIRB, NTI, the GN and INAC. Points of contention could first be addressed by the working group, then, if not resolved, taken to NIP as described in the recommendations summary for Article 37. Furthermore, as noted in Article 11, it is also important to recognize the concerns that Inuit are not consulted sufficiently.

Funding

We recommend that each of the three parties approve the funding increases for the IPGs as per the letter dated February 6, 2006, wherein NIP endorsed increases in funding levels.

Support for the Effective Operation and Good Governance of the IPGs

NIP should be providing support to IPGs, as required in 37.1.1 e). As discussed in the recommendations section of Article 37, NIP should work with the IPGs, to provide guidance on operational and governance principles, so that the IPGs can develop processes that reflect these principles and are consistent with their operational realities and culture.

Consolidation

We have heard there are certain efficiencies that could be achieved by the consolidation of IPG administrative systems. Consolidation is covered by Articles 10.6 and 10.7 of the NLCA. Opportunities for improving efficiency through consolidation should be considered by the parties. However, it should only be implemented after the legislation for NPC and NIRB is in place.

As discussed in the recommendation portion of Section 10, the timeliness of the Board appointment process should be improved.

Implement General Monitoring Plan.

It is critical that such a plan be developed and implemented. This is important both because it is required as per 12.7.6, and because there is concern among Inuit that economic development may be taking precedence over ecological preservation.

5.13 Article 13 – Water Management

5.13.1 Status

5.13.1.1 Background

The first Five-Year Review expressed concerns regarding the fact that the GC had not yet enacted legislation regarding the NWB; that Ministerial delays in making appointments to the Board were interfering with effective functioning; and that the GC was not providing adequate intervener funding for public hearings of large scale water projects in the NSA. Since the first review, legislation has been enacted.

5.13.1.2 Assessment

13.3.11 *The NWB shall conduct its business in Canada's official languages as required by legislation or policy, and upon request of any member, also in Inuktitut.*

13.3.12 *The NWB shall conduct its hearings in Canada's official languages as required by legislation or policy and, upon request of any member, applicant or intervener, also in Inuktitut*

The consensus is that the obligations of these two sections were being met. There is more of a demand for services in Inuktitut than in French. Simultaneous translation into Inuktitut is provided at all hearings, and decisions are provided in Inuktitut on request. NWB interviewees pointed out that they would make arrangements for French interpretation and translation on request.

13.3.13 *In designing its by-laws and rules of procedure for the conduct of public hearings, the NWB shall: (a) allow and give appropriate weight to evidence to be admitted at public hearings that would not normally be admissible under the strict rules of evidence; and (b) give due regard and weight to Inuit culture, customs and knowledge.*

The consensus is that the obligation of this section was being met. One interviewee from INAC commented that Inuit culture is always considered when it is brought up, and that IQ is given more weight than might be seen in the rest of the NLCA.

13.3.15 *Within a reasonable period of time prior to the commencement of any public hearing, the information provided to the NWB in relation to any water application shall be made available to the public.*

Interviewees noted that while all the information is posted on the Internet, more could be done to provide information face to face for those without internet access. **Given that Internet access is not universal in Nunavut, we find that this obligation was only being partially met.**

13.3.16 *In the conduct of public reviews, the NWB shall hold hearings in the communities most affected by the water application.*

The consensus is that **this obligation was being met, although there is recognition on the part of one interviewee from INAC that some communities might feel they are not sufficiently consulted.**

13.3.17 *The cost of the NWB shall be the responsibility of Government. The NWB shall prepare an annual budget, subject to review and approval by Government.*

Budgets are submitted by NWB to INAC, which makes the final determination of what the budget will actually be. NWB respondents indicated that NWB handles its funding carefully by using it strictly for operational purposes. It was noted that the next ten-year funding arrangement is currently being negotiated. The consensus is that **this obligation was being met.**

13.4.1 *The NWB shall contribute fully to the development of land use plans as they concern water in the Nunavut Settlement Area by providing its recommendation to the NPC.*

The original intent under the NLCA was that there would be an over-arching land use plan for the Nunavut Settlement Area, then plans for each of the districts, then land use plans for areas of concern. At this time, there are land use plans for Keewatin and North Baffin. The NWB report that a lack of capacity has limited their ability to contribute to the development of land use plans. We therefore conclude that **this obligation was being partially met.**

13.4.2 *Where pursuant to Section 11.5.10, the NPC informs the appropriate agencies that a water application does not conform to land use plans or a variance has not been approved, the application shall be rejected. If, pursuant to Section 11.5.11, the applicant subsequently requests and receives an exemption from planning conformity requirements, the application shall be processed by the NWB or NIRB as required.*

The interviewee from INAC reported that this clause has been fully implemented, whereas the NWB focus group reported it has not, although they qualified that by saying that there has been no occasion to do so. Participants point to a lack of land use plans to guide decision-making, and mining initiatives that have been allowed in the absence of such plans. In view of the fact that not all land use plans are in place, we conclude that **this obligation was being partially met.**

13.4.3 *Where the NPC determines, pursuant to Section 11.5.10, that a water application is in conformity with land use plans or a variance has been approved, and where the application falls within Schedule 12-1, the NPC shall forward the application with its determination and recommendations to the NWB for disposition, unless the NPC exercises its authority under Section 13.4.4.*

The consensus is that, where land use plans exist, the applications with determinations and recommendations are being forwarded. However, in the absence of a complete set of land use plans, we conclude that **the obligation of this section has not been fully met.**

13.4.4 *Where the NPC has concerns respecting the cumulative impact of development activities in a planning region, it may refer water applications to NIRB for screening even though the application falls within Schedule 12-1.*

13.4.5 *Where the NPC determines, pursuant to Section 11.5.10, that a water application is in conformity with the land use plans or when a variance has been approved, and where the application does not fall within Schedule 12-1, the NPC shall forward the application with its determination and recommendations to NIRB for screening.*

Respondents indicate that there has been **no occasion to implement these two sections**.

13.4.6 *Sections 13.4.3, 13.4.4 and 13.4.5 shall apply where a land use plan has been approved pursuant to Section 11.5.9. In the absence of a land use plan, water applications requiring screening by NIRB shall be forwarded directly to NIRB.*

This clause continues to be relevant because only two land use plans have been completed. Respondents from the NWB indicated that in the absence of plans they always verify that water applications requiring screening are forwarded to NIRB. We conclude that **the obligation of this section was being met.**

13.5.1 *Following receipt of a water application for screening, NIRB shall determine whether it requires a review pursuant to Article 12 and shall so advise the NWB.*

The consensus is that this process is in effect and that **the obligation of this section was being met.**

13.5.2 *Where the water application is referred for review under Article 12, the NWB and the review body shall coordinate their efforts to avoid unnecessary duplication in the review and processing of the application. Legislation may provide for joint hearings or authorize the NWB to forego public hearings on any water application where it has participated in a public review of the relevant water application pursuant to Article 12.*

The parties have tried to implement this clause, but have found it does not work in practice. The NIRB is responsible for environmental assessments, whereas the NWB is concerned with regulatory approval – both bodies have different information needs. Nonetheless, one interviewee from NTI reported that there is some overlap in information needs and they should work together to avoid duplication in effort. We conclude that **this was being met.**

13.6.1 *NPC NIRB NWB shall co-operate and co-ordinate their efforts in the review, screening and processing of water applications to ensure they are dealt with in a timely fashion.*

The NWB focus group rated this section as mostly achieved. They indicate however that, while it is mostly achieved with the NIRB, it is less so with the NPC. We conclude that **this section was not being fully implemented.**

13.7.1 *With the exception of domestic or emergency use of waters as set out in Section 5 of the Northern Inland Waters Act RSC 1985, c. N-25, no person may use water or dispose of waste into water without the approval of the NWB.*

There is no consensus as to whether this obligation was being met. The NWB focus group reports that in general, when proponents are aware of the need for approval, they seek it. An interviewee from INAC points out, however, that the regulations, transferred from the NWT, have not been re-written into the new *Waters and Surface Rights Tribunal Act.* A related issue is the lack of capacity of the NWB to monitor and enforce this clause. We therefore conclude that **this section was not being fully implemented.**

13.7.2 *Subject to Section 13.7.4, the NWB shall hold a public hearing before approving any application. The NWB may, where there is no public concern expressed, waive the requirement for a public hearing.*

Respondents from INAC and the NWB indicate that the NWB does hold public hearing before application approval when appropriate. We conclude that **the obligation of this section was being met.**

13.10.1 *Where a drainage basin is shared between the Nunavut Settlement Area and another jurisdiction, the Government of Canada and the Territorial Government, assisted by the NWB, shall use their best efforts to negotiate agreements with other jurisdictions concerned with the use and management of such drainage basins.*

Respondents feel that this obligation has not, or only partially, been met for a number of reasons:

- the NWB has never been invited to participate formally
- there are no relevant Nunavut regulations – the regulations from the NWT are still used
- Environment Canada state that their mandate does not include trans-boundary monitoring in the absence of a specific agreement.

We therefore conclude that **the obligation of this section was not being implemented.**

5.13.2 Effectiveness of Implementation

There has been significant progress made on this Article since the last review. The legislation has been passed. The requirement to conduct or translate discussions into Inuktitut has been met. There is a strong sense that Inuit culture, customs and knowledge are taken into account. It has been noted that while all the information is posted on the Internet, more could be done to provide information face-to-face for those without Internet access.

The area where progress is not as strong is in regards to where NWB must consult with or to NPC or other jurisdictions. In addition, the lack of appropriate regulations attached to the waters legislation has resulted in a greater workload and increased time requirements, slowing the entire process. At the time of passing of the Act in 2002, the regulations were to be developed within two years.

5.13.3 Barriers

There have been two barriers cited to the effective implementation of this Article:

- The land use plans are still in the progress of being developed by NPC.
- Interviewees have noted that NWB does not have the financial resources to consult with NPC, NIRB and other jurisdictions.

5.13.4 Recommendations

NIP has agreed on additional funding for all IPGs (Ref. 7.4). We recommend that each of the Parties agree so that the funding increase can be implemented.

5.14 Article 14 – Municipal Lands

5.14.1 Status

5.14.1.1 Background

At the time of the first Five-Year Review, NTI expressed concerns regarding decisions by the Government of the Northwest Territories to withhold the transfer of sixty-one parcels of land to the municipalities, as well as to delay the transfer of certain other parcels. NTI was also concerned that individual municipalities may not have had the financial resources or the expertise to handle the transfer of parcels of land without the assistance of the GNWT. Finally, NTI was concerned that the GNWT's practice of carrying out block surveys of tracts of municipal lands within built-up areas was inadequate.

Based on the interviews for this Five-Year Review, it appears that the main concerns expressed earlier by NTI have been dealt with. The exception to this may be a continuing concern regarding the capacity of municipalities to manage lands effectively.

5.14.1.2 Assessment

14.3.1 *As soon as practicable, and in any event no later than three years after the date of ratification of the Agreement, the Commissioner shall convey the fee simple estate to the Municipal Lands within the built-up area of the municipality to the Municipal Corporation. The built-up area shall include, but shall not be restricted to infrastructure requirements of the municipality including water reservoirs and facilities, community dump sites, sewage lagoons and treatment plants, borrow pits for granular, quarry and construction materials, and graveyards. Necessary remedial surveys of the built-up area shall be done expeditiously by the Territorial Government which shall be responsible for the cost thereof.*

Interviewees stated that the **obligation of this section has not been met.** The interviewee from INAC added that this is a responsibility of the GN and the Commissioner. Most of the land containing quarries, dump sites and lagoons has not been transferred as the remedial surveys have not been completed.

14.4.1 *As of the date of the ratification of the Agreement, all Municipal Lands, the fee simple estate to which has not been conveyed to the Municipal Corporation, shall be administered and controlled by the Commissioner for the use and benefit of the municipality.*

Interviewees stated **that the obligation of this section was being met.**

14.4.2 *The Commissioner shall not create or dispose of any interest or estates in Municipal Lands without prior written permission of the Municipal Corporation, conditional or otherwise.*

Interviewees stated that **the obligation of this section has been met.**

14.6.1 *Nothing in this Article shall be construed so as to prevent the variance of a municipal boundary or the creation of a new municipality after the date of ratification of the Agreement. Such variance of a municipal boundary or creation of a new municipality shall not:*

(a) affect, in itself, the title to lands;

(b) include Inuit Owned Lands without the written permission, conditional or otherwise, of a DIO; or

(c) require amending the Agreement.

Interviewees stated there has been **no occasion to implement this section**.

14.6.2 *Any variance to an existing municipal boundary or creation of a boundary for a new municipality shall be drawn in such a way as to provide the municipality with sufficient lands based on current and future needs to encompass:*

(a) the projected expansion requirements of the community;
(b) the community water supply;
(c) the solid waste disposal areas;
(d) resource areas sufficient to provide a supply of granular, quarry, and construction materials for the community;
(e) existing or proposed community transportation and communication networks;
(f) community airstrips and docking areas;
(g) a necessary buffer area around the perimeter of the projected urban community to control development and discourage unorganized development;
(h) areas contiguous to the community that are actively utilized by the community on a continuous or seasonal basis for recreational or other purposes and which have property development implications; and
(i) areas unique to an individual community that may arise on a case-by-case basis and which may be required by a community in the conduct of its municipal responsibilities.

The interviewee from INAC indicated there has been no occasion to implement this section, whereas the interviewee from NTI indicated the obligation of the section has been fully achieved. We therefore conclude, in the absence of problems noted, that **the obligation of this section has been achieved.**

14.17.1 *Where, after the date of ratification of the Agreement, Government determines that land within a municipal boundary held at the date of ratification of the Agreement, is no longer needed for government purposes, and such land has been declared to be surplus, Government shall convey the fee simple estate to the Municipal Corporation in exchange for nominal consideration.*

The interviewee from NTI reported the obligation has been fully achieved, whereas the INAC interviewee reported that some federal lands in Baker Lake have not been transferred to the municipality as there are contamination issues. INAC will not declare the land surplus until the contamination is remediated. We therefore conclude that **the obligation of this section has been partially met.**

5.14.2 Effectiveness of Implementation

Several obligations within this Article have been met: municipal lands have been conveyed to and administered and controlled by the Commissioner. There are two obligations that have not been met. First, the remedial surveys have note been done by GN. Second, some lands have not been transferred due to ongoing contamination issues.

5.14.3 Barriers

The lack of progress on these remaining issues has been attributed to lack of resources and communication difficulties.

5.14.4 Recommendations

The remedial survey and decontamination of the land should be undertaken with due haste.

5.15 Article 15 – Marine Areas

5.15.1 Status

5.15.1.1 Assessment

15.3.1 *Government will maintain a structure or structures to promote coordinated management of migratory marine species in Zones I and II and adjacent areas.*

The first Five Year Review concluded that **the obligation of 15.3.1 was not being met.**

During the current Five Year Review, interviewees from NTI, the NWMB and INAC commented that a structure, as described under section 15.3.1, had not been set up to exclusively address this obligation. Instead of a formal structure, organizations involved with issues pertaining to this obligation internally assign responsibilities to the organization most capable of dealing with the issue (i.e. the NWMB has powers inside Nunavut, and the DFO has powers in Zone 1 and 2). There are annual meetings between the Quebec DFO and the Eastern Arctic DFO and also between the NWMB, NTI and the equivalent organizations on the Quebec side. In addition, the LUMAQ Committee and the Canada Greenland Joint Commission for Narwhal and Beluga are examples of structures that stakeholders participated in.

A dedicated process has not been created to address this obligation but departments involved with these issues coordinate to address them. Therefore, the obligation has not been directly met, but a process has naturally occurred to compensate for the lack of structure. For this reason, **this obligation has been partially met.**

15.3.2 *The NWMB shall appoint appropriate representation from the Nunavut Settlement Area to the structure or structures referred to in Section 15.3.1.*

The first Five Year Review concluded that this Section had not been met.

The current Five Year Review determined from interviewees that formal representation by the NWMB in a 'structured' fashion, as laid out in this obligation had not been established. However, the NWMB has been involved and there have been meetings where the DFO has consulted the NWMB. In addition, the NWMB has been appointing commissioners on the Joint Commission for Narwhal and Beluga and has also always been involved in inter-regional meetings with Quebec and meetings on any other issues with Greenland relating to shrimp, turbot, and seal.

Given the preceding issues, it has been concluded that **this obligation was being partially met.**

15.3.4 *Government shall seek the advice of the NWMB with respect to any wildlife management decisions in Zones I and II which would affect the substance and value of Inuit harvesting rights and opportunities within the marine areas of the Nunavut Settlement Area. The NWMB shall provide relevant information to Government that would assist in wildlife management beyond the marine areas of the Nunavut Settlement Area.*

The first Five Year Review found that this Section had been partially met on an ongoing basis. A formal communication process was not occurring; however, the NWMB was found to be providing advice to the federal government on a regular, yet informal basis.

In terms of the current Five Year Review, there was consensus among interviewees that the NWMB was being consulted with respect to wildlife management decisions. However, opinions differ on the extent to which this influences government decisions. Some GN and NTI interviewees stated that the recommendations of the NWMB have not been taken into account. Interviewees from the NWMB on the other hand, believed that the recommendations are taken into account by the DFO in decision making pertaining to this Section. For example, in 2002 there was an increase in the shrimp quota in Shrimp Fishing Area One that occurred without any consultation with the NWMB, but when a similar increase was announced the following year it was undertaken after consultation with the NWMB.

We conclude that while this obligation was not always met in the past, recent changes suggest it was being met by the end of the review period.

15.3.6 *The NWMB may identify wildlife research requirements and deficiencies, review research proposals and applications, and where appropriate recommend acceptance or rejection of such proposals or applications within Zones I and II and, in making any decision which affects Zones I and II, Government shall consider such recommendations.*

The first Five Year Review found that this obligation was being partially met on an ongoing basis. The NWMB was found to have established research requirements and deficiencies. This report did find that the Board's recommendations should be acted on more by the government.

Most interviewees during the current Five Year Review have agreed that the NWMB is providing recommendations that are considered by the government.

An interviewee stated that this has improved between 1999 and 2005. The NWMB works with the representatives from the communities and the government departments that are involved with wildlife management and has workshops and develops a priority list, which the NWMB distributes to government departments and the communities. With respect to the marine areas (the DFO would be the main department doing research), the DFO would look at its own priorities and the NWMB list and develop research proposals. The DFO would provide funding, but the Nunavut Wildlife research trust fund (managed by NWMB) would also be a major source of funding for those projects. However, an interviewee noted that GN has had to fund additional research because of insufficient funding by DFO. With respect to the projects where the NWMB is not the lead, the NWMB is however, consulted before the science license from DFO is approved. Accordingly, **this obligation was being met.**

15.3.7 *Government recognizes the importance of the principles of adjacency and economic dependence of communities in the Nunavut Settlement Area on marine resources, and shall give special consideration to these factors when allocating commercial fishing licenses within Zones I and II. Adjacency means adjacent to or within a reasonable geographic distance of the zone in question. The principles will be applied in such a way as to promote a fair distribution of licenses between the residents of the Nunavut Settlement Area and the other residents of Canada and in a manner consistent with Canada's interjurisdictional obligations.*

The first Five Year Review concluded that this objective was not being met on an ongoing basis due to a judgment by the courts which set aside the Ministers decision related to turbot quotas for the Davis Strait Fishery for 1997 as being contrary to law.

During this Five Year Review, respondents from the various organizations agreed that there is a dispute as to the interpretation of this section.

Interviewees from the NWMB and GN noted that the provinces have the right to 80% to 90% of their adjacent offshore fishery quota. In contrast, Nunavut has only 27% of the Northern Shrimp quota, 31% of the Striped Shrimp quota, and only 60% of the Turbot quota (Ref. 17.1). GC has indicated that during the period since 1999, Nunavut's share of it's adjacent fisheries, has increased from 27% of the turbot to over 60% (and now 68% with the March 2006 announcement of a further 2500 tonnes for Nunavut). However, the shares are still much lower than the shares of adjacent fishery quotas given to other provinces.

At issue is the definition and practice of 'special consideration for principles of adjacency and economic dependence'. NTI took this issue to court, arguing that the words "special consideration" in this Section meant that Nunavummiut should be given priority to the fishery quotas. In the first hearing, the judge concluded that the DFO should have given more consideration to Nunavut interest. The Appeals court also found that the DFO was not fair enough, but concluded that "special consideration" did not mean priority, and that it is not the role of the court to impose a decision on the minister unless the decision of the Minister has been potentially unreasonable.

Some interviewees reported that when the NLCA was negotiated, there was not an expectation that Nunavut would have a viable fishery industry. They noted that prior to the NLCA, fishing was developed by both Nunavummiut and fishermen from the South. Fishermen from the South invested in large vessels, whereas Nunavummiut were pursuing small catches with equipment financed by less capital.

In the last 3 to 4 years, all increases in allocation have gone to Nunavut. On the NAFO map, all of area "0A" has been allocated to Nunavut but area "0B" had already been fully allocated. The only way to increase the allocation of existing quotas to Nunavut is to cut quotas of other fishermen. An interviewee noted that the situation has been further exacerbated for Nunavut by the fact that the DFO cut all quotas in half causing Nunavut quotas to be cut accordingly, and Nunavummiut began to realize that in some cases fishermen from the south had quotas ten times larger than Nunavummiut. GC has pointed out that Since 1999, DFO has also provided significant science funding for turbot research in Subarea 0, which has lead to the new turbot quotas that have all gone to Nunavut. Also, in April 2005, a new, separate turbot management zone, with its own 500 tonne quota was established for the upper part of Cumberland Sound, based on cooperative research carried out by DFO and the community of Pangnirtung.

DFO requested additional funding to implement this Section of the NLCA, but no decision has yet been made. DFO and INAC have promised to work on this Section of the agreement, but there has been no commitment to additional funding for this area.

There is consensus among all interviewees that Nunavut's share of commercial fishing licenses is well below the national average (Ref. 17.1). The key challenge is that there appears to be no agreed definition of what "special consideration" means and hence what the true objective of this Section is. In conclusion, a decision as to **whether this objective has been fulfilled or not is subject to interpretation.**

15.4.1 *The NIRB, the NWB, the NPC, and the NWMB may jointly, as a Nunavut Marine Council, or severally advise and make recommendations to other government agencies regarding the marine areas, and Government shall consider such advice and recommendations in making decisions which affect marine areas.*

The first Five Year Review concluded that this obligation was being met on an ongoing basis due to the formation of the Nunavut Marine Council (NMC).

While interviewees agreed that the concept of the NMC was a good idea, a challenge to implementing this obligation is that the NMC is not a formal entity and there is no funding requirement for operations under

the NLCA. NTI claimed that funding should have been provided by the GC, while INAC disagreed. The issue of whether funding should be provided, and if so by whom, seems to persist. In the meantime, a lack of funding is halting progress by the council. The fact remains that the NWMB continues to make recommendations, but the Nunavut Marine Council has not met in many years.

In conclusion, because the GC and NTI have opposing views regarding interpretation of this Section, the assessment of **whether this obligation has been met or not is subject to interpretation.**

5.15.2 Effectiveness of Implementation

The purpose of this Article is to recognize the offshore rights of Inuit and develop policies regarding the marine area. The critical point of contention in this Article is Section 15.3.7, which requires that the government give special consideration to the principles of adjacency and economic dependence of communities. The federal government has taken a very different perspective on this than GN and NTI. This has been an ongoing problem and a resolution is required.

5.15.3 Barriers

The most critical barrier is the lack of agreement on the objective and interpretation of this Article

In particular, the lack of agreement on the objective of Section 15.3.7 is severely limiting the overall fulfillment of this Article.

Language Requirements

There does not seem to be recognition of the need to provide materials in Inuktitut and Innuinaqtun. People have sometimes mentioned that, “we have materials in English and French and it is not our responsibility to get them out in Inuktitut”. This issue must be addressed.

Consultation

As has been discussed throughout this report, there are significant differences in opinions as to what constitutes sufficient consultation. There is an expectation that consultation must happen with all employees within organizations or with Inuit in all communities. There have been improvements in consultations; however, the cost of individual consultation and consultation in all 26 communities is often very large and there is a concern that the right balance between consultation and cost has not been achieved.

Decentralization of Services

Interviewees noted that this may result in the smaller communities being hurt, especially if appropriate provisions are not put into place, and that the planned transition time for decentralization is too short to allow a full transfer of knowledge.

Lack of Infrastructure

In addition, GN and NTI have identified a number of additional barriers that limit the realization of the economic potential of the fisheries in Nunavut. While these barriers do not relate to specific obligations within the NLCA, they do relate to the overall objectives of the NLCA and Article 15.4 the principles as set out in 15.1.1 and most specifically e), f) and g). For example, the lack of a deep sea port means all fish must be shipped through Nuuk, Greenland. As a result it was found that:

- Fish are more expensive in Nunavut, as it needs to be flown back into the Nunavut Settlement Area;
- Nunavut misses out on all the economic benefits associated with re-supplying and crewing ships; and
- People are eating fish that is caught locally and not tested for safety.

The key barriers to the successful development of the Nunavut fishery, based on a report by the GN and NTI (Ref. 17.1) are listed below.

Science Deficiencies
The Fisheries Strategy points out that there is a knowledge-base deficiency in this area. The Strategy cites the research conducted on turbot in NAFO Sub-area 0 as an example of how a sufficient investment leads to the creation of wealth for a region. A 4,000 ton turbot quota in NAFO Division A was the result of this research.

Infrastructure
The Fisheries Strategy states that the federal government has made major investments into marine infrastructure throughout Canada, with Nunavut being the only exception. Investments required in Nunavut include harbour and port facilities, marine service centres, processing plants and cold-storage operations. The vast majority of Nunavut's communities currently do not have the necessary infrastructure to support fishing vessels, even the most modest in size. Without such investments Nunavut will struggle to bring the benefits of its adjacent fisheries to its coastal communities.

Labour Force
Nunavut's fishery relies on a southern labour force. This reliance has been exacerbated by problems of recruitment and retention of Inuit in the fisheries work force. Nunavut's labour force deficiencies have been a key source of economic leakage from the territory.

Organizational and Business Capacity
Nunavut's fishery is heavily controlled by interests from outside the territory. Fishing enterprises that fish Nunavut quotas are owned and operated by companies primarily based in southern Canada. Decisions are often made that may not reflect the interests of Nunavut and often result in a loss of economic opportunity for the territory.

5.15.4 Recommendations

Agree on a commonly accepted interpretation of this Article and Section 15.3.7 in particular. So long as the parties disagree on the interpretation, the parties will continue to spend time and effort debating what should be done to achieve diverging goals. Specifically, the Parties should reach agreement on how to interpret Section 15.3.7, and what the overall objectives of this Article are. We recommend the parties form a working group to do so.

Assess funding needs when interpretation of section 15.3.7 is agreed upon. Several interviewees noted that inadequate funding in some areas is contributing to the failure to achieve the objectives of Article 15. Once the parties agree on the interpretation of this Article, we recommend that funding of fisheries activities be reassessed.

Creation of a formal structure to address the obligation under 15.3.1. It may be that the lack of a single structure, with responsibility for achieving the overall objectives of Article 15, was contributing to the challenges associated with this Article. We believe the Nunavut Marine Council could potentially fill this role. However, the parties must come to agreement on funding for the Nunavut Marine Council. Given that the NLCA does not specify who shall fund the Nunavut Marine Council, we suggest that the parties should revisit this issue once interpretation of the objectives of the Article overall have been agreed upon.

The Nunavut Fisheries Strategy also lists a number of recommendations (Ref. 17.1) to overcome the aforementioned barriers in achieving the spirit and guiding principles of Article 15. Once the interpretation of this Article is agreed on the following recommendations should be considered:

To overcome the barrier of **scientific deficiencies**, the Strategy proposes the development of a *Nunavut Fisheries Agenda* and incorporation of a *Conservation Ethic into the Decision- making Process.*

To overcome the lack of **organizational and business capacity**, the Strategy proposes the development of *Community-based, inshore capabilities, Strategic Nunavut Partnerships in the Offshore Fishery, Coordination of marketing activities, and Identifying "Best Use" of Arctic Char Resources.*

To achieve successful access and allocation arrangements, the GN and NTI suggest five areas that must be implemented:

- *Develop a unified approach to addressing access and allocation issues, targeting key areas.*
- *Address internal access and allocation issues.*
- *Ensure companies receiving access to Nunavut quotas are reinvesting into the territory's industry.*
- *Initiate fisheries development and diversification.*

To address the need for Nunavut's labour market development and training, the Fisheries Strategy suggests:

- *Improvement of recruitment by understanding Inuit demand for fisheries work.*
- *Building fisheries labour-force capacity through training.*
- *Understanding of workplace dynamics to improve retention of workers.*

The GN and NTI recommend three areas of investment in infrastructure to keep benefits of Nunavut's economy in the region:

- *Investment into harbours, ports and marine service centres.*
- *Investment into processing capacity.*
- *Investment into cold storage capabilities.*

To allow for the growth of Funding and Revenue Generation in Nunavut, the Fisheries Strategy recommends:

- *Expanding Federal program investments into Nunavut.*
- *Utilization of fisheries revenues for development purposes.*
- *Making the best use of existing territorial resources.*
- *Attracting and making the most from private investment.*

5.16 Article 16 – Outer Land Fast Ice Zone – East Baffin Coast

5.16.1 Status

5.16.1.1 Assessment

16.1.2 *In addition to the rights under Section 16.1.1, Inuit shall have the right to continue to use open waters in the Outer Land Fast Ice Zone for the purpose of harvesting, for domestic consumption, all species other than marine mammals. Inuit shall not need licences for such activities but shall be subject to all other management regulations imposed by appropriate government authorities consistent with Part 3 of Article 15.*

An interviewee with the GN during the current Five Year Review mentioned that **this obligation was being met on an ongoing basis.**

16.1.3 *Fisheries in the Outer Land Fast Ice Zone shall be managed so as not to deplete marine mammal populations.*

The first Five Year Review concluded that this obligation was being met on an ongoing basis. The DFO had pointed to the *Oceans Act* and other governing instruments as evidence of its commitment to manage so as not to deplete marine mammal populations. The NWMB described a good working relationship with the DFO, with practices building over time.

An interviewee during the current Five Year Review was of the opinion that this obligation was, to a certain extent, being achieved. The interviewee mentioned that there are serious concerns about the rights to quotas as discussed in Article 15, but we are not aware of any concerns about depletion of the mammal population. For this reason, we conclude that **this obligation was being met.**

5.16.2 Effectiveness of Implementation

The obligations of this section are being met. We understand that there are no procedural difficulties overall.

5.16.3 Barriers

There were no barriers identified.

5.16.4 Recommendations

There are no recommendations offered.

5.17 Article 17 – Purposes of Inuit Owned Lands

17.1.1 *The primary purpose of Inuit Owned Lands shall be to provide Inuit with rights in land that promote economic self-sufficiency of Inuit through time, in a manner consistent with Inuit social and cultural needs and aspirations.*

17.1.2 *Inuit Owned Lands are expected to include areas with the following characteristics, not in order of priority:*

(a) areas of value principally for renewable resources reasons, including

- *(i) principal or other wildlife harvesting areas,*
- *(ii) areas of significant biological productivity or of value for conservation purposes,*
- *(iii) areas of high potential for propagation, cultivation or husbandry,*
- *(iv) areas of current or potential occupation by outpost camps,*
- *(v) areas of value for sport camps or other tourist opportunities; and*

(b) areas of value principally for reasons related to the development of non-renewable resources, including

- *(vi) areas of known or potential mineral deposits,*
- *(vii) areas of value for various operations and facilities associated with the development of non-renewable resources;*

(c) areas of commercial value; and
(d) areas of archaeological, historical or cultural importance.

17.1.3 *Inuit Owned Lands shall, to the extent possible, provide for a mix of the characteristics outlined above in order to secure balanced economic development. However, the relative weighting of the characteristics with respect to any particular community or region shall turn on the actual and potential economic opportunities at hand and the particular community or regional preferences.*

17.1.4 *The Parties agree that the provisions of this Article have been complied with in respect of Inuit Owned Lands vested on the date of ratification of the Agreement.*

17.1.5 *Neither government nor Inuit shall have a claim or a cause of action based on non-compliance with this Article in respect of Inuit Owned Lands vested on the date or ratification of the Agreement.*

Article 17 provides a description of the purpose of Inuit Owned lands. The Article states that the Parties have agreed to the provisions of the Article and that neither Government nor Inuit shall have a claim or a cause of action based on non-compliance, and therefore no further review is required.

5.18 Article 18 – Principles to Guide the Identification of Inuit Owned Lands

18.1.1 *The primary principle to guide the identification process of Inuit Owned Lands shall be to provide Inuit with maximum opportunity to identify such areas in pursuit of the purposes of Inuit Owned Lands. Subject to this primary principle, the identification process for Inuit Owned Lands shall reflect the following:*

(a) identification may take place in areas subject to third party interests; any rights or interests of third parties shall be dealt with equitably; the identification may be made on a case-by-case basis;

(b) in general, identification shall not include areas subject to third party interest in the form of fee simple estates in private hands;

(c) consistent with provisions dealing with community ownership of land, areas may be identified in or near communities, provided that identification of such areas shall not prevent a community from carrying out its regular community functions or prevent its growth;

(d) areas may be identified in all lands currently required, or foreseeably required, for wildlife sanctuaries, Conservation Areas, Parks, archaeological sites or similar categories of lands dedicated for the protection of wildlife habitat or for recreational or cultural purposes, provided that

(i) such areas shall be subject to provisions dealing with wildlife, land management, and laws of general application, and

(ii) certain areas within potential parks, and within areas of particular archaeological, historical or cultural significance, may not be identified; it is expected that the boundaries of Parks will emerge through the identification process;

(e) identification in areas of overlapping use and occupation with other aboriginal peoples may not be finalized until issues relating to such overlap are resolved;

(f) on a case-by-case basis, identification may not extend to certain areas required at present, or in the reasonably foreseeable future, for federal or territorial government facilities or operations;

(g) on a case-by-case basis, identification may not extend to lands needed for public purposes or utilities, the need for which becomes apparent during the identification process;

(h) on a case-by-case basis, identification may not extend to within a 100 feet of certain shorelines; and

(i) in general, areas shall be identified so as to avoid undue fragmentation.

18.1.2 *During the land identification process, Inuit shall have the right to identify lands containing known deposits of carving stone as Inuit Owned Lands.*

18.1.3 *The Parties agree that the provisions of this Article have been complied with in respect of Inuit Owned Lands vested on the date of ratification of the Agreement.*

18.1.4 *Neither Government nor Inuit shall have a claim or a cause of action based on non-compliance with this Article in respect of Inuit Owned Lands vested on the date of ratification of the Agreement.*

Article 18 provides a description of the principles that guide the identification of Inuit Owned lands. The Article states that the Parties have agreed to the provisions of the Article and that neither Government nor Inuit shall have a claim or a cause of action based on non-compliance, and therefore no further review is required.

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5.19 Article 19 – Title to Inuit Owned Lands

5.19.1 Status

5.19.1.1 Assessment

19.2.3 *Where a third party holds a mineral interest from the Crown in relation to lands, title to which is held by Inuit in the form referred to in Sub-section 19.2.1(a) or (b), the third party shall have the right to remove, work and use all or any specified substances in the lands subject to that mineral interest in the course of exercising the rights accorded by the interest, provided that such removal, working or use is strictly incidental to the working of the interest. No compensation shall be payable by the third party to the DIO for such specified substances except: (a) as may be provided under Part 7 of Article 21; and (b) where the specified substances are used for a purpose not directly related to the exercise of that mineral interest.*

During the current Five Year Review, interviewees did not mention any significant problems or issues with this Section. Given that there were not problems raised by interviewees in the last review, it has been concluded that **this obligation was being met.**

19.2.7 *Notwithstanding anything in Section 19.2.5, Government has the right, subject to the Agreement, to protect and manage water and land covered by water, and to use water in connection with such right, throughout the Nunavut Settlement Area for public purposes, including:*

(a) management and research in respect of wildlife, and aquatic habitat;

(b) protection and management of navigation and transportation, establishment of navigation aid devices, and dredging of navigable water bodies;

(c) protection of water resources from contamination and degradation; and

(d) flood control and fire fighting.

During the current Five Year Review, interviewees did not mention any problems or issues with this Section.

Given that there were not problems or issues raised by interviewees, it has been concluded that **this obligation was being met.**

19.4.1 *Government shall grant to the DIO, as Inuit Owned Lands in the form referred to in Sub-section 19.2.1(b), the lands described in an item of Part I or II of Schedule 19-8:*

(a) in the case of Part I of the Schedule, six months after

(i) the DIO provides Government with a letter obtained from the lessee referred to in that item stating that the lessee consents to its lease being located on Inuit Owned Lands, or

(ii) the lease referred to in that item terminates, whichever event first occurs, on the condition the consent is given or the lease terminates within two years of the date of ratification of the Agreement; and

(b) in the case of Part II of the Schedule, when Government declares the lands to be surplus to its needs and the DIO pays Government their fair market value.

The first Five Year Review found that this Section was being met on an ongoing basis because NTI had designated the RIAs for this Section.

With regard to sub-Section a), we understand that prior to July 1995, KIA received letters from the lessees of the 4 parcels identified in Schedule 19-8 accepting transfers from the Crown. With regard to Sub-Section b), the lands in Part II of Schedule 19-8 have not been declared surplus so none on this list have been granted to the DIO.

In summary, we understand that these **obligations were met.**

19.5.1 *Any portion of the lands in Pangnirtung described in an item of Schedule 19-9 shall become Inuit Owned Lands in the form referred to in Sub-section 19.2.1(b) when the DIO acquires the fee simple interest to that portion at no cost to Government.*

The first Five Year Review found that this obligation was being partially met because NTI had not yet designated the Qikiqtani Inuit Association, however negotiations on the terms of transfer for the parcels was proceeding.

With regards to the transfer of Lands from Pangnirtung Northwest Co. to QIA, the transfer has been held up due to survey and registration problems associated with the referenced lots in Pangnirtung. Steps need to be taken in cooperation with the Nunavut Land Titles Office and possibly the Northwest Company to correct the problems with title. The Nunavut Client Liaison Unit, Geomatics Canada, advised that a new survey would be required for the transaction to proceed.

With regard to the transfer of Lands from Pangnirtung Anglican Church to QIA, QIA was advised that the transactions cannot be completed until surveys are registered, and that a new survey of the relevant lands was required as the surveyor made errors on his previous survey. The survey was to have been completed in 2003, but we do not have information on whether or not this was done.

We understand that covenants are being negotiated with original land owners (e.g. Anglican Church, negotiating restrictions on land use). Therefore, it has been concluded that while work on this obligation is proceeding, **the obligation has not yet been met.**

19.6.1 *The DIO shall grant to Government, at no cost to Government, for microwave repeater structures to be established as part of the North Warning System,*

(a) its full interest in the parcels of Inuit Owned Lands specified in Part I of Schedule 19-10, and

(b) up to two easements on the parcels of Inuit Owned Lands specified in Part II of Schedule 19-10, upon receipt by the DIO from Government of a description of the more precise locations of these parcels and that easement. Government shall survey the parcels granted under Sub-section (a).

Interviewees during the current Five Year Review made no mention of any problems or issues with this Section. Therefore, it has been concluded that **there has been no occasion to implement this obligation.**

19.8.8 *The majority of Inuit Owned Lands will not require surveys to determine the boundaries, however:*

(a) the boundaries or part of the boundaries of Inuit Owned Lands shall be surveyed by Government when the DIO and Government agree that surveys are required to avoid or resolve conflicts with another title or interest holder;
(b) the boundaries or part of the boundaries of Inuit Owned Lands may for any purpose be surveyed at Government's discretion;
(c) the boundaries of the parcels excluded from Inuit Owned Lands described in Schedule 19-12 shall be surveyed by Government within one year of the date of ratification of the Agreement; and (d) the boundaries of Inuit Owned Lands within municipal boundaries that are described in Schedule 19-13 shall be surveyed by Government within three years of the date of ratification of the Agreement.

The first Five Year Review concluded that this Section was being met on an ongoing basis as the 10 year survey program, agreed to by NTI and the GC was on schedule.

The current Five Year Review did not find any problems or issues with this obligation. NTI has indicated that NTI and NRCan are working well together to identify IOL boundaries that need survey work. Ongoing boundary surveys are occurring as per sub-Sections a) and b), and NTI and NRCan have agreed to what parcels require surveys and what types of survey standards would be used. We conclude that **this obligation was being met.**

19.9.1 *Following the date of the ratification of the Agreement, Government shall notify the DIO of the discovery of any deposits of carving stone on Crown lands.*

The first Five Year Review concluded that this Section was not being met on an ongoing basis.

According to Ref. 8.4, p. "Under Article 19.9.1 of the NLCA, the NRO is responsible for establishing a process with DIOs for notification of discovery of any deposits of carving stone on Crown lands. No carving stone was discovered during the review period". Therefore, it has been concluded that **this obligation was being met.**

19.9.2 *Following the date of the ratification of the Agreement, the DIO shall, subject to Government obligations respecting third party rights, have the right:*
(a) to obtain an exclusive quarry lease to significant deposits of carving stone; or
(b) to acquire title to the land containing significant deposits of carving stone in exchange for other Inuit Owned Lands.
Lands acquired under Sub-section (b) shall be Inuit Owned Lands.

19.9.3 *If Government and the DIO cannot agree on the lands to be exchanged pursuant to Sub-section 19.9.2(b), the matter shall be referred to arbitration pursuant to Article 38.*

The first Five Year Review concluded that these obligations were not being met on an ongoing basis. Neither the GC nor the RIAs were aware of a formal process for implementation of this Section.

During the current Five Year Review, interviewees did not mention any problems or issues with this Section. While they were not aware of a process, as was the case during the last review, we believe that the actions required by these obligations are self-evident and therefore no formal process is required, and conclude there has been **no occasion to implement this obligation.**

19.9.4 *An Inuk shall have the right to remove up to 50 cubic yards per year of carving stone from Crown lands without a permit and the right may be exercised on Crown lands that are subject*

to other interests on condition that: (a) there be no significant damage; and (b) there be no significant interference with use and quiet enjoyment of the land by the interest holder.

Interviewees from the RIAs indicated that, to their knowledge Inuit had only taken carving stone from IOLs, and thus **there had been no occasion to implement this obligation.**

19.9.7 *Prior to the establishment of a National Park in the Nunavut Settlement Area, the agency responsible for establishing the Park shall undertake at the request of Inuit in affected communities, when there is potential for carving stone, a detailed study to determine the location, the extent and quality of any deposit of carving stone within the proposed boundaries of the Park. At the request of Inuit, significant deposits of carving stone and routes of access shall be excluded from the boundaries of the Park, insofar as such exclusions would not appreciably detract from the park purpose or objectives.*

Neither KitIA nor KivIA interviewees were familiar with any study having been done to assess the carving stone in the Ukkusiksalik National Park in the Kivalliq region, nor the proposed National Park for the Kitikmeot region. There are some deposits that QIA is aware of and they have title to some of the deposits. There is a common awareness of deposit areas that are quarried, but a list has not been compiled by the Government. Consequently, we conclude **this obligation was not being met.**

19.10.1 *The DIO shall reimburse the Territorial Government for the costs listed in Schedule 19-14, being costs incurred before the date of ratification of the Agreement in the development of each of the parcels of Inuit Owned Lands that are specified in the Schedule, payment to be made at the time that a development permit is issued in respect of that parcel.*

Given that there were not problems or issues raised by interviewees, it has been concluded that **this obligation was being met.**

5.19.2 Effectiveness of Implementation

Most of the obligations within this Article were being met or had no occasion to have been implemented yet. However, it was noted that the surveys had yet to be completed, as identified in 19.5.1

5.19.3 Barriers

Mapping

Mapping for Nunavut and the NWT is either not available or the scale of the mapping was too general, which made it difficult to implement the agreement.

5.19.4 Recommendations

In order to achieve this Article, the issues surrounding mapping of the NSA need to be addressed by all parties involved.

It is important for the surveys to be completed, as required by 19.5.1.

5.20 Article 20 – Inuit Water Rights

5.20.1 Status

The first Five Year Review did not cover Article 20.

20.2.2 *Subject to the Agreement and any exception identified in the property descriptions of Inuit Owned Lands, the DIO shall have the exclusive right to the use of water on, in, or flowing through Inuit Owned Lands.*

Interviewees with the RIAs noted that this obligation is very important to Inuit and confirmed that **this objective was being met.**

20.2.4 *Subject to Section 20.5.1, the DIO. Section 20.5.1, the DIO shall have the right to have water flow through Inuit Owned Lands substantially unaffected in quality and quantity and flow.*

Interviewees with the QIA noted that for Inuit to protect their right they have to know which area is being affected. Proper information is required to make informed decisions. **Given the lack of information, this obligation was not being met.**

20.3.2 *The applicant and the DIO shall negotiate in good faith for the purpose of reaching an agreement on compensation referred to in Section 20.3.1, but in the event that they are unable to reach agreement, either may refer the determination of the appropriate compensation to the NWB, and the decision of the NWB shall be binding.*

Interviewees with the RIAs confirmed that **this obligation was being met.** There have been concerns about impacts on water and the RIAs have successfully negotiated compensation agreements with the respective mining companies who may cause the potential damage.

20.3.3 *In determining the appropriate compensation for loss or damage under Section 20.3.2, the NWB shall take into account the following:*

(a) the adverse effects of the change in quality, quantity or flow of water on Inuit Owned Lands, owned or used by the person or group affected;
(b) the nuisance, inconvenience, disturbance or noise caused by the change in quality, quantity or flow of water to the person or group affected;
(c) the adverse effects of the change in quality, quantity or flow of water in combination with existing water uses;
(d) the cumulative effect of the change in quality, quantity or flow of water in combination with existing water uses;
(e) the cultural attachment of Inuit to Inuit Owned Lands, including water, adversely affected by the change in quality, quantity or flow of water;
(f) the peculiar and special value of Inuit Owned Lands, including water, affected by the change in quality, quantity or flow of water; and
(g) interference with Inuit rights, whether derived from this Article or some other source.

Given that no matters have been referred to the NWB to resolve, there has been **no occasion to implement this objective.**

20.3.4 *Unless otherwise agreed by the DIO and the applicant, all awards shall provide for periodic payments and a periodic review for the purpose of adjustments, having due regard for the nature and duration of the water use. Costs of the DIO incurred in the determination process under Section 20.3.2 shall be borne by the applicant for water use unless otherwise determined by the NWB.*

Given that no water compensation disputes have been referred to the NWB to resolve, there has been **no occasion to implement this obligation.**

20.4.1 *Where a project or activity occurring outside the Nunavut Settlement Area but within the boundaries of the Northwest Territories as they exist immediately prior to the date of ratification of the Agreement may substantially affect the quality of water flowing through Inuit Owned Lands, or the quantity of such water, or its flow, the project or activity shall not be approved by the competent water authority unless the applicant has entered into a compensation agreement with the DIO for any loss or damage that may be caused by that change in quality, quantity or flow, or unless such compensation has been determined in accordance with Section 20.4.2.*

While there have not been any concerns within the Kivalliq region, there have been concerns within the Kitikmeot region. Specifically, there have been concerns that the BHP Billiton Inc.'s and Diavik Diamond Mine's activities are negatively impacting the quality of the water in the Copper mine river and that this may be affecting water on IOLs in the Kitikmeot region. However, KivIA is unaware if data is available to identify whether or not this is the case.

While it is not clear whether or not this that this obligation was being met, there is a concern that it has not been met, and there is not enough evidence to ensure that it has been met.

20.4.2 *The applicant and the DIO shall negotiate in good faith for the purpose of reaching an agreement on compensation referred to in Section 20.4.1, but in the event that they are unable to reach agreement, either may refer the determination of the appropriate compensation for a joint determination by the NWB and the competent water authority and the joint decision shall be binding. The decision shall be governed by Sections 20.3.3 and 20.3.4. When the NWB and the competent water authority are unable to make a joint determination, compensation shall be determined by the judge of the appropriate court.*

The parties have not been able to negotiate a compensation agreement as Diavik Diamond Mines Inc. does not acknowledge having caused any damage. However, the matter has not been referred to the NWB. Given that there is disagreement and the matter has not been referred to the NWB by the KitIA, **this obligation has not been met.**

20.5.1 *Subject to the compensation provisions herein, the NWB shall retain the jurisdiction to approve water uses throughout the Nunavut Settlement Area.*

Interviewees with the KitIA noted that NWB has exercised this right in regards to mining projects in the Kitikmeot region. Interviewees with the KivIA noted that there has been no opportunity for the NWB to exercise such rights in the Kivalliq region as of yet. We conclude that **this obligation was being met.**

20.5.2 *Nothing in these provisions shall be interpreted so as to derogate from or to allow*

> *the attaching of conditions or charges to the exercise of public rights of navigation, rights of innocent public passage on water, or use of water for emergency purposes or the ability to use water for domestic use as defined in the Northern Inland Waters Act.*

Interviewees were not aware of any problems here and it is thus assumed that **this obligation was being met.**

5.20.2 Effectiveness of Implementation

In general, most of the obligations were being met, or else had not had any occasion to be implemented. The key matter of concern of this Article is that if there is a potential to negatively impact on the water, that a compensation agreement with Inuit be struck and that the NWB exercise its power to issue licenses for water use. These obligations have generally been achieved, and interviewees did not sight common concerns.

The one exception to this conclusion is in regards to projects outside the Nunavut Settlement Area. In this case, there is a concern that water on IOLs in the Kitikmeot region was being negatively impacted. There has been no resolution to this issue.

5.20.3 Barriers

Lack of Information on Monitoring and Enforcement

An RIA noted that they do not have information on consistent monitoring of water flowing into Nunavut that is affected by projects outside of Nunavut. Moreover, given that the projects are outside of Nunavut, it would seem that neither the DIO nor the NWB would have any ability to force a developer outside the area to compensate for damage it creates. An RIA interviewee has noted that compensation may be possible under 20.4.1 of the NLCA but will require an in-depth Legal review/opinion.

5.20.4 Recommendations

Monitoring and Enforcement by GC

We recommend that monitoring information be provided to RIAs of regions that may be affected by development activity outside their region.

5.21 Article 21 – Entry and Access

5.21.1 Status

5.21.1.1 Assessment

21.2.1 *Except where otherwise provided in the Agreement, persons other than Inuit may not enter, cross or remain on Inuit Owned Lands without the consent of the DIO.*

The first Five Year Review concluded that this Section was being met on an ongoing basis because NTI designated RIAs under 21.2.1. NTI and the RIAs had established rules and procedures for the management of Inuit Owned Lands which include a range of permits, licenses and leases to access IOLs.

Interviewees from the Kitikmeot and Baffin RIAs indicated that this obligation was being met. However, interviewees from the Kivalliq RIA indicated that this obligation was not met some of the time. Specifically, Marble Island is accessed regularly by non-Inuit without consent from KivIA. While Marble Island was accessed by non-Inuit prior to the signing of the NLCA, it was identified as an IOL with exclusive possession rights in 1993, and Inuit are becoming more disturbed by its use, without consent, by non-Inuit. Other than Marble Island, no other examples have been cited. This obligation was **not being met consistently; the key point of concern is non-Inuit travel on Marble Island.**

21.3.1 *There shall be a public right of access for the purpose of travel by water, including travel associated with development activity making use of the strip incidental to travel by water, and for recreation to a 100 foot (approximately 30.5 metre) strip of Inuit Owned Lands bounding the sea coast, navigable rivers, navigable lakes that can be entered from the said rivers. The said strip shall be measured from the ordinary high water mark of the sea coast and the said navigable rivers, lakes and water bodies. The right of access includes access to the foreshore adjacent to the said strip.*

Interviewees noted that this obligation was being respected. However, it was also pointed out that there is no hundred foot strip provision on Marble Island. **This obligation was being met.**

21.3.4 *No person*

(a) exercising the right of access referred to in Section 21.3.1; or

(b) harvesting wildlife pursuant to Section 21.3.2,

shall engage in any development activity, or establish camps or structures other than for merely casual or temporary purposes, on the said strip.

Interviews with the RIAs indicated that they were not aware of any contraventions to this obligation. Interviewees with the QIA noted that exemption certificates state this verbatim. This obligation was **being respected.**

21.3.8 *A member of the public may enter and remain on Inuit Owned Lands for emergency purposes.*

Interviews with the RIAs indicated that **obligation was being respected.**

21.3.9 *Members of the public may cross Inuit Owned Lands for the purpose of personal or casual travel, such as to go to or from their place of work or to or from a place of recreation. Whenever possible, crossings shall take place on routes designated by the DIO. The right to cross shall include the right to make any necessary stops.*

Interviews with the RIAs indicated that obligation was being respected. Interviewees with the QIA noted that there are no real designated routes. The idea of ownership is open concept, where users are expected not to abuse the land. They do not restrict access if there is minimal impact, but Inuit expect to be informed of usage. They have noted that this may become an issue down the road. QIA is considering establishing controlled access to some unique culturally significant areas. We conclude that **this obligation was being met.**

21.3.11 *With the consent of the DIO, persons conducting research for public knowledge shall:*
(a) have the same right of access to Inuit Owned Lands as agents, employees and contractors of Government; or
(b) have a right of access to Inuit Owned Lands in accordance with terms and conditions imposed by the DIO, other than the payment of fees.

The first Five Year Review found that this Section was being met on an ongoing basis. NTI designated RIAs for implementation of this obligation. RIAs have established procedures with the Nunavut Research Institute to receive applications for research projects. RIA land management procedures govern subsequent action by the RIA. The procedures were noted to be working well.

RIA interviewees noted that this obligation has been respected. Researchers have entered on to Inuit Owned Lands to do research. The DIOs issues Exemption Certificates which set terms and conditions, and the researchers respected them.

While **the obligations of this Section have been respected,** we have heard from beneficiaries within the communities that there is a concern over the drugging of bears for research purposes. We have heard that a large number of bears were drugged in the Baffin region. The meat from the bear cannot be eaten for "at least a year". The large number of bears involved, and the ambiguity of when it would be safe to eat the meat, has caused concern amongst the beneficiaries.

21.5.1 *Agents, employees and contractors of Government and members of the Canadian Forces and members of the R.C.M.P. shall have the right, in accordance with this Article, to enter, to cross and to remain on Inuit Owned Lands and water on Inuit Owned Lands to carry out legitimate government purposes relating to the lawful delivery and management of their programs and enforcement of laws.*

Interviews with the RIAs indicated that **this obligation was being respected.** Interviewees with the QIA noted that land has been used by the Canadian Forces, DND and GSC (Surveyors). They further note that GC has been cooperative in informing QIA.

21.5.2 *Should Government, the Canadian Forces or the R.C.M.P. require continuing use or occupancy of Inuit Owned Lands for more than two years, including use for unmanned facilities, the DIO may require Government to obtain an interest in the land.*

The first Five Year Review concluded that this obligation was being met on an ongoing basis. NTI designated RIAs for implementation of this obligation and the RIAs established procedures to implement the obligation once notified by Government of their requirement.

According to interviewees from the KivIA, this issue has not arisen in the Kivalliq region. According to interviewees from the KitIA, there have been circumstances where the government has occupied the land for more than two years, and the government has been required to lease the land after the fact. QIA interviewees noted that there are not issues that they are aware of. They reported that there were fuel caches for helicopter researchers, but they had moved the fuel on to crown land where no further action was required.

This obligation was being met.

21.5.5 *In a case where more than insignificant damage may be caused to the land, or where there may be more than insignificant interference with Inuit use and quiet enjoyment of the land, Government shall consult the DIO and seek its agreement regarding the procedures for exercising government access under Sections 21.5.1 and 21.5.3. Where agreement cannot be achieved, the matter shall be referred to the Arbitration Board for the determination of such procedures pursuant to Article 38. Activities identified in Schedule 21-4 shall not be subject to the requirements of this Section.*

The first Five Year Review concluded that this obligation was being met on an ongoing basis. NTI designated RIAs for implementation of this obligation and the RIAs established procedures to implement the obligation once notified by Government of their requirement.

Interviews with the RIAs indicated that they were not aware of any contraventions to this obligation. **This obligation was being respected.**

21.5.6 *Without limiting the generality of this Section, procedures required under Section 21.5.5 for exercising government access shall ensure that:*

(a) environmental protection measures are consistent with the provisions of the Agreement;
(b) information is provided; and
(c) location, time and duration of access is addressed.

Interviews with the RIAs indicated that they were not aware of any contraventions to this obligation. This obligation was **being respected.**

21.5.10 *The Department of National Defence (DND) shall have no greater rights to conduct military manoeuvres, including exercises and movements, on Inuit Owned Lands than it has with respect to other non-public lands under generally applicable legislation. For greater certainty, this section shall prevail over Sections 21.5.11 and 21.5.12.*

Interviews with the RIAs indicated that they were not aware of any contraventions to this obligation. This obligation was **being respected.**

21.6.1 *Notwithstanding anything in Sub-section 19.2.1(b), if Government requires sand and gravel and other like construction materials from Inuit Owned Lands for public purposes, but the DIO refuses to permit Government to take the said materials, Government may apply to the Tribunal for an entry order enabling the removal of such material.*

Interviews with the RIAs indicated that this situation has not arisen. **There has been no occasion to implement this obligation.**

21.6.2 *The Tribunal shall grant an entry order if, and only if, it determines that:*

(a) the materials are required for public purposes; and
(b) no alternative supply is reasonably available.

21.6.3 *If an entry order is granted, Government shall pay the DIO, for the materials removed, the greater of:*

(a) $1.00 per cubic metre, valued at the date of ratification of the Agreement and indexed by the Final Domestic Demand Implicit Price Index; or
(b) the royalty rate imposed by the Crown, as amended from time to time, on the extraction of such materials from Crown lands.

21.6.4 *The Tribunal shall determine the terms and conditions for access and compensation for access, and such compensation shall be determined in accordance with Section 21.8.3. The calculation of shall not take compensation into account any amount mentioned in Section 21.6.3, or the payment of any entry fee required by legislation.*

21.6.5 *An entry order shall include terms and conditions to minimize the damage and interference with Inuit use, and shall also provide that Government rehabilitate the site.*

Given that no issues have been sent to the Tribunal, and no entry orders have been granted, **there has been no occasion to implement this obligation.**

21.7.1 *Where Inuit Owned Lands are subject to,*

(a) a third party interest other than an interest in minerals, or
(b) a third party interest in respect of specified substances, in existence immediately before the vesting of the Inuit Owned Lands in the DIO,
the third party interest shall continue in accordance with its terms and conditions, but the DIO shall assume the rights and obligations of the Crown in relation to any such interest. The DIO shall receive whatever consideration is paid or payable by the interest holder for the use or exploitation of these lands and specified substances in respect of any period following the date of vesting.

QIA interviewees noted that this may apply to Baffinland. Other than that, there have been no issues. This obligation was **being met on an ongoing basis.**

21.7.2 *Where Inuit Owned Lands held in the form referred to in Sub-section 19.2.1(a) are subject to a third party interest in minerals other than specified substances, in existence immediately before the vesting of the Inuit Owned Lands in the DIO, that interest shall continue in accordance with its terms and conditions, including rights granted to the interest holder under the legislation in force at the date of vesting pursuant to which the interest is held, or from any successor legislation applicable to similar interests on Crown lands. Any provisions of such successor legislation that would have the effect of diminishing the rights of the DIO shall only apply to Inuit Owned Lands with the consent of the DIO. The DIO shall receive whatever consideration is paid or payable by the interest holder for the use or exploitation of the minerals other than specified substances in respect of any period following the date of vesting.*

Interviewees indicated that **this obligation was being met.**

21.7.5 *Where Government has the discretion to reduce or waive a royalty payable by a third party interest holder referred to in Section 21.7.2, such discretion shall not be exercised without the written consent of the DIO.*

Interviewees indicated that **this obligation was being met.**

21.7.6 *Government shall share with the DIO any information received from a third party interest holder referred to in Section 21.7.2 which that party is required to provide by legislation, where such information is required to permit the DIO:*

(a) to verify the consideration paid or payable to Government by the interest holder for the use or exploitation of the minerals other than specified substances;
or
(b) to participate in consultation with Government regarding third party interests as provided for in this Article.

As noted in Article 25: Resource Royalty Sharing, the government is not sharing detailed information on how the royalty payments for crown land are calculated, given that they had signed confidentiality agreements. **This obligation was not being met.**

21.7.10 *For the purpose of Section 21.7.9, the DIO shall propose, for review with Government and relevant industry organizations, a code to provide expedited prospecting access to Inuit Owned Lands, which code shall come into effect upon approval by Government and the DIO. The code shall reflect the need to provide confidentiality for prospectors.*

The last Five Year Review noted that this section had not been met. The NLCA requires that a code for expedited prospecting access to IOL be developed by NTI for consideration by INAC. Considerable work had already been done to develop the code and a draft code was presented to INAC in 1997. INAC later referred to this as "…not one that we would support developing further." Work was then begun to revise the draft code. In the interim, NTI and RIAs did amend their Rules and Procedures for the Management of Inuit Owned Lands to provide for a Class I land use license which expedites prospecting access and other minor level use of the land.

Current work on developing the "code for expedited prospecting access" includes the preparation of a comprehensive paper to: review all work done to date in developing the code; examine the outstanding unresolved issues; present recommendations; draft a revised code, administrative procedures, and amendments to the Rules and Procedures; and chart the remaining work required to have the code developed and implemented. This work is in progress and the paper is targeted for completion by July 2006." Interviewees with the QIA indicated that they believe that a higher fee schedule should be applied. **Hence, this obligation was being worked on during the review period.**

21.7.15 *Where a person requires access across Inuit Owned Lands for commercial purposes, and is not otherwise covered in this Article, that person shall be permitted access, including on a seasonal basis where appropriate, with the consent of the DIO or, if such consent is not forthcoming after an arbitration panel, pursuant to Article 38, within 30 days of being presented with a request,*

(a) has established that the person attempted for a period of not less than 60 days, to negotiate the access in good faith,

(b) has determined that the access is essential to the commercial purpose and access by any other means is physically or financially impractical, and
(c) has determined the route such access will follow so as to minimize the damage and interference with Inuit use, and, based on the arbitration panel's findings, the Tribunal, in keeping with Part 8, has issued an entry order. The entry order shall include terms and conditions to minimize damage and interference with Inuit use.

The first Five Year Review found that this obligation was being met on an ongoing basis. NTI designated RIAs for implementation of this obligation. Established procedures are found in the Rules and Procedures for the Management of Inuit Owned Lands and the RIAs' procedural manuals or implementation action plans.

Interviews with the RIAs indicated that **this obligation was being respected.**

21.8.1 *A DIO has the right to require Government to establish and maintain an independent Surface Rights Tribunal ("Tribunal") which shall, within the Nunavut Settlement Area:*

(a) issue entry orders to operators to use and occupy lands to the extent necessary for their operations and subject to the payment of an entry fee to the owner or occupant in recognition of the forced nature of the taking, which fee shall be fixed by the appropriate legislation;
(b) hold hearings to determine compensation payable to the surface rights holders;
(c) periodically review the level of compensation payable under an entry order;
(d) terminate an entry order, after a hearing, where lands are no longer being used for the purpose authorized; and
(e) such other functions as may be provided for in the Agreement or legislation.

The Surface Rights Tribunal has been established. However, the RIAs have been dealing with matters directly, and have not yet had to refer any to the Tribunal. One point of concern is that we have found that not all beneficiaries are aware of its existence, and no issues have been referred to the Tribunal. **The obligation to establish the Tribunal has been met, but there has been no occasion to assess its performance in these areas, given that no matters have been referred to them.**

21.8.2 *Where the DIO is the surface title holder, it shall not be required to cover any of the costs of establishing or operating the Tribunal. Government may establish and maintain the Tribunal notwithstanding the absence of a demand from a DIO, provided that the Tribunal fulfills the functions described in Section 21.8.1.*

The costs of the Surface Rights Tribunal have been borne by the government and thus **this obligation was being met.**

21.8.3 *In determining the amount of compensation payable to the DIO in respect of Inuit Owned Lands, the Tribunal shall consider,*

(a) the market value of the land,
(b) loss of use to the DIO and Inuit,
(c) the effect on wildlife harvesting by Inuit,
(d) the adverse effect of the use or occupancy, upon other Inuit Owned Lands not used or occupied,
(e) damage which may be caused to the land used or occupied,
(f) nuisance, inconvenience and noise to the DIO and Inuit,
(g) the cultural attachment of Inuit to the land,
(h) the peculiar and special value of the land to Inuit,

(i) an amount to cover reasonable costs associated with DIO inspections as deemed appropriate by the Tribunal,
(j) an amount to cover reasonable costs to the DIO associated with the application for an entry order and its processing, and
(k) such other factors as may be provided for in legislation, but shall not consider the reversionary value or any entry fee payable

21.8.4 *Prior to exercising an entry order on Inuit Owned Lands, the applicant shall be required to pay the DIO the entry fee and 80% of its last compensation offer made to the DIO before it submitted the matter to the Tribunal.*

Given that no operator has applied the Tribunal for an entry order, there has been **no occasion to assess whether the obligations of the Tribunal have been met.**

21.8.7 *The legislation shall provide that at least half of the members of any panel in any case dealing with Inuit Owned Lands shall be residents of the Nunavut Settlement Area.*

The last First Five Year Review found that this obligation had not been met. No legislation had been passed. Bill C-62, an Act that in part establishes the SRT, received first reading in December, 1998.

According to NTI Legislation concerning the Nunavut Water Board and Nunavut Surface Rights Tribunal were passed. Regulations are being worked on. NTI Lands Department is involved in the working group that is developing the regulations. **Consequently, this obligation has been met.**

21.8.8 *The Tribunal shall conduct its business in Canada's official languages as required by legislation or policy, and upon request of any DIO, also in Inuktitut.*

Even though no matters have yet been referred to the Tribunal, they are still meeting, and the meetings are conducted in English and Inuktitut. We conclude that **this obligation was being met.**

21.9.4 *Any expropriation legislation coming into force after the date of ratification of the Agreement shall, insofar as it applies to Inuit Owned Lands, provide for the following minimum procedures:*
(a) notice of intention to expropriate served on the DIO;
(b) an opportunity for the DIO to object to the expropriation on the basis that the expropriating authority has not complied with the expropriation legislation, and an opportunity to be heard on that objection; and
(c) the determination of compensation by negotiation and mediation and, failing that, by reference to an arbitration panel or committee referred to in Section 21.9.8.

21.9.5 *Where the expropriating authority acquires an estate in fee simple, those lands shall no longer be Inuit Owned Lands. Lands acquired as compensation for expropriation shall be Inuit Owned Lands. Where lands which have been expropriated are no longer required, the DIO shall have an option for six months following such a determination to re-acquire those lands as Inuit Owned Lands. If the parties are unable to agree on a price, the matter shall be referred to the arbitration panel or committee referred to in Section 21.9.8.*

21.9.8 *Where the DIO and the expropriating authority continue to disagree on compensation, and mediation, if provided for, fails, the final determination of any compensation payable shall be by arbitration:*

(a) as set out in Article 38, other than for expropriation under the National Energy Board Act; or
(b) for expropriation under the National Energy Board Act, by an arbitration committee appointed under the Act that shall include at least one nominee of the DIO. The Minister in establishing the arbitration committee shall choose members who have special knowledge of, and experience related to, the criteria set out in Section 21.9.9.

NTI has indicated that government has not expropriated any IOL for public transportation purposes. Hence, **there has been no occasion to implement these obligations.**

21.9.9 *In determining the amount of compensation payable to the DIO the arbitration panel or committee shall be guided by:*

(a) the market value of the land;
(b) loss of use to the DIO and Inuit;
(c) the effect on wildlife harvesting by Inuit;
(d) the adverse effect of the taking, upon lands retained by the DIO;
(e) damage which may be caused to the land taken;
(f) nuisance, inconvenience and noise to the DIO and Inuit;
(g) the cultural attachment of Inuit to the land;
(h) the peculiar and special value of the land to Inuit;
(i) an amount to cover reasonable costs associated with DIO inspections as deemed appropriate by the arbitration panel or committee;
(j) an amount to cover reasonable costs to the DIO associated with the arbitration; and
(k) any other factors as may be provided for in legislation.

21.9.12 *Where Government has a right under Section 21.9.1, as qualified by this Article, to expropriate Inuit Owned Lands which it requires for its public transportation purposes, Government need not pay compensation for the lands taken, except for improvements, up to an amount not exceeding,*

(a) in respect of each Inuit Owned Lands Parcel, five percent (5%) of that Parcel, or
(b) two percent (2%) of Inuit Owned Lands in the Land Use Region, referred to in any of Schedules 19-2 to 19-7, where the lands taken are located. Where lands taken under this Section are no longer required for the purpose for which they were taken, they shall revert to the DIO at no cost.

NTI has indicated that government has not expropriated any IOL for public transportation purposes. Hence, **there has been no occasion to implement these obligations.**

21.11.1 *Where there is no adequate public route available, Government shall not, through the enactment or administration of laws of general application, or through the management or alienation of Crown lands, deprive Inuit of reasonable access to Inuit Owned Lands through Crown lands for the beneficial use and enjoyment of those Inuit Owned Lands. The manner of exercising that access shall be subject to laws of general application.*

Interviewees from the RIAs and NTI note that there have not been any known instances of Government depriving Inuit of reasonable access to IOLs. Hence, **this obligation has been met.**

5.21.2 Effectiveness of Implementation

In general, it appears that the rights of Inuit, the public, the government and researchers have all been respected, and the implementation appears to be largely free from undue administrative burdens.

However, there have been concerns raised, particularly more recently, in regards to non-Inuit spending leisure or recreational time on IOLs without having obtained permits. In many cases this is because an Inuk takes a non-Inuk with them. The only example noted was Marble Island. In this case non-Inuit have been visiting and enjoying this land since long before the NLCA was signed, and there has been growing concern since that some non-Inuit have not followed the rules in terms of applying for a permit. It is important to note that the tourist companies have been respecting this Article, and obtaining permits. Beneficiaries in the community have become increasingly concerned with this disregard of the rules.

5.21.3 Barriers

Lack of Awareness

Several people have noted that that lack of awareness, on the part of the public about the requirement for non-Inuit to have a permit to enter onto Inuit owned lands, is a problem. It also seems likely that where people are aware of the requirement, they may not realize the seriousness of it, as there is a perception that it was acceptable to "overlook" this requirement. However, it is important that this requirement be respected.

Difficulty of Enforcing Access Restrictions

One of the challenges with dealing with the concern about non-Inuit on IOLs without a permit is that it is difficult to enforce. There are no people or technologies stationed on IOLs to verify that non-Inuit entering have a permit.

5.21.4 Recommendations

Raise Awareness

It is recommended to raise awareness amongst both beneficiaries and non-beneficiaries about the requirement for non-beneficiaries to have consent to enter on to IOLs, as well as the exceptions when consent is not required (e.g. in an emergency, if people are just passing through to go to work, etc.).

Enforce Ownership Right

A key tool to consider for enforcing the access restrictions is to better inform Inuit and non-Inuit about the Nunavut Land Claims Agreement. If more information is made available to non-Inuit, particularly those that are residents of the community, they are much more likely to follow the rules. In addition, we recommend encouraging people who are traveling on or around IOLs to report non-Inuit they suspect are trespassers. It is also recommended that signage be utilized to identify Inuit Owned Lands in high traffic areas, where negative effects are occurring.

5.22 Article 22 – Real Property Taxation

5.22.1 Status

5.22.1.1 Background

In the current system, Nunavut has only one municipal taxing authority, in Iqaluit, and the rest fall under the general taxation authority (GTA). The tax rate in the GTA is a fraction of what it is in Iqaluit.

Interviewees further noted that most of the Inuit owned lands in Nunavut are located in hinterland areas outside of municipal areas. There are only a few Inuit owned lands found within municipal boundaries, so in the case where they are, they are subject to both territorial and municipal legislation.

Several municipalities (e.g. Rankin Inlet) are examining the possibility of administering their own municipal tax.

Taxation, in general terms was discussed in the course of most of the community focus groups that were conducted in Nunavut for the current Five Year Review. We include a highlight of the comments raised at those focus groups:

- We never had to pay taxes and leases before Nunavut for land and now we do, and it has great impact on us.
- I'm sure I'm not the only house owner paying taxes and leases but I don't understand where that money goes to, or to whom.
- We were told recently that we would have to start paying taxes or some sort of levy if we had cabins on Inuit owned lands. It seems that since the signing of the NLCA, we now pay more land taxes, leases and levies. And these are our hunting cabins.
- I hear that First Nations do not have to pay taxes and I think we should not have to pay taxes either. Everything is costly up here and we lack housing, and yet we have to pay taxes. If we did not have to, it would probably alleviate a lot of these problems.

22.2.1 *Subject to this Article and the Agreement, no federal, territorial, provincial or municipal charge, levy or tax of any kind whatsoever shall be assessable or payable on the value or assessed value of Inuit Owned Lands and, without limiting the generality of the foregoing, no capital, wealth, realty, school, water or business tax shall be assessable or payable on the value or assessed value of Inuit Owned Lands.*

Interviewees from the GN noted that **this obligation section was being achieved**.

22.2.2 *Subject to Section 22.2.5, Inuit Owned Lands within municipal boundaries that,*

(a) have improvements, or

(b) do not have improvements, and lie within a planned and approved subdivision and are available for development, shall be subject to real property taxation under laws of general application.

22.2.3 *Subject to Section 22.2.5, Inuit Owned Lands outside municipalities on which improvements have been made shall be subject to real property taxation under laws of general application. Notwithstanding, where an improvement has been constructed, and an area of land for that*

improvement has not been demised, the assessor may assign an area no greater than four times the total ground area of the improvements.

22.2.4 *For the purpose of Sections 22.2.2 and 22.2.3, improvements do not include:*
(a) improvements which result from government or public activity;
(b) outpost camps;
(c) any non-commercial structure associated with wildlife harvesting, including cabins, camps, tent frames, traps, caches, and weirs; or
(d) any non-commercial structure associated with any other traditional activity.

GN interviewees noted that there have been no practical applications during the period under review. Therefore, **there has been no occasion to implement these obligations**.

22.2.5 *Inuit Owned Lands shall not be subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in respect of real property taxation for purposes of collection of tax arrears. The taxation authority may, however, execute upon all personal property of the DIO, or the Nunavut Trust, by way of seizure and sale or attachment, for purposes of collection of tax arrears.*

There have been some problems collecting taxes in the city of Iqaluit, but this problem has largely been fixed. In the GTA area, it costs about $1 million to collect the taxes. If all the tax revenues were collected, it would be about $1.3 million, but only about half of the amount owed is collected. **Given this, the obligation has been partially met.**

5.22.2 Implementation

There are several problems related to collecting taxes.

- Only about half the amount is collected
- The costs of collection exceed the amount collected
- Beneficiaries resent having to pay taxes and they don't see the benefit to them of doing so.

5.22.3 Barriers

High costs and low collection rates. Collection of taxes has proven to be very costly. Given the low rate of collection, costs currently exceed tax revenues collected.

Lack of awareness of benefits among beneficiaries.

5.22.4 Recommendations

We have two recommendations:

- Examine ways to improve efficiency and reduce collection rates.
- Explain to beneficiaries why they must pay taxes, how they are calculated and what the benefit is to them. In addition, in recognition of the financial difficulties that people incur, it is important to coordinate with social assistance programs so that people can be made aware of what supports might be available to them.

5.23 Article 23 – Inuit Employment

As described in the Preamble, a review of Article 23 was considered out of scope of this review. We do note that the issue of Inuit Employment is a very important one to beneficiaries. We understand that GC has obtained approval to begin scoping out the cost of undertaking this review.

5.24 Article 24 – Government Contracting

5.24.1 Status

5.24.1.1 Background

In 1995 NTI established an Article 24 working group under the direction of the then Director of Business Development at NTI. The group was comprised of participants from NTI, GNWT, INAC, TBS and PWGSC. There were two separate thrusts – one directed towards negotiations with the federal government, and the other with the GNWT.

The GN took over for the GNWT in 1999. It developed the first Nunavummi Nangminiqaqtunik Ikajuuti (NNI) Policy in 2000 and further revised it in 2005 (Ref 16.13), in collaboration with NTI. This policy provides guidance to GN departments on how they should interpret and implement Article 24.

The GC issued a Contracting Policy Notice 1995-2 in March 1995 (later replaced with CPN 1997-8). GC noted that prior to issuing CPN 1995-2, GC attempted to consult with NTI, but the latter objected to the form and level of detail of the Policy and refused to participate further in consultations. In order to fulfill its obligations under Article 24, GC issued CPN 1995-2. The Contracting Policy Notice applies to all Functional Heads, Administration/Finance of all Departments and Agencies. The CPN is stated to be mandatory for all these entities. The Contracting Policy is among the approved procurement policy suites for the Government of Canada. The Contracting Policy Notices are on GC's website (http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/siglist_e.asp). The Application section of the Contracting Policy (http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/contracting/contractingpol_1_e.asp#app) states:

> *This policy applies to all departments and agencies, including departmental corporations and branches designated as departments for purposes of the Financial Administration Act. The following transactions are not covered in the policy:*
>
> - *revenue-producing contracts (sales and concession contracts, leases of Crown property) and the like;*
> - *contracts related to the acquisition of land (which are covered by separate statutes and regulations);*
> - *the transfer of goods, services or real property between departments, Crown Corporations, provinces, municipalities and the Territories;*
> - *grants and contributions;*
> - *shared cost programs in which the government is not the contracting authority;*
> - *any contract not funded by Parliament in which the government acts as an agent for other parties;*
> - *leases and contracts for the fit-up of an office or residential accommodation pursuant to the Federal Real Property Act and its Regulations; and*
> - *Interchange-Canada agreements.*

Section 24.8.1 of this Article says that each of the governments, in cooperation with the DIO, shall monitor and periodically evaluate the implementation of this Article. The GN produces an annual report with information on contract awards and Inuit employment within contractors. They also have, at times, prepared evaluation reports concerning the implementation of the NNI policy. Hence, the analysis of this article with respect to GN has been done based on a review of policies, annual reports, evaluation reports, interviews and other ad hoc information.

NTI has repeatedly requested that GC provide information on the monitoring and period evaluation of its obligations within this area, and has noted that GC has failed to do so. As with other aspects of Article 24, the parties disagree with respect to what is required under article 24.8.1. GC indicated that the article expressly states that evaluation and monitoring will be done in cooperation with the DIO. GC has repeatedly asked NTI to provide examples of instances where government contracts let within the Nunavut Settlement Area were not in accordance with the requirements of Article 24. GC takes the position that there are obligations on all parties under Article 24.8.1 and specifically, that there is an obligation on the part of NTI to assist with monitoring and evaluation and to provide GC with some information to assist GC in the investigation and monitoring function.

We believe it is the responsibility of GC to provide information from the contracting process and that the phrase "in cooperation with the DIO" does not mean that NTI should provide examples of instances where government contracts were let within the Nunavut Settlement Area that were not in accordance with the requirements of Article 24, but rather is meant to mean that the process of gathering and analyzing information should involve cooperation with NTI. Our rational is the twofold. Government is the one that issues requests for proposals, sets the evaluation criteria and selects the contractor. NTI has indicated that it is notified of some contracts within the NSA, but does not believe it is being notified of all contracts within the NLCA. NTI has no way of knowing what contracts it is not aware of. Hence, it is GC's responsibility to verify that all contracts went through the appropriate channels. Second, the NLCA states that the government, in cooperation with the DIO, shall take the necessary measures to monitor and periodically evaluate. Given the construction of this sentence, it is the governments' responsibility to undertake the monitoring and evaluation activities – they must cooperate with the DIO in so doing, but it is still their responsibility to undertake the monitoring and evaluation activities.

GC has stated that Section 5 of the Contracting Policy requires departments and agencies to ensure that adequate control frameworks for due diligence and effective stewardship of public funds are in place and working. TBS works with departments and agencies to address management issues and compliance with Contracting Policies identified through its ongoing relationships with departments, management reviews, evaluations, internal audits and transactions. They note that no audits, evaluations, management reviews or transactions to this date have stated that the obligations of Article 24 have not been followed. These audits and evaluations are listed on GC's web site. We believe that the intent of the NLCA and specifically Section 24.8.1 was to proactively monitor and evaluate whether or not the obligations and objectives in regard to Article 24 were being met, and that indicating that no problems were noted in audits and evaluations that were not focused on Article 24 is not sufficient to demonstrate that the obligations and/or objectives have been met.

We do note that GC has provided us with lists of contracts awarded to firms located within Nunavut. However, this information was not analyzed by GC in comparison to all of the contracts awarded for work within the Nunavut Settlement Area, and thus does not provide an assessment of whether federal contracts have complied with the requirements of Article 24.

Consequently, the analysis with respect to GC has been based on a review of policies, interviews and other ad hoc information. In many cases, we are faced with conflicting information, where several interviewees indicate that the objective or obligation has been met, while others believe that it has not been met. In those cases where there is a difference of opinion, and in the absence of evidence illustrating that the objective or obligation has been met, we are forced to conclude that the objective or obligation has not been met.

24.2.1 *The Government of Canada and the Territorial Government shall provide reasonable support and assistance to Inuit firms in accordance with this Article to enable them to compete for government contracts.*

Several interviewees reported that although larger corporations in the NSA are familiar with standard government contracting procedures, many individuals and smaller organizations are not.

Federal Government

This review has found that there is substantial variation in the views on this Section in regards to the federal government.

- As mentioned above, GC issued a contracting policy notice (CPN) in 2005 (and again in 1997, Ref .16.12) advising federal departments that they must comply with Article 24 of the NLCA
- TBS sent a letter to NTI in regards to their concerns about a perceived lack of compliance with obligations in regards to Article 24. According to the letter from TBS on March 8, 2005 (Ref 16.7), the federal government undertakes a variety of activities with respect to Article 24, "including but not limited to notification, training and job skills development, and use of bid evaluation criteria when practicable." However, the letter did not include examples of these activities.
- Interviewees from both GC and NTI reported that federal departments notify Inuit organizations of government contracts and bidding opportunities in the NSA. For example, they notify NTI, which in turn notifies the three RIAs and the three Community Economic Development Organizations. These organizations in turn notify other Inuit Organizations. However, interviewees from NTI are not sure that all federal departments are following this directive. We have not been provided with any evidence to illustrate that this has been done in all cases.
- The Western Region Office employs an Advisor who is responsible for liaising with Aboriginal and Inuit groups, such as NTI, as well as coordinating training activities. In addition, "to support the objectives of Article 24, PWGSC offered training on MERX, the Government Electronic Tendering System. Contracts Canada division delivered a series of seminars and provided supplier information kits to Inuit firms identified by NTI. Seminars included "How to do Business with the Federal Government (Basic)", "Selling Services", and "Writing an Effective Proposal". PWGSC continues to be available to set up information seminars for Inuit firms in Nunavut upon request". (Ref. 8.4, p.45) NTI has noted that it has not been consulted on the design or implementation of these programs (as required by 24.3.2).
- Despite the official position of GC that it has met its obligations, several interviewees, from the federal government, as well as NTI and the GN, reported that they believed that the federal government had not fulfilled the intent of this Section. Moreover, several interviewees reported that GC should do more in this area.
- Section 24.8.1 requires each of GC and GN to monitor and periodically evaluate the implementation of this Article. GN produces an annual contracting report detailing a variety of information related to this article and does an evaluation of the implementation of their policy. No such equivalent is done by GC, and thus it is difficult to assess what activities have been done.

While it appears that the federal government is undertaking some activities in this area, the lack of objective evidence through monitoring and evaluation and/or descriptions of the process , combined with concerns expressed by interviewees suggest that the objective is only being met to a limited degree.

Government of Nunavut

The GN developed the NNI policy in collaboration with NTI in 2000 and updated it in 2005. They have structured the contracting process to favour Inuit firms and Nunavut businesses. In addition, the GN has offered courses on how to respond to government contracting. While most interviewees agreed that the GN was making a concerted effort to support Inuit firms, most also noted that further work was needed to ensure that the desired effect on Inuit firms was actually occurring. For example, Inuit firms have expressed frustration in filling out forms, and it has been suggested that further assistance, simplification or a reduction of paperwork is required.

In summary, in regards to GN contracting, we conclude that there has been significant work undertaken to provide guidance so as to ensure that this objective was met. However, given that representatives of GN and NTI noted that more work needs to be done to ensure that the desired outcomes are achieved t**he objectives were only being partially achieved.**

24.3.1 *Consistent with this Article, the Government of Canada shall develop, implement or maintain procurement policies respecting Inuit firms for all Government of Canada contracts required in support of its activities in the Nunavut Settlement Area.*

The last Five Year Review reported that this Section was being partially met on an ongoing basis. The federal government had developed, implemented, and updated procurement policies respecting Inuit firms; however, they are not being applied to all federal departments and agencies. Certain departments and crown corporations had not implemented the appropriate policies to meet the objectives of this Section.

Assessing whether this Section has been achieved is particularly difficult, given both the prevalence of differing opinions, and the lack of objective evidence. A briefing note of November 12, 2002, to the Deputy Minister, states that "Since the mid-90s, the Government of Canada (GC) and NTI have disagreed on the interpretation of Article 24." (Ref. 16.7)

We have considered the following information in assessing this Section.

GC has stated that its official position is the following:

> GC has met and is meeting its obligations under Article 24.3.1 through its Contracting Policy Notice 1997-8. Contracting Policy Notice 1997-8 was issued December 10, 1997 (superseding CPN 1995-2, dated March 1, 1995). It is important to note that the NLCA expressly provides, under Article 24.1.1, that Government of Canada means "all federal departments and departmental corporations listed in Schedules I and II and parent Crown Corporations listed in Schedule III, Part I of the Financial Administration Act R.S.C. 1985, Chapter F-11." Thus, the parties have expressly agreed that Article 24 will apply to those entities. CPN 1997-8 is addressed to: all Functional Heads, Administration/Finance of all Departments and Agencies and indicates the following:
>
> 2. Most Comprehensive Land Claims Agreements deal with certain economic and social development benefits for aboriginal peoples. Contracting authorities should examine the applicable land claims agreements, Park Agreements and Co-operation Agreements for any aboriginal participation requirements for contracting activities that take place in a land claim settlement area.
> 3. Accordingly, where a contracting authority is engaged in a contract for the procurement of goods, services or construction in a settlement area or national park, these activities are subject to the contracting obligations that are found in the applicable agreement. This policy is issued to make contracting authorities aware of the nature of these contracting obligations.

Extracts of the applicable agreements are provided in the appendix to this Contracting Policy Notice.

4. All contracting authorities should note that many of the land claims agreements contracting obligations require considerations that commence at the project planning stage. Adequate records must be made and retained to show how the contracting authority has fulfilled these requirements.
5. Departments are to update procedures or adjust existing procurement procedures to ensure that the procurement activities of the contracting authority are in conformity with any applicable land claims, National Parks or DND agreement obligations particularly with respect to project design, bid evaluation criteria, solicitation methods, notices and contract award.

Section 4 of the Appendix to Contracting Policy Notice 1997-8 reproduces, in its entirety, Article 24 of the NLCA. The introduction to the Appendix expressly states that: "The Policy requirements of this Appendix are mandatory."

In summary then, we note that GC has clearly and unequivocally stated that federal departments and agencies must respect the NLCA and Article 24 in particular in its procurement activities. However, while it is clear what departments and agencies must do, our role in this assignment is to review the information available on whether or not departments and agencies did in fact implement these policies as directed. This has been a significant challenge in this assignment, as we have not been provided with comprehensive evidence illustrating that GC has followed these directives, despite the fact that section 4 of the CPN states that "[a]dequate records must be made and retained to show how the contracting authority has fulfilled these requirements". We considered the following comments, information and examples provided to us.

- Interviewees from NTI reported that they did not believe that GC was respecting the "spirit" of this Section.
- While it is clear what the official position of GC is, and some interviewees from GC were in agreement with this position, we also heard several interviewees from the federal government indicate that they did not believe that these policies were in fact followed by the federal government in all circumstances.
- Some interviewees reported that the Procurement Strategy for Aboriginal Business (PSAB) (Ref. 16.8) could be one tool for achieving this objective. However, the PSAB also lists as an exception: "Procurement subject to any of the current and future Comprehensive Land Claims". While clearly GC can choose to override this exception, we believe that reliance on the PSAB as it currently stands would present confusion to any Inuit firm seeking to understand federal government policy in this area. Moreover, a letter from TBS on March 8, 2005 (Ref 16.7) notes that while the PSAB may apply in certain conditions, these conditions do not necessarily exist for all procurements in the Nunavut Settlement Area.
- According to a letter from TBS on March 8, 2005 (Ref 16.7), the federal government undertakes a variety of activities with respect to Article 24, "including but not limited to notification, training and job skills development, and use of bid evaluation criteria when practicable." However, no information on examples of these activities was provided.
- As mentioned above, in support of GC's activities here, it was mentioned that federal government departments notify Inuit organizations of all government contracts and bidding opportunities in the NSA (although as mentioned above, NTI believes that not all departments follow this policy, and we have not been provided with any evidence to suggest that this policy has been followed in all cases).
- According to the 2001-2004 Annual Report on Implementation (Ref 8.4), the Western Region Office employs an Advisor who is responsible for liaising with Aboriginal and Inuit groups, such as NTI, as well as coordinating training activities. In the past, training has been offered on the

MERX system in addition to a series of seminars and information kits have been sent to Inuit firms that have been identified by NTI. In response to this comment, NTI has noted that it has not been consulted on the design or implementation of these programs (as required by 24.3.2).

- An interviewee from the GN noted that in those cases where GN and GC have a relationship (e.g. gas tax and rural infrastructure fund), GC agrees to let GN's policies and procedures guide all activities (in particular, the NNI policy).
- GC has provided a copy of an email dated December 6, 2005, in which the author stipulates that "This is to confirm that the procurement process for the STSI [shared travel services initiative] was subject to the Comprehensive Land Claims Agreements. No bids were received from [A]boriginal companies or suppliers located in land claim areas. The bid was published on MERX in May 2002. At this time the contracting officer complied with the requirements for each Land Claim Agreement. GC further went on to note that contact was made to encourage Inuit firms to pursue sub-contracting opportunities. We note that the email does not illustrate how the process met the obligations of the NLCA. It says that in the opinion of the government workers involved, it met the obligations. However, without information on the process, and given conflicting opinions by other interviewees in regards to the contract, we, as independent reviewers cannot asses whether the obligations were met.
- We understand that INAC has made several offers to bring all of the respective parties together to try and collaboratively develop a solution. For example, INAC sent a letter to NTI in June of 2003 (Ref 16.2) in regards to developing a Workplan to resolve issues surrounding Article 24. NTI interviewees reported that prior to the sending of this letter, there were numerous discussions around an approach. NTI wanted to strike an agreement on what approach would be used and tabled draft proposals to this effect. NTI reported that they understood that federal departments were willing to discuss approaches, but stated that they would not formalize these in any agreement. Given NTI's understanding that the proposal from INAC was predicated on the assumption that the outcome would not lead to an agreement, they believed the process recommended would have been fruitless. GC has indicated that they would not rule out developing an agreement; they would like to meet with NTI, discuss the issues and potential solutions without predefining what the form of the outcome would be.
- NTI has repeatedly requested that the matter be referred to an Arbitration Board and that information on evaluation and monitoring of GC's performance, as required by 24.8.1, be provided. INAC has responded that they would like to establish a working group, as mentioned in the previous bullet. The parties were at a stalemate on this issue.

There is clearly a very significant difference of opinion as to whether GC has met its obligations in this matter. In addition we have not seen any information on evaluation and monitoring as required by GC in Section 24.8.1.

In summary it is clear that GC has unequivocally demonstrated that federal departments and agencies must adhere to the requirements of the NLCA and Article 24 in particular. The challenge in assessing whether or not this was done is twofold: first, there are conflicting opinions about whether GC has followed these directives; second there is no comprehensive evidence, either by way of monitoring and evaluation reports, adequate records to show that the obligation has been met, or broad descriptions of the process implemented to ensure Article 24 has been met. We did note that that GC is notifying Inuit organization of contracts in at least some cases (but not in NTI's opinion in all cases). In the absence of evidence as required by 24.8.1 or section 4 of the CPN, we conclude that **the obligation of this section was being met to a very limited degree**.

24.3.2 *Government of Canada shall develop or maintain its procurement policies in close consultation with the DIO, and shall implement the policies through legislative, regulatory or administrative measures.*

The last review found close consultation not having being met on an ongoing basis. An exchange of thinking was occurring with the federal government and the GN; however several process issues had not been resolved.

The previous section identified significant differences in perspectives between the DIO and GC. In addition, while INAC has offered to arrange a working group on this issue in 2003, NTI expressed distrust of this process and indicated that they believed the matter should proceed to Arbitration. There has not been progress to date on working collaboratively. Consequently, **the obligations of this Section were not being met.**

Territorial Government Policies

24.3.4 *Subject to Section 24.9.2, the Territorial Government shall maintain preferential procurement policies, procedures and approaches consistent with this Article for all Territorial Government contracts required in support of Territorial Government activities in the Nunavut Settlement Area. The Territorial Government will consult with the DIO when developing further modifications to its preferential policies, procedures and approaches in order that the provisions of this Article may be met.*

The Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy) (Ref 16.13) identifies the policies and procedures that GN will follow in order to achieve this obligation. This policy includes: policy objectives, relationship to NLCA, evaluation process and bid adjustment, bonuses and penalties, monitoring and enforcement procedures, application of monitoring and enforcement procedures, periodic review committee, appeals process, and a host of other issues. It is a comprehensive policy and all interviewees reported that they thought this was the right thing to do to meet this obligation.

It should be reported though, that several interviewees in both NTI and GN reported that while the right process is in place, further evaluation is required to assess how effective this is and ensure that recommendations on how to achieve the desired impacts on firms should be undertaken.

It is also important to state that while we understand that for the most part there has been good cooperation between NTI and GN on developing and implementing the NNI policy, there were two examples where NTI alleged that GN made a change to the policy without properly consulting NTI. NTI took legal action and the parties came to agreement on specific changes to the policy and on an appropriate definition of "consultation" for future changes to the policy (Ref 16.11).

This obligation was being mostly met, subject to the comment that evaluation and associated actions are required to ensure that the desired impact on firms is achieved, and that close cooperation on all issues is required with NTI.

24.3.5 *Procurement policies and implementing measures shall be carried out in a manner that responds to the developing nature of the Nunavut Settlement Area economy and labour force. In particular, the policies shall take into account the increased ability, over time, of Inuit firms to compete for and to successfully complete government contracts.*

There was consensus among all parties interviewed during the last Five Year Review that the objectives under this Section were being met. However, the report rates this Section as not being met on an ongoing basis because it was noted that a review of documentation did not identify a policy mechanism or process to govern its implementation.

GC has noted that this obligation is listed in the CPN and, in accordance with common contracting procedures, is considered each time a procurement strategy is developed by a department and agency. They further note that a recent conversation between Defence Construction and other federal departments indicates that procurement officials are aware of the capacity of firms in the Nunavut Settlement Area (and when these firms will be able to compete for larger contracts) and are considering this capacity in their procurement strategy. However, numerous interviewees indicated that this obligation was not being met in regards to federal contracts, and no information was provided to illustrate how it has been met.

As for the GN, it revised its NNI policy, in 2005 to better address obligations associated with this article.

In summary, **we conclude that GN was meeting this obligation, but that GC was not.**

24.3.6 *Procurement policies and implementing measures shall reflect, to the extent possible, the following objectives:*

(a) increased participation by Inuit firms in business opportunities in the Nunavut Settlement Area economy;

(b) improved capacity of Inuit firms to compete for government contracts; and

(c) employment of Inuit at a representative level in the Nunavut Settlement Area work force.

The last review found that this Section was not being met on an ongoing basis by the federal Government in terms of their procurement policies and operating practices. The GNWT Contracting Procedures and Purchasing Guidelines were both found to meet the requirements of this Section.

Government of Canada

This review has found that there is little consensus on the achievement of these objectives and it remains a contentious issue among the three parties.

With respect to GC, the same issues noted in 24.3.1 apply here as well. GC has noted that this obligation is listed in the CPN and, in accordance with common contracting procedures, is considered each time a procurement strategy is developed by a department and agency. They further note that a recent conversation between Defence Construction and other federal departments indicates that procurement officials are aware of the capacity of firms in the Nunavut Settlement Area (and when these firms will be able to compete for larger contracts) and are considering this capacity in their procurement strategy. Some interviewees in GC believe this objective has been fully met, while other GC interviewees indicated that GN has mostly met this objective but that GC is not always meeting this requirement. There are no monitoring or evaluation reports from GC that demonstrate how it was being met.

Despite the potential limitations of the PSAB, NTI has noted that they believe the PSAB could be one of the tools applied to achieve these objectives. In 2005 GC issued two contaminated sites clean-up contracts for camp-site preparation under the PSAB, in accordance with representations made by NTI. Both contracts were issued to Inuit firms. However, there have been few other examples of the use of the PSAB.

Interviewees at NTI believe that GC is not meeting this obligation, with one exception where the Department of National Defense has entered into several contracting agreements with Inuit for the clean up of the DEW lines. Interviewees have reported that they have been able to achieve 70% Inuit employment levels. If a company is not meeting the contract rules the Department will approach the contractor for substantiation and penalties and/or cancellation of the project are possible. NTI would like

to see more agreements like these within the NSA, but report that so far there has been reluctance on the part of INAC to negotiate.

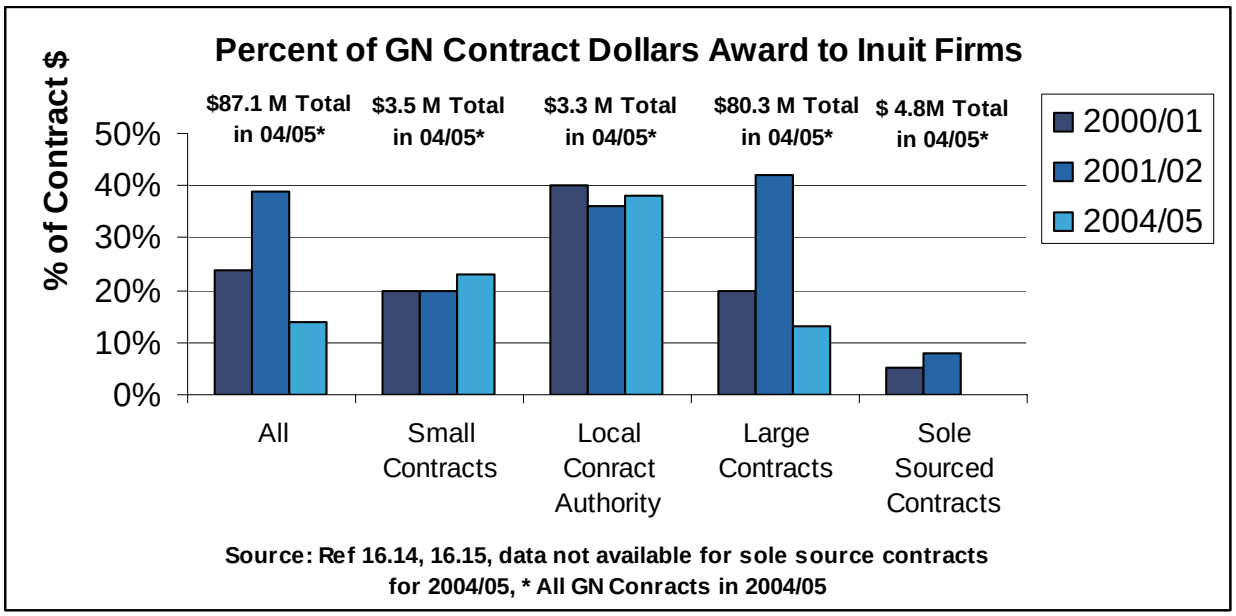
Government of Nunavut

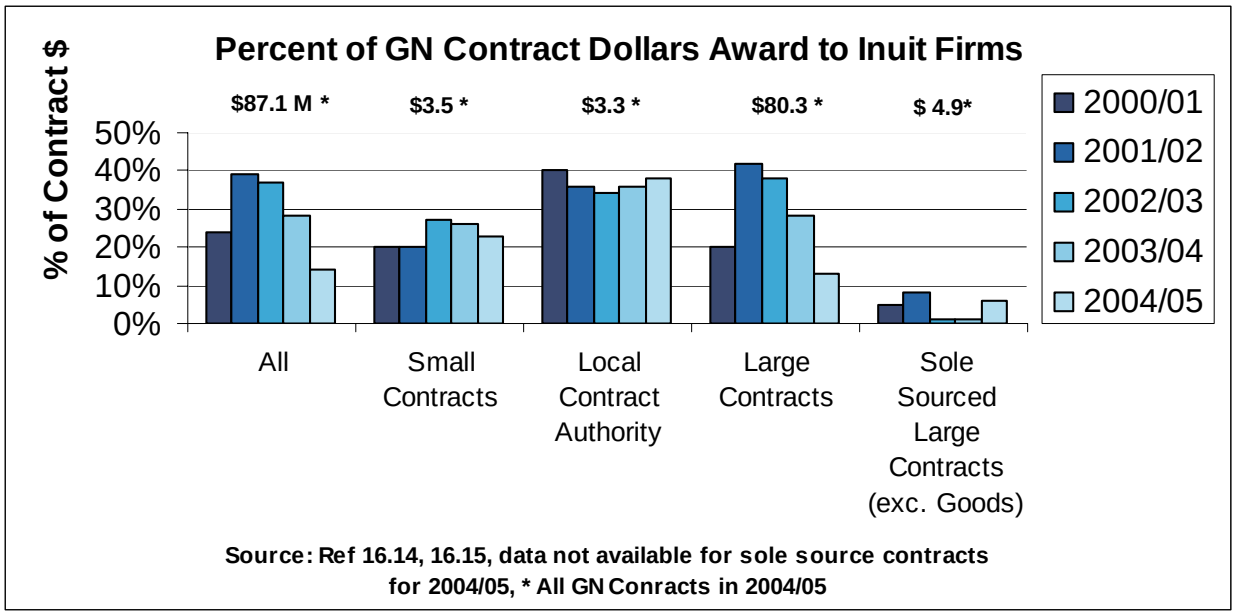
Many interviewees believe that, with respect to GN, the policies are there, but implementation is weak. A number of larger firms are becoming more successful; however, smaller firms are struggling. Another challenge is finding people with the right skills to be able to do the work.

According to interviewees at NTI, they agree that the right process is in place. They also believe, as stated by GN interviewees as well, that more assessment of the effectiveness of those processes is required (e.g. in terms of how easy it is for Inuit firms to apply for and meet government contracting requirements, overall outcomes, etc.).

Another issue mentioned by NTI and GN is that fully implementing the new NNI policy will require additional funds, and the provisions for those funds are not in place.

The following charts illustrate several key points. Local Contract Authorities were most successful in awarding contracts to Inuit firms, in terms of both dollar values and percent of contracts. This is particularly important, as these contracts account for the majority of GN contracts. While the percent of total contract dollars to Inuit increased significantly over the 2000/01 to 2001/02 period (the rise being entirely due to large contracts including goods), their share fell thereafter, resulting in an even lower share in 2004/05 than was the case in the 2000/01 period.





The following chart illustrates, with respect to minor construction and maintenance services, that both contractor bids and averages achieved exceeded the minimum averages required for Inuit labour as a share of total. With respect to major construction, while the average bid percentage exceeded the minimum required, the average achieved actually fell short of the minimum.

Inuit Labour as a Share of Total, 2004/05

Region	Average % Required	Average % Bid	Average % Achieved
Minor Construction and Maintenance services	33	61	56
Major Construction Contracts	24	26	22

Source: Ref 16.15

In conclusion, while the DND example illustrates that GC has met these obligations in some cases, **there is no evidence the obligations were being consistently met by GC**. **With regard to GN, the obligations were being partially met, because many of the processes are in place, but these processes have not been effective in achieving the intended effect.**

24.3.7 *To support the objectives set out in Section 24.3.6, the Government of Canada and the Territorial Government shall develop and maintain policies and programs in close consultation with the DIO which are designed to achieve the following objectives:*
(a) increased access by Inuit to on-the-job training, apprenticeship, skill development, upgrading, and other job related programs; and

(b) greater opportunities for Inuit to receive training and experience to successfully create, operate and manage Northern businesses.

Results from the last Five Year Review found that the federal government was partially meeting the objectives set forth in this Section. A program that provides access to training had been implemented and was delegated to one of the Inuit agency organizations to deliver it. The Territorial Government was also found to be partially meeting the objectives on an ongoing basis due to the training they provide. It

should be reported that at the time of the last review, NTI had not been consulted on the type of programming being offered by the federal or territorial governments.

Several interviewees noted that the challenges with the implementation of this Section are wider than this Article and are very much linked to the implementation of Article 23 (which is out of scope for this review) and the Nunavut Economic Strategy.

There are several factors to take into account in this review with respect to GC.

- One of the challenges on the federal government side is identifying under whose authority this work should be done.
- Interviewees from NTI have indicated that they have encountered difficulty in ascertaining what federal departments can and cannot do.
- NTI consulted with HRDC on various issues pertaining to this Section; however, a report was not developed out of the consultations.
- DND has attached a training program (and funds) to the contracts associated with the DEW lines.
- We have also heard that many of the federal programs are not applicable to Nunavut.

In summary, there seems to be a lot of confusion about which federal departments have responsibility here, and what programs are available.

With respect to GN, while there are policies and programs in place to encourage the selection of Inuit firms, and contractors that employ Inuit, and there are a specific number of identified training positions that are structured around training and expanding employability, there are no comprehensive programs to specifically address points a) and b) of this Section. As a result, we conclude that this **obligation was being partially met by GN.**

Therefore, given that there has been one example, the DND DEW line initiative, in which GC has met this obligation, but without comprehensive information regarding federal contracting, we conclude that **objective was being met to a very limited degree.** As mentioned above, the greatest challenge appears to be assessing what organizations have responsibility, and funding, to address these goals.

24.4.1 *In cooperation with the DIO, the Government of Canada and the Territorial Government shall assist Inuit firms to become familiar with their bidding and contracting procedures, and encourage Inuit firms to bid for government contracts in the Nunavut Settlement Area.*

The last review found that this Section was being met on an ongoing basis. Both PWGSC and the PWS have each delivered procurement seminars in Iqaluit, Rankin Inlet and Cambridge Bay. Also, when advised by NTI of an addition to the list of Inuit firms, an information package is sent to the firm with information on how to do business with the Federal Government and how to register themselves as a supplier. The Territorial government was translating procurement notices into Inuktitut and advised of opportunities within the government.

Findings from this Five Year Review establish that the PWGSC and GN have implemented policies. For example, as discussed previously, both have provided training program. However, it is not clear how well they are achieving the objectives inherent in the obligations pertaining to those procurement policies. Given this, in conclusion, **this obligation was being partially met, but further work needs to be done to assess the effectiveness of the activities**.

24.4.2 *In inviting bids on government contracts in the Nunavut Settlement Area, the Government of Canada and the Territorial Government shall provide all reasonable opportunities to Inuit firms to submit competitive bids, and, in doing so, shall take, where practicable and consistent with sound procurement management, the following measures:*

(a) set the date, location, and terms and conditions for bidding so that Inuit firms may readily bid;

(b) invite bids by commodity groupings to permit smaller and more specialized firms to bid;

(c) permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized firms to bid;

(d) design construction contracts in a way so as to increase the opportunity for smaller and more specialized firms to bid; and

(e) avoid artificially inflated employment skills requirements not essential to the fulfillment of the contract.

The last Review found this Section to be partially met on an ongoing basis by the federal government and met on an ongoing basis by the Territorial government. Contracting procedures within both governments were set up and addressed the obligations under this Section to differing degrees. The federal government did not meet the obligations because bidding a piece of a larger project was not permitted and most of the bid submissions were outside Nunavut, primarily to Edmonton for processing.

Government of Canada

As has been the case throughout this article, interviewees differed in their opinions. GC has noted that the official position of GC is that this obligation is listed in the CPN and, in accordance with common contracting procedures, is considered each time a procurement strategy is developed by a department and agency. Some GC interviewees believed this part was being mostly achieved, while interviewees at another department believe it was being fully achieved. Interviewees from NTI indicated that these obligations were being partially met.

With respect to sub-Section (a) GC was notifying businesses of this information (although as mentioned previously, NTI has expressed concerns about whether all federal departments are following this policy). With respect to b, c and d, NTI has concluded that it is not possible to split federal contracts. NTI has indicated that there is no process in place and no data to assess the extent to which e) is achieved.

We note that the DND DEW line project is an example that illustrates how GC has tried to structure contracting to address these issues.

Government of Nunavut

With respect to sub-Section (a) GN is notifying businesses of this information. With respect to b, c and d, GN has indicated that they try to enable this were possible, but notes that it is difficult in the case of construction contracts. NTI and GN have both reported that there is no process in place and no data to assess the extent to which e) is achieved.

Due to the discrepancies between responses from interviewees and the discussion of issues that pertain to these sub-Sections, it has been concluded that **the obligations under this Section were being partially met by both levels of government.**

24.4.3 *Where the Government of Canada or the Territorial Government intends to invite bids for government contracts to be performed in the Nunavut Settlement Area, it shall take all reasonable measures to inform Inuit firms of such bids, and provide Inuit firms with a fair and reasonable opportunity to submit bids.*

The previous Five Year Review found that the procurement practices within the Federal government were not being advertised in Inuktitut and were generally advertised solely on the Internet, which are both barriers to achieving the spirit and intention of this Section. The Territorial government was however found to be meeting all parts of the Section.

The discrepancy in views around GC obligations occurs here too. TBS has indicated that all federal departments need to be respecting the NLCA, and that if there are any challenges, these should be addressed with INAC. Federal departments do provide notification of contract opportunities to Inuit organizations (although there is a question of whether this was done 100% of the time). GC opportunities are also posted on MERX. However, several interviewees do not feel this meets the spirit of "providing Inuit firms with a fair and reasonable opportunity to submit bids". For example, notifications are provided in English, which means that many Inuit will not be able to read them. Similarly, postings on MERX are not accessible to all Inuit firms as not all have Internet access. Several interviewees also expected GC to provide greater support in this area.

GN undertakes a number of activities to provide Inuit firms with opportunities to submit bids. GN and NTI fax and post notices in communities on bulletin boards and on the community cable channel, in both English and Inuktitut. An interviewee at GN mentioned that Inuit firms will be called and/or information faxed directly to organizations that provide the goods and services required in the contract. This is done to see if the business requires any help with the necessary forms.

Therefore, provided the aforementioned discussion, and the lack of clarity or agreement on what is meant by "*take all reasonable measures to inform Inuit firms of such bids, and provide Inuit firms with a fair and reasonable opportunity to submit bid*", it is difficult to assess whether or not the obligations have been met. Given the GN's description of the process that they followed, in comparison to the fact that GC simply provides notification to NTI, we conclude that the **GN process provides much more targeted support for Inuit firms than does the GC process.**

24.5.1 *Where the Government of Canada or the Territorial Government solicits bids for government contracts to be performed in the Nunavut Settlement Area, it shall ensure that qualified Inuit firms are included in the list of those firms solicited to bid.*

At the time of the last Five Year Review the inclusion of Inuit firms in bid soliciting lists was found to be partially being met on an ongoing basis. Invitational bids were being used only for bids under $25,000 and Inuit firms were not always included on the list. On the other hand, within the Territorial government, Inuit firms were continually being included on invitational list. The last review, therefore reported that the Territorial government was meeting the obligations of this Section on an ongoing basis.

NTI maintains a list of Inuit firms for this purpose. As mentioned previously, federal departments do send notifications of opportunities to Inuit organizations, although NTI has concerns about whether this is done in all cases.

As mentioned in the previous Section, GN takes a number of steps to ensure that Inuit firms are included in the list of firms. In addition to relying on the list prepared by NTI, they actively call and fax people in the communities.

In summary, NTI is a key source of information on Inuit firms for the GN, and passes on information on GC contracts to Inuit organizations. So long as all parties are satisfied with this process, and notifications of all federal contracts are provided to NTI, this system would work. Consequently, we conclude that **GN's obligations are being met on an ongoing basis. With respect to GC, the obligations are being met in some cases** (given that NTI has indicated that it is provided with notification of contract), but without information on all federal contracts, it is not possible to say whether they are being met in all cases.

24.5.2 *Where an Inuit firm has previously been awarded a government contract, and has successfully carried out the contract, that Inuit firm shall be included in the solicitation to bid for contracts of a similar nature.*

The last Five Year Review found that the both governments were not meeting the obligations of this Section. For the federal government, even if an Inuit firm had successfully carried out a contract, it did not automatically translate into inclusion on the list. GNWT Public Works was found to be circulating the list of Inuit firms to procuring departments; however, it was not identifying all previously successful firms who carry out similar work.

This Five Year Review found that the interviewees in the Government of Canada, the GN and NTI believe that this Section was being achieved because it falls within normal or natural contracting processes. If a contract is awarded to a firm that delivers an excellent product, the firm will naturally be considered for similar contracts in the future. Therefore, based on the common perceptions of interviewees, we believe **this obligation was being met.**

24.5.3 *In the absence of competitive bidding for government contracts, qualified Inuit firms will be given fair consideration.*

The last review found that both governments were meeting the obligations of this Section on an ongoing basis. Several successful examples of Inuit firms participating in negotiated contracts were highlighted. Also, the GNWT had a specific procedure to meet the requirements of this clause.

GC interviewees reported that within the federal contracting policy there is a requirement to do competitive bidding for all contracts except in four exceptional cases and the obligation within this Section was being achieved. The official position of GC is that the Contracting Policy requires that all bidders be given fair consideration. Some GC interviewees reported that the obligation of this Section was being met on an ongoing basis, while others indicated that this is only done infrequently. Most interviewees thought it was done more commonly by GN. GN reported several steps that they took to achieve this. For example, they said that if all the bids are too high, they first call Inuit firms back to see what alternatives could be done. In addition, they noted that they actively advertise within the community and call Inuit firms.

In conclusion, interviewee comments and examples illustrate that **the GN was meeting this obligation. Conversely, with regards to GC, while some interviewees indicated that this obligation was being met, several interviewees indicated that it was not being met, and we do not have evidence of how this obligation was being met. Hence we conclude that it does not appear that this obligation was being met.**

24.6.1 *Whenever practicable, and consistent with sound procurement management, and subject to Canada's international obligations, all of the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria*

established by the Government of Canada for the awarding of its government contracts in the Nunavut Settlement Area:

(a) the existence of head offices, administrative offices or other facilities in the Nunavut Settlement Area;

(b) the employment of Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contracts; or

(c) the undertaking of commitments, under the contract, with respect to on-the job training or skills development for Inuit.

The last Five Year Review found that the obligations of this Section were all being met on an ongoing basis. Federal policies and procedures were all found to be aligned with the obligations and are being implemented appropriately.

The official position of GC is that it was meeting its obligations due to the CPN. Some GC interviewees thought this was being partially done. However, with the exception that there is general agreement that this has been done on the DEW line DND contract, there is no evidence of whether it was being done in all cases.

Due to the perception that it has been at least partially addressed, but lack of clarity on whether the obligation has been fully met, we conclude that **this obligation was being partially met.**

24.6.2 *Whenever practicable and consistent with sound procurement management, and subject to Canada's international obligations, all of the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria established by the Territorial Government for the awarding of its government contracts in the Nunavut Settlement Area:*

(a) the proximity of head offices, administrative offices or other facilities to the area where the contract will be carried out;

(b) the employment of Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contract; or

(c) the undertaking of commitments, under the contract, with respect to on-the job training or skills development for Inuit.

The last review found this Section to be partially met on an ongoing basis. The two governments have their policies in place; however, the procedures were not always consistent. The implementation of the procedures and guidelines varied from department to department and from location to location.

GN has indicated that it is meeting parts a) and b), but is unsure about whether part c) was being addressed. NTI was uncertain if this was done in all cases for either government. Due to the perception that it has been at least partially addressed, but lack of clarity on whether the obligation has been fully met, we conclude that **this obligation was being partially met.**

24.7.1 *The DIO shall prepare and maintain a comprehensive list of Inuit firms, together with information on the goods and services which they would be in a position to furnish in relation to government contracts. This list shall be considered by the Government of Canada and the Territorial Government in meeting their obligations under this Article.*

The last Five Year Review found this Section to be partially met on an ongoing basis. It indicated that there were lapses in sending the list of Inuit firms to the appropriate government offices. Where exactly the responsibility lies to ensure proper distribution was unclear. Most officials have a copy of the list; however, many are not working from the most up-to-date list.

This review found that NTI started the list of firms in 1994 and provides updates on a monthly basis. The Inuit Firm List maintained by NTI is posted on NTI's website and is accessible to all persons with Internet access. The list is considered by the two governments. In conclusion, there was a general consensus that **this obligation was being achieved.**

24.8.1 *The Government of Canada and the Territorial Government, in cooperation with the DIO, shall take the necessary measures to monitor and periodically evaluate the implementation of this Article.*

The last review found that this Section was not being met on an ongoing basis by either government. Implementation practices and results were not being measured or evaluated.

The GN produces an annual report with information on contract awards and Inuit employment within contractors. They also have, at times, conducted evaluations of the implementation of the NNI policy. NTI has some concerns and would like to see additional data monitored and analyzed. GN has also stated that it is important to begin to monitor the effect of their policies on Inuit firms, and adjust processes accordingly.

As with other aspects of Article 24, the parties disagree with respect to what is required under article 24.8.1. GC indicated that the Article expressly states that evaluation and monitoring will be done in cooperation with the DIO. GC has repeatedly asked NTI to provide examples of instances where government contracts let within the Nunavut Settlement Area were not in accordance with the requirements of Article 24. GC takes the position that there are obligations on all parties under Article 24.8.1 and specifically, that there is an obligation on the part of NTI to assist with monitoring and evaluation and to provide GC with some information to assist GC in the investigation and monitoring function.

We believe it is the responsibility of GC to provide information from the contracting process and that the phrase "in cooperation with the DIO" does not mean that NTI should provide examples of instances where government contracts were let within the Nunavut Settlement Area that were not in accordance with the requirements of Article 24, but rather is meant to mean that the process of gathering and analyzing information should involve cooperation with NTI. Our rational is the twofold. Government is the one that issues requests for proposals, sets the evaluation criteria and selects the contractor. NTI has indicated that it is notified of some contracts with the NSA, but does not believe it is being notified of all contracts within the NLCA. NTI has no way of knowing what contracts is not aware of. Hence, it is GC's responsibility to verify that all contracts went through the appropriate channels. Second, the NLCA states that the government, in cooperation with the DIO, shall take the necessary measure to monitor and periodically evaluate. Given the construction of this sentence, it is the governments' responsibility to undertake the monitoring and evaluation activities – they must cooperate with the DIO in so doing, but it is still their responsibility to undertake the monitoring and evaluation activities.

We further understand that INAC has attempted to work with NTI to agree on what should be monitored and evaluated, but, as has been the case with many issues in this Article, the parties have not come to agreement. Specifically, particularly in the latter part of the review period, NTI refused to meet on this issue, indicating instead that they wanted it to go to Arbitration.

This obligation was being partially met with respect to territorial contracts, but was not being met with respect to federal contracts.

24.9.1 *The objectives of this Article shall be achieved through the allocation or reallocation of government expenditures without imposing additional financial obligations on the Government of Canada or the Territorial Government.*

With respect to GC, many of the obligations have not yet been met, and consequently it is too soon to assess whether they will be met without imposing additional financial obligations. With respect to GN, several interviewees reported that the new NNI policy will enable them to meet these objectives, but that it will cost substantially more money.

Provided the aforementioned information, it has been concluded **that this objective was not being met.**

24.9.2 *The Territorial Government will carry out the terms of this Article through the application of Territorial Government preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities.*

This review found that there is consensus among parties that **this Section is mostly being achieved,** but that further data gathering, particularly on the impact of the policies, is required.

5.24.2 Effectiveness of Implementation

It is important to assess this article for GN and GC separately.

Government of Nunavut

GN developed the first Nunavummi Nangminiqaqtunik Ikajuuti (NNI) Policy in 2000 and revised it in 2004 and 2005 (Ref 16.13), in collaboration with NTI. This policy is designed to ensure it meets each of the objectives and obligations of this Article. With the exception of 24.4.2 e), 24.6.1 c) and 24.6.2 c), this policy addresses all of the objectives and obligations in this Article. The GN produces an annual report with information on contract awards and Inuit employment within contractors. They also have, at times, conducted evaluations of the implementation of the NNI policy.

An analysis of contract awards illustrates that Inuit firms have not made gains since 2000/01, and account for a smaller proportion of contracts than all parties believe is appropriate. While the outcomes to date have been disappointing, the establishment and tracking of outcomes is critical to assessing and understanding potential problems. Interviewees from GN and NTI both agree that further work needs to be done (i.e. additional data needs to be gathered) to assess the impact of these policies on Inuit firms, and that additional action or changes will likely be required following that.

One significant concern is that all interviewees seemed to agree that implementing the new NNI policy will be significantly more expensive than had been provided for in previous GN budgets.

Government of Canada

Assessment of progress in regards to federal responsibilities is much more complicated.

GC issued a contracting policy notice (CPN) in 2005 advising federal departments and agencies that they must respect Article 24 of the NLCA (Ref 16.12). We understand that GC has instructed that federal

departments and agencies must comply with this Article. We do note that there have been several examples of activities that GC has undertaken in regards to this Article, such as training, notification to NTI of contracts, and the DND DEW line project (which exceeded the requirements).

However, we have heard from interviewees from both GC and NTI that they do not believe that federal departments and agencies have always complied with these requirements. In addition, Section 24.8.1 of the NLCA and section 4 of the CPN both require documentation on the implementation of these objectives and obligations. We have not been provided with any such documentation, nor have we been provided with a comprehensive discussion and illustration of the process that is applied to ensure that the requirements are met.

In those cases where there is a difference of opinion, and in the absence of evidence illustrating that the objective or obligation has been met (as is required by 24.8.1), we are forced to conclude that for many of the objectives or obligations there is no evidence that have been fully met.

5.24.3 Barriers

Lack of evaluation and periodic monitoring. The lack of objective data on federal contracting, as required by 24.8.1 made it very difficult to assess the implementation of this Article. GC has indicated that part of the challenge has been NTI's refusal in the latter part of the period under review (since 2003) to meet to discuss the requirements here. NTI has stated that they had wanted the issue to go to Arbitration, rather than continue to meet, given that the parties had made no progress on this issue in the previous ten years. It is important to note that we believe the refusal of NTI to meet to discuss Article 24 in the latter part of the period is not sufficient justification for a continued lack of monitoring and periodic evaluation, given both the length of time that this Article has been in dispute, and our belief that there are some factors that for which measure can reasonably be expected. For example, the objective, as stated in 24.2.1 is that "The Government of Canada and the Territorial Government shall provide reasonable support and assistance to Inuit firms in accordance with this Article to enable them to compete for government contracts." It seems reasonable to conclude that the success in competing for contracts is one measure that needs to be tracked. Further discussion on this matter is provided in the recommendations section.

Cost of monitoring and evaluation. One option to overcome the challenge cited in regards to agreeing with NTI on what should constitute monitoring and evaluation would be for GC to prepare the same type of monitoring and periodic evaluation reports that GN produces, as NTI is in agreement with the coverage of information in these reports. GC has indicated that it would impractical and very costly for them to produce reports identical to what GN produces.

Differences in perceptions regarding the intent of various Sections. There are numerous examples where the wording of the Section is ambiguous. This leads to legitimate differences in opinion about what the true objective or obligation is. For example, it is not clear what is meant by requiring the government to use "all reasonable measures to inform Inuit firms of such bids, and provide Inuit firms with a fair and reasonable opportunity to submit bids" in 24.4.3 or what is meant by "respecting Inuit firms" in 24.3.1. It is believed that this is at the core of many of the issues within these organizations in terms of advancing many of the Articles in the NLCA. The OAG was more pointed in her report that accused INAC of not pursuing the spirit of the land claim.

Lack of knowledge and awareness of NLCA. Many interviewees also reported that there was a lack of knowledge and awareness on the part of employees in the federal government, NTI and GN in terms of the obligations and expectations from the NLCA and its overall significance. Also, the organizations are all struggling with staff turnover, which further exacerbates the problem. It should be noted that it is

difficult to distinguish between differences in opinion and lack of knowledge; in some cases the real issue may be a difference in interpretation, whereas in other cases there may be a lack of awareness of what is required

Definition of 'Inuit-owned business' is a contentious issue in Nunavut communities. At the community level, there is a lot of concern that the definition of what constitutes an Inuit-owned business. Especially in the larger centres where marriages and unions between an Inuk and a non-Inuk are more prevalent, this issue becomes even more contentious. In addition, there has been concern that the criterion for classification of an Inuit business is insufficient. The original definition required only that the business be 51% owned by an Inuk or group of Inuit. However, in some cases Inuit do not have effective management control. We understand that NTI is revising the definition of an Inuit business to include a requirement for Inuit control, in addition to the majority ownership criteria. There is also a second issue, as discussed in Article 35, in regards to enrollment of Inuit.

Lack of funding for training in Nunavut communities. We have heard that there is a lack of human and financial resources, especially in terms of training, thereby effectively preventing Inuit businesses and employees from competing on government contracts. There is no inventory of skills by community and no trade school. Training is difficult to set up, especially if it is difficult to predict when and if more projects that are similar in nature will go to the same community. Interviewees reported that contractors are trying their best, but it is difficult. If people within the community get on the job training with one project, it is unlikely that another project would follow in that community. Hence, building capacity within communities can be very difficult due to the intermittent nature of most contracts.

Lack of service delivery model specifically tailored to Nunavut. The federal government faces a real challenge in this area because it is moving more and more towards a streamlined approach to procurement and service delivery. With regard to procurement, this poses a challenge when trying to encourage procurement from Nunavut-based organizations. Also, differential rules between GN and GC for bidding creates confusion amongst Inuit bidders. With regard to service delivery, "one-size fits all" approaches may be efficient for most of Canada, but often do not work well for Nunavut.

5.24.4 Recommendations

Evaluate and periodically monitor. In our opinion, GC must evaluate and monitor the implementation of this Article. We understand that a committee of the Nunavut Federal Council has started to discuss this requirement. The committee is co-chaired by the Regional Director General of the Nunavut Regional Office of INAC and they can provide any necessary updates.

As an initial step, we believe there are several objective and unambiguous criteria, that could be monitored as a starting point. These are summarized in the following table.

Sections identifying objectives or obligations	Outcome measures
24.2.1, 24.3.6 (a and b)	% of contracts awarded to Inuit firms (in terms of number of contracts and dollar value)
24.3.6 (c) and 24.6.1 (b)	Employment levels of Inuit on government contracts
24.4.2 (b and c)	% of large contracts that are sub-divided
24.5.1, 24.5.2 and 24.5.3	Listing of Inuit firms on invitational bids
24.6.1 (a)	% of contracts awarded to Nunavut-based firms (in terms of number of contracts and dollar value)
24.6.1 (c)	% of contracts with commitments regarding on the job training or skills development for Inuit

It is critical to note that the table above is not meant to be an exhaustive list. This recommendation in no way limits the requirement for GC to cooperate with NTI in monitoring or periodic evaluation; it merely offers a minimum list of measures that are directly related to the objectives and obligations of Article 24.

Agreement on the intent of the objectives and obligations is required. The parties must work together to develop a common understanding of what is required under this Article. An in-depth discussion of an issue identification/dispute resolution process is included in the recommendations portion of the discussion of Article 37.

Reassessment of GC's approach to this Article. We find that GC's communications to us suggested that they believe that this should be looked at with the broader scope of the Government of Canada, in the context of issues of practicality and cost. Their communication repeatedly cited why objectives or obligations did not have to be achieved, rather than what had been done. We believe a significant difference in approach is required. The purpose of this agreement is not to improve the efficiency of GC. We believe the approach should be one of "how does GC meet the objectives and obligations in the most efficient way?"

Leverage successes to date. There are a number of successes where lessons can be learned.

- NTI and GN have reached agreement on a policy to meet these objectives and obligations. GC should examine this approach and the information contained in this evaluation to see what lessons can be learned. For example, translating RFPs into Inuktitut, posting contracts on the local cable, and affecting the bid weighting could have significant impacts.
- All parties should also examine the DND DEW line case, where good success has been achieved in respect to the hiring of Inuit and Inuit contracting levels.
- In those cases where GN and GC have a relationship (e.g. gas tax and rural infrastructure fund), GC has always agreed to let GN's policies and procedures guide all activities.
- Local Contract Authorities with GN have been most successful in achieving high levels of Inuit contractors. The rest of GN, and GC should both try and understand how Local Contract Authorities have achieved these successes. Perhaps these organizations could even work together as a network and manage some of the contracting for the rest of GN and GC.

Better communication between parties is needed. Communications between NTI, the GN and INAC need to be strengthened if we are to see improvements in implementation. The lack of knowledge among employees in these organizations can be overcome by information sharing among INAC, the GN and NTI. This would also help with communications among the three parties. Perhaps there should be mandatory training on the NLCA for employees at all levels, including any ADMs with any connection to Nunavut. The Canada School of Public Service is a place where this could be taught. At one time there was a course offered there by Lois Leslie called "Working in a Modern Land Claims Environment". The course was sponsored by the NFC and Rural Team Nunavut. Senior officials must ensure that the right instructions are provided to employees in terms of the spirit of the agreement. Essentially, a proper model for how to build capacity in Nunavut is needed.

Better data collection and monitoring is necessary to best monitor this Article. To adequately address the issues in this article a framework for data collection and reporting should be created in order to better monitor how this Article was being implemented and to make necessary changes as needed and on an ongoing basis. Data should be shared among all parties that fall under this Article.

Identify and tailor solutions to Nunavut. There are likely a host of federal programs that could provide supports that would facilitate achieving the objectives related to employment and skills development.

However, interviewees generally were not aware of the programs. It would be useful to first identify an inventory of all the applicable programs, and then examine their relevance to Nunavut. Depending on the relevance of these programs, it may be worthwhile placing all or some federal program funding into a broader program with broader terms and conditions, thereby allowing flexibility, rather than forcing Nunavut to have to accept inefficient allocations from a multitude of irrelevant programs.

Establish a division dedicated to supporting GC contracts within the NSA. We note that part of the problem with GC ensuring that all federal departments and agencies meet their obligations with regards to Article 24, and monitoring of this activity, may simply be due to the logistics and costs associated with educating all of the departments. One alternative for achieving this goal cost effectively might be to establish a group within PWGSC specialized in this area to handle contracts in the NSA.

5.25 Article 25 – Resource Royalty Sharing

5.25.1 Status

25.1.1 *Inuit have the right, in each and every calendar year, to be paid an amount equal to: (a) fifty percent (50%) of the first two million dollars ($2,000,000) of resource royalty received by Government in that year; and (b) five percent (5%) of any additional resource royalty received by Government in that year.*

The last Five Year Review found that Royalty payments are calculated on this basis. From interviews with Nunavut Trust and NTI during this review we understand that **this obligation was still being met.**

25.2.1 *Government shall pay to the Nunavut Trust the amounts payable under Section 25.1.1*

25.2.2 *Amounts payable by Government pursuant to this Article shall be calculated on the basis of amounts due to and received by Government in respect of resources produced after the date of ratification of the Agreement.*

The last Five Year Review found that these obligations were being met on an ongoing basis. From interviews with Nunavut Trust and NTI during this review we understand that **these obligations were being met on an ongoing basis.**

25.2.3 *Payments remitted to the Nunavut Trust shall be in quarterly payments on an as received basis.*

The last Five Year Review found that royalty payments were being received late.

From interviews with Nunavut Trust and NTI during this review we understand that, royalty payments have been made on time and **this obligation was being met.** However, we have also heard that the grandfathered lease payments, which are also supposed to be made quarterly were not made quarterly during the first three quarters of the last fiscal year. This occurred due to an administrative error and NTI is satisfied that GC rectified the problem

25.2.4 *Government shall annually provide the Nunavut Trust with a statement indicating the basis on which royalties were calculated for the preceding year.*

The last Five Year Review found that these obligations were not met on an ongoing basis. Specifically, they found that the statements received by the Trust do not contain the detail required to verify the accurate calculation of resource royalty payments. The reason cited was that such a statement would give away confidential information on resource companies.

Nunavut Trust has indicated that during this review period, GC provides information on what was being paid, but the information does not describe how the royalty payment is calculated. The issue is the same as that which arose during the past review; GC signed non-disclosure agreements and has indicated that it cannot provide this information. Hence, **this obligation was not being met.**

25.2.5 *On the request of the Nunavut Trust, Government shall request the Auditor- General to verify the accuracy of the information in the annual statements.*

Nunavut Trust has never exercised this right. Hence, **there has been no occasion to implement this Section.**

25.3.1 *Government shall consult with the DIO on any proposal specifically to alter by legislation the resource royalty payable to Government. Where Government consults outside of Government on any proposed changes to the fiscal regime which will change the resource royalty regime, it shall also consult with a DIO.*

The last Five Year Review found that this obligation had been met.

NTI is requesting some changes to the Canadian Mining Regulations. NTI is satisfied that GC is listening and considering these requests. Consequently, **this obligation was being met.**

5.25.2 Effectiveness of Implementation

While there were some challenges in terms of paying on time in the first period under review, these appear to have been worked out for the most part.

The only obligation that remains to be met is with regard to Section 25.2.4, and Nunavut Trust does not expect the situation to change.

5.25.3 Barriers

The barrier to achieving the obligation of Section 25.2.4 is that GC has signed a non-disclosure agreement which prevents them from sharing obligations of this nature.

5.25.4 Recommendations

The Auditor General should conduct an audit of the royalty payments, taking into account the obligations associated with this Article, and provide an assurance to Nunavut Trust that the royalty payments have been paid in accordance with this Article.

5.26 Article 26 – Inuit Impact Benefit Agreements

5.26.1 Status

5.26.1.1 Background

IIBAs are required for all Major Development Projects as that term is defined in Article 26. To date, all of the Major Development Projects have been mining related projects. NTI has designated the Regional Inuit Associations as the Designated Inuit Organizations under Article 39 to conclude Major Development Project IIBAs.

Only one IIBA was concluded within the review period – this is the IIBA for Tahera Diamond Corporation's Jericho project in the Kitikmeot region. The IIBA was negotiated between and signed by Tahera Diamond Corporation and the KitIA on September 9th, 2004.

Since that time, negotiation has begun on numerous additional projects. In the Kitikmeot region, the KitIA have agreed in principle on an IIBA with Miramar for its Doris North project. Discussions are underway with another developer. In the Kivalliq region, the KivIA, NTI and Cumberland Resources Inc have recently (in the early part of 2006) agreed in principle on an IIBA for the development of the Meadowbank project. In each of these cases, interviewees have noted that the RIAs have learned more about where the "loopholes" and potential problems can occur, and have subsequently built stronger IIBAs.

Although NTI has responsibility under Article 39 of the NLCA for making and revoking designations, NTI's involvement in the Article 26 IIBA process has been informal and sporadic; it was not involved in a significant way in the first IIBA.

One of the concerns that we noted with the negotiation of IIBAs was that there was no common repository of examples of how each of the objectives have been met in other mining projects. We recommended at that time that an inventory of "best practices" and common packages of benefits be developed, so that the communities and RIAs can appreciate existing examples.

5.26.1.2 Assessment

26.2.1 *Subject to Sections 26.11.1 to 26.11.3, no Major Development Project may commence until an IIBA is finalized in accordance with this Article.*

NTI and RIA interviewees have reported that **this obligation was being met.**

26.3.1 *An IIBA may include any matter connected with the Major Development Project that could have a detrimental impact on Inuit or that could reasonably confer a benefit on Inuit, on a Nunavut Settlement Area-wide, regional or local basis. Without limiting the generality of the foregoing, the matters identified in Schedule 26-1 shall be considered appropriate for negotiation and inclusion within an IIBA.*

Schedule 26-1 contains the following:

1. *Inuit training at all levels.*
2. *Inuit preferential hiring.*

3. Employment rotation reflecting Inuit needs and preferences.
4. Scholarships.
5. Labour relations.
6. Business opportunities for Inuit including:
(a) provision of seed capital;
(b) provision of expert advice;
(c) notification of business opportunities;
(d) preferential contracting practices.
7. Housing, accommodation and recreation.
8. Safety, health and hygiene.
9. Language of workplace.
10. Identification, protection and conservation of archaeological sites and specimens.
11. Research and development.
12. Inuit access to facilities constructed for the project such as airfields and roads.
13. Particularly important Inuit environmental concerns and disruption of wildlife, including wildlife disruption compensation schemes.
14. Outpost camps.
15. Information flow and interpretation, including liaison between Inuit and proponent regarding project management and Inuit participation and concerns.
16. Relationship to prior and subsequent agreements.
17. Co-ordination with other developments.
18. Arbitration and amendment provisions.
19. Implementation and enforceability, including performance bonds and liquidated damages clauses.
20. Obligations of subcontractors.
21. Any other matters that the Parties consider to be relevant to the needs of the project and Inuit.

As part of this review, the Tahera IIBA (the only one finalized during the review period) was reviewed. The IIBA makes provisions for hiring and training Inuit workers and for contracting with Inuit firms, for cross-cultural orientation and training for project staff and contractors. It also addresses the issue of working language (i.e. Inuit who do not speak English may still work in areas that do not require the language), and accommodates the desire of Inuit to have time off for cultural pursuits (e.g. during the hunting season).

KitIA has developed an Action Plan. The Action Plan is divided into sections cross-referencing the Agreement, Schedules or Appendices of the IIBA. The Action Plan, while not replacing the IIBA, provides general guidance to those persons involved with the implementation of the IIBA on behalf of the KitIA. This version of the Action Plan is intended to assist those KitIA personnel involved in future Implementation Committee meetings. For each section of the IIBA, the plan identifies the requirement, the status, and the action required. More specifically, the requirement section describes what must be done and by whom. The status section identifies includes information such as “done”, “needs work”, key areas of focus for labour force development plan, etc. The action describes what must be done, sometimes citing specific time frames.

This document is confidential and PwC is not permitted to comment on the findings in the document. We do note that the document appears to be a very useful tool for tracking outcomes against the plan. We also found that posters describing the Scholarship Program and the Community Development Fund, funded by the developer, and associated application forms have been made available. We note that the forms, at three and four pages respectively appear to be straightforward and not overly long. The forms were in Inuktitut or Innuinaqtun, as appropriate to the region.

While parts of the IIBA are subject to confidentiality restrictions, we note that a number of matters identified for consideration for IIBAs under Article 26 are not addressed in the parts of the Tahera IIBA that have been provided to us. For example, Article 26 provides that important Inuit concerns related to the environment and disruption of wildlife are matters appropriate for inclusion in the IIBA. The IIBA describes the intent to achieve: environmental safety, reasonable efforts to return the site to a pre-development condition, prevention of substantial effects on surface and ground water quality or quantity, implementation of effective erosion control measures, prevention of adverse effect from drainage, minimization of areas of disturbance and to the extent possible restricting disturbance to less environmentally sensitive areas, etc. The document does not describe – at least in the non-confidential portions, the particularly important environmental concerns and disruption of wildlife, including wildlife disruption compensation schemes. In the absence of the identification of "important concerns" we note that the standard to be adhered to, in terms of "prevention of substantial effects" is less rigorous than the requirement not to create more than "insignificant damage" for government entrants on to the land in Section 21.5.5. Interviewees have noted that the NIRB and NWB processes are appropriate places to address these issues; however, it is clear that Article 26 anticipated important Inuit concerns being negotiated between the develop and Inuit. We also note that liquidated damages and performance bonds, recognized as appropriate in section 26.9.1 and Schedule 26-1, are also not included in the public portions of the IIBA.

KitIA has noted that it participates fully in NIRB and NWB reviews of Major development projects. They have further stated that terms and conditions in the project certificate and water license deal with many of these outstanding environmental issues listed above. Also, if projects are on Inuit Owned Land, KitIA, which has been designated as the DIO with responsibility for making claims for wildlife damage, can demand specific terms and conditions related to the lease such as wildlife mitigation and monitoring plans above and beyond the NIRB project certificate. KitIA can specify mine closure, water quality, and reclamation standards. KitIA can also; specify amounts of reclamation security required to clean up Inuit Owned Lands; and deal with water compensation through article 20. Thus there are a variety of mechanisms to protect Inuit rights. Hence, rather than duplicating efforts, KitIA, with responsibility for many of these overlapping areas, chose to deal with this issue outside the IIBA, as is their prerogative.

We found that consideration of the environment is particularly important to beneficiaries in the communities. During our focus groups and discussions in the communities, we often heard a concern that the environment and wildlife are unduly sacrificed to economic development. We do not have any evidence that this mining activity led to environmental or wildlife damage. Our point here is to note only that it was identified as a matter to consider in IIBAs, that it does not appear to be explicitly addressed in this IIBA, and that there have been concerns raised by beneficiaries in a number of communities across Nunavut (not necessarily in the community affected by this IIBA).

In summary, we fully agree that the RIAs should chose to deal with these matters in a way that they find to be most efficient, which may be outside the IIBA. However, we suggest that a listing of community concerns in this area be developed. This would illustrate that the community-specific concerns were noted and ensure that the undertaking of obligations within the NLCA can be effectively monitored through time.

We also note that it where the project is not located on Inuit Owned Lands, the DIO may not have the same powers to redress problems. Consequently, exclusion of detailed environmental considerations may represent a failing of the IIBA.

We have also heard more general concerns from the community. For example, we have heard that "when there is exploration going in our community, non-Inuit seem to benefit and determine the rules before Inuit have had a chance to understand the situation".

While no other IIBAs were completed within the review period, we noted that numerous ones were initiated during or immediately following the period. We understand from interviews with RIAs and NTI that negotiators are seeking to learn from each other and recognize "loopholes" that occurred in earlier IIBAs, and learn from them to strengthen later IIBAs. As there were no other IIBAs negotiated within our review period and we have not been given copies of any IIBAs negotiated since the review period, we cannot assess the extent to which these IIBAs go beyond the Tahera IIBA.

NTI has recently become involved in the process of KivIA's negotiation of an IIBA for the Meadowbank project. We understand that KIA has seen these additional supports to be very helpful, as NTI has a broader base of specialized resources that they can bring to the table.

26.3.2 *An IIBA shall be consistent with the terms and conditions of project approval, including those terms and conditions established pursuant to any ecosystemic and socio-economic impact review.*

NTI has reported that **this obligation was being met**.

26.3.3 *Negotiation and arbitration of IIBAs shall be guided by the following principles:(a) benefits shall be consistent with and promote Inuit cultural goals; (b) benefits shall contribute to achieving and maintaining a standard of living among Inuit equal to that of persons other than Inuit living and working in the Nunavut Settlement Area, and to Canadians in general; (c) benefits shall be related to the nature, scale and cost of the project as well as its direct and indirect impacts on Inuit; (d) benefits shall not place an excessive burden on the proponent and undermine the viability of the project; and (e) benefit agreements shall not prejudice the ability of other residents of the Nunavut Settlement Area to obtain benefits from major projects in the Nunavut Settlement Area.*

Interviewees reported that it has been the intent throughout the negotiating processes to achieve these benefits. **However, there has been no formal evaluation to assess whether or not these objectives have been achieved.**

26.4.1 *At least 180 days prior to the proposed start-up date of any Major Development Project, the DIO and the proponent, unless they otherwise agree, will commence negotiations, in good faith, for the purpose of concluding an IIBA.*

NTI has reported that **this obligation was being met.**

26.5.2 *Where the parties reach agreement through voluntary arbitration, the agreement shall be written in the form of a contract and a copy sent to the Minister.*

26.6.1 *Where full agreement has not been reached, within 60 days after negotiation has been commenced, and where the DIO and the proponent are not engaged in voluntary arbitration, either party may apply to the Minister for the appointment of an arbitrator. The scope of the arbitration shall include the full range of benefits possible in an IIBA, unless the parties agree the range should be restricted.*

26.6.3 *Within 15 days of an application to the Minister for the appointment of an arbitrator, an arbitrator shall be appointed with the approval of the parties negotiating the IIBA. If the parties cannot agree on the appointment of an arbitrator, the arbitrator shall be appointed by the Minister from a standing list of arbitrators which has been approved jointly by the DIO and by those industry organizations determined by Government to be relevant.*

26.6.4 *An arbitrator, within 60 days of his or her appointment, or within 60 days of upholding an allegation of bad faith, shall: (a) ascertain the views and proposals of both the DIO and the proponent; (b) submit a decision in the form of a contract to the parties; and (c) send a copy of the decision to the Minister.*

26.6.5 *Costs of the arbitrator and the parties shall be borne equally by the parties, unless otherwise determined by the arbitrator. Costs of the DIO incurred in arbitration dealing with compensation pursuant to Section 26.11.4 shall be borne by the proponent of the Major Development Project, unless otherwise determined by the arbitrator.*

26.8.2 *If the Minister makes a determination pursuant to Section 26.8.1, the Minister shall provide written reasons and may provide direction for achieving conformity or remedying the excess of jurisdiction.*

26.10.1 *Except where otherwise agreed by the proponent and the DIO, an IIBA shall provide for its renegotiation.*

26.11.1 *The DIO and the proponent of a Major Development Project may agree that an IIBA is not required.*

26.11.3 *If, once negotiations have begun on an IIBA, the proponent finds it necessary for the project to start sooner than the projected start-up date, the Minister may, if the project has received approval from the appropriate agencies, authorize the project to commence: (a) if the parties agree; or (b) if the delay would jeopardize the project. Where the Minister proposes to exercise this authority, the Minister shall consult with the parties and, where one has been appointed, the arbitrator.*

26.11.4 *If, pursuant to Section 26.11.2 or 26.11.3, a Major Development Project commences prior to an IIBA being concluded, the arbitrator shall ensure that benefits received by Inuit shall include compensation, which may be in the form of replacement benefits, for the benefits lost through the early commencement of the Major Development Project.*

None of the IIBAs have gone to arbitration as of this point in time. Therefore, there has been **no occasion to implement any of these obligations.**

5.26.2 Effectiveness of Implementation

The requirement to develop and implement Article 26 IIBAs has been widely recognized and taken seriously by all parties. While there had only been one IIBA concluded within the review period, there

have been a host of new developments. The RIAs are reaching out to each other and NTI to identify best practices, and RIA representatives that are newly entering this process are finding it quite helpful.

Article 26.3.3 indicates the importance of striking a balance in which benefits are required to promote Inuit cultural goals and to contribute to achieving and maintaining a standard of living among Inuit equal to that of other Canadians, while not placing an excessive burden on the proponent and undermining the viability of the project. In the absence of a review of existing Article 26 IIBAs to assess their successes and failures, it is impossible to determine whether the obligations and objectives of Article 26 are being achieved.

As noted above, PwC has not been permitted to publish data on the levels of Inuit training, employment and contracting achieved in the Jericho project, or the success of implementing other programs called for by that IIBA, and it does not appear that any such data has been made publicly available. We do note that The Jericho project has been under construction for less than a year and has not even 'opened' as a mine. Data may not be available yet.

We understand that there are inherent industry-standard pressures to keep quantitative information on outcomes confidential. We also understand that as RIAs develop more IIBAs, and learn from experience, there may be inherent benefits to keeping these confidential. However, such confidentiality, which translates into a lack of transparency, makes it difficult for PwC as reviewers and the general public to appreciate what the full terms of conditions were, what the performance has been and what consequences or penalties have been applied in circumstances where commitments were not met.

As noted in the background, PwC has been involved in assisting in the analysis of proposed IIBAs. One of the things that we noted was that there was no common repository of examples of how each of the objectives has been met in other comparable mining projects. We believe that an inventory of "best practices" and common packages would make the process more efficient.

It is also important to note that beneficiaries in the community have expressed to PwC that they believe that it is important for them to be able to achieve the economic opportunities that are possible, and want to ensure that they receive the benefits, but they are also concerned that development not bring harm to wildlife or the environment on which they depend for sustenance and cultural purposes. We understand that during negotiations, beneficiaries in the communities are consulted. For example, in the Kitikmeot region, one RIA interviewee noted that during the negotiation phase, there would likely be two meetings with the community, where all beneficiaries would be welcome to attend. The developer would deliver a presentation. These presentations were conducted in Inuktitut or Innuinaqtun, as appropriate to the region.

5.26.3 Barriers

Lack of Experience

Interviewees indicated that a lack of experience among many of the RIAs was a significant challenge to successful implementation. There are currently no model provisions, guidelines or comparative data available to the RIAs to assist them in negotiating effective Article 26 IIBAs.

Lack of Historical Monitoring Information

There have been no formal reviews or available monitoring data of the existing Article 26 IIBAs to assess how well the objectives of Article 26 and of particular IIBAs are being achieved.

Lack of Knowledge among Beneficiaries

Even for those involved in the negotiation process, who devote days and weeks and months to this, grasping all of the complexities, opportunities and risks is very difficult. Beneficiaries that have neither the training nor the involvement in the process are finding it difficult to effectively participate in discussions and opportunities.

Confidentiality Limits Transparency

We appreciate that private companies do not want information on financial and quantitative information made public and can provide benefits in future negotiations. However, the lack of publication of such information prevents beneficiaries from appreciating whether they are being promised, and whether they are receiving, a fair share of benefits.

5.26.4 Recommendations

Develop models and guidelines, and an inventory of best practices and examples of common packages of benefits

We believe that such an inventory is critical to ensuring that beneficiaries achieve the maximum benefits, with the maximum efficiency. NTI and the RIAs should work together to develop model provisions, guidelines and comparative data to assist them in negotiating effective Article 26 IIBAs.

Monitor Outcomes

Given the rapid expansion in the need for IIBAs, we believe that a system of tracking what was agreed on, what the outcome has been and how the process has gone should be developed by NTI and the RIAs. For example, detailed data on training, employment and contracting, and social and other programs is needed.

Agree on a Role for NTI

NTI has a broad base of specialized resources and can be of valuable and efficient supporter to the RIAs. NTI and the RIAs should formally agree on NTI's role throughout the negotiating process. While this role may vary from region to region and even from project to project, as needs require, it is important to consider what value NTI can bring and leverage it accordingly.

Raise Awareness Amongst and Empower Inuit

NTI and the RIAs should increase their assistance to local Inuit in affected communities to educate them about the opportunities, and about what benefits other communities typically receive and provide them with the opportunity present their concerns to and participate in NIRB and NWB processes. NTI and the RIAs should actively engage local Inuit in IIBA negotiations from start to finish, to ensure that local Inuit issues are addressed in the IIBAs.

Ensure Transparency and Accountability to Inuit

Serious consideration should be given to making IIBAs, including provisions related to funding and monitoring of outcomes, available to the public. Trade secrets and similar information of a proprietary nature should be exempt from such publication.

5.27 Article 27 – Natural Resource Development

5.27.1 Status

27.1.1 *Prior to opening any lands in the Nunavut Settlement Area for petroleum exploration, Government shall notify the DIO and provide an opportunity for it to present and to discuss its views with Government regarding the terms and conditions to be attached to such rights.*

27.1.2 *Prior to the initial exercise of rights in respect of exploration, development or production of petroleum on Crown lands in the Nunavut Settlement Area, and in order to prepare a benefits plan for the approval of the appropriate regulatory authority, the proponent shall consult the DIO, and Government shall consult the DIO, in respect to those matters listed in Schedule 27-1.*

27.2.1 *Prior to the initial exercise of rights in respect of development or production of resources other than petroleum on Crown lands in the Nunavut Settlement Area, the proponent shall consult the DIO in respect to those matters listed in Schedule 27-1.*

27.2.2 *The consultation provided for in this Part shall balance the needs of the DIO for information, an opportunity for discussion among Inuit, and the needs of Government and the proponent for timely and cost-effective decisions.*

27.3.1 *The obligations to consult under Sections 27.1.2 to 27.2.2 shall apply mutatis mutandis to operators whose rights are continued under Section 21.7.2*

According to interviews, GN published a call for nominations for land for petroleum exploration in 2000. NTI and the RIAs were involved in this process. There have been no nominations for land since, and nothing further has been undertaken.

INAC Oil and Gas Directorate has been conducting calls for nominations for oil and gas in the high arctic every year since 2000.

At this point in time, **the obligation of 27.1.1 has been met, and there has been no occasion to implement the remaining objectives and obligations**.

5.27.2 Effectiveness of Implementation

The obligations have been met and were done so without undue problems.

5.27.3 Barriers

No barriers have been identified.

5.27.4 Recommendations

No recommendations are required at this time.

5.28 Article 28 – Northern Energy and Minerals Accords

5.28.1 Status

28.1.1 *The Territorial Government shall include representatives of the Tungavik in the Territorial Government team to develop and to implement northern energy and minerals accords with the Government of Canada.*

GN and NTI concluded an agreement to make NTI a full party to the devolution negotiations and a formal signatory. GC is still obtaining its mandate in this matter. The parties are working to identify the scope of the federal authorities, program responsibilities and resources to be transferred to GN. We conclude that **this obligation was being met.**

28.1.2 *Section 28.1.1 shall not impose any obligations on the Government of Canada or the Territorial Government to negotiate or to conclude northern energy or minerals accords..*

Interviewees agree that **this obligation has been met.**

5.28.2 Effectiveness of Implementation

Given that both of these obligations have been met, and all parties are satisfied with the process, and we have not heard of serious problems with the process, it appears that this article was being implemented effectively.

5.28.3 Barriers

No barriers were identified.

5.28.4 Recommendations

The parties must continue to work together as they are currently doing.

5.29 Article 29 – Capital Transfer

5.29.1 Status

29.1.2 *The Government of Canada shall make additional capital transfer payments to the Nunavut Trust as listed in Schedule 29-2.*

29.1.3 *The capital transfer payments referred to in Sections 29.1.1 and 29.1.2 include the Government of Canada's funding obligations in respect of the Nunavut Social Development Council and of the Inuit Heritage Trust, but such payment shall in no way affect the eligibility of the Council or Heritage Trust to apply for and receive government funds available for similar institutions in the Nunavut Settlement Area and throughout Canada by way of government grants, core funding, or other such funding mechanisms.*

According to interviews with Nunavut Trust, **these obligations have been achieved.**

29.1.4 *Any payment to which the Nunavut Trust is entitled under Section 29.1.2 shall, if the Trustees of the Nunavut Trust so direct, be paid directly to any beneficiary of the Trust.*

According to interviews with Nunavut Trust, the Trustees have never directed any payment made by the GC to be paid directly to a beneficiary organization. Given that the Trustees have had the final say, as is required by this Section, **this obligation was being met.**

29.2.1 *The Nunavut Trust shall repay the negotiation loans of the Tungavik Federation of Nunavut in accordance with Schedule 29-3.*

With the decline in interest rates since the signing of the NLCA, the Nunavut Tunngavik Inc realized it would be less expensive to borrow from banks than to continue paying 6% interest to GC. As a result, Nunavut Tunngavik Inc. borrowed money from the bank to repay the loan from GC. In order to approve the loan, the bank required Nunavut Trust to agree to make the same payments as it was under the original plan, and Nunavut Trust expects that the total saving by the end of the repayment period will be in the order of about $200,000. **This obligation was being met.**

29.2.2 *The Government of Canada may deduct any amounts due under Section 29.2.1 against payments referred to in Section 29.1.2.*

Nunavut Trust indicated that GC has done this, as allowed for**. This obligation was met.**

29.3.1 *At any time after three years from the date of ratification of the Agreement, the Nunavut Trust may request a loan from the Government of Canada against the then unpaid balance of the capital transfer.*

29.3.2 *If the Government of Canada agrees to consider the request, the Minister of Finance, representing Canada, and the Nunavut Trust will negotiate the amount and terms and conditions of the loan.*

29.3.3 *The Minister of Finance is authorized to consider a request and to grant a loan, on terms and conditions as agreed, up to the amount requested, if the Minister of Finance is satisfied that: (a) the loan is intended for the social or economic development of Inuit; (b) in any year, the unpaid balance of the capital transfer payment is sufficient to cover the total of all outstanding loan repayments, interest and fees required of the Nunavut Trust; (c) the terms and conditions of the loan, including the amount of the loan, the timing and amount of repayments, and the interest rate, (i) are consistent with government policies and practices for granting loans, and (ii) enable the Minister to manage public disbursements and ensure fiscal constraint; and (d) an amount to be paid is available for that purpose from the applicable Parliamentary appropriation.*

Nunavut Trust has not made any such requests of GC. **There has been no occasion to implement these Sections.**

5.29.2 Effectiveness of Implementation

The obligations in this Article have all been met. In addition, Nunavut Tunngavik Inc. has substituted lower cost bank debt for higher cost government debt, and anticipates that this will reduce the overall cost of the debt. According to reports from Nunavut Trust in regards to a study done by RBC, it has also managed to deliver superior returns. Finally, Inuit have been involved, both through their participation on the Board, and employment within the Trust.

5.29.3 Barriers

No barriers have been identified at this time.

5.29.4 Recommendations

No recommendations are required at this time.

5.30 Article 30 – General Taxation

This Article identifies general taxation requirements. We spoke with interviewees from NTI and GN. Interviewees were not aware of any concerns, and thus neither barriers nor recommendations were offered.

5.31 Article 31 – The Nunavut Trust

5.31.1 Status

5.31.1.1 Assessment

31.1.3 *The Nunavut Trust shall be subject to control by its trustees, who shall be selected by Regional Inuit Organizations or through some other method that ensures conformity with Section 39.1.6.*

The first Five Year Review concluded that this obligation had been met. The review found that: "The Trust Deed is compliant. With respect to "sound management", the Trust has objects that include investing as a "prudent" person would, professional investment managers, independently evaluated performance, a publicly stated rationale for the current investment approach, and an investment policy with guidelines."

Interviews with Nunavut Trust provided us with an assessment of the history and the current situation. As mentioned in the previous review, a Trust Deed was created in 1990 and Trustees were appointed at that time. The Trust is managed by the Trustees. At the beginning, trustees were appointed by the RIA Board members. Over time the RIAs have increasingly sought input from the public about who wishes to be considered a trustee. The Board goes through the resumes and picks the people who in their opinion are best qualified to do the work. There are two trustees up for appointment in each year for three year terms on a rolling basis. Consequently, **this obligation was being met.**

31.1.6 *The Nunavut Trust shall provide for the protection and enhancement of settlement assets based on sound management practices.*

The first Five Year Review concluded that this Section had been met. The review found that: "The Trust Deed is compliant. With respect to "sound management", the Trust has objectives that include investing as a "prudent" person would, professional investment managers, independently evaluated performance, a publicly stated rationale for the current investment approach, and an investment policy with guidelines."

The Nunavut Trust is managed by professionals with expertise in this area. The current CEO formerly managed CMHC's pension fund. They have put in place the policies and processes that would be expected for any large institution or endowment fund. They have an investment advisory committee. Members of the committee have all been active in investing funds of this nature (it includes for example: a former manager of Alcan's pension fund, who sits on many boards, a former investment manager for the Bronfman fund, and other similarly skilled people).

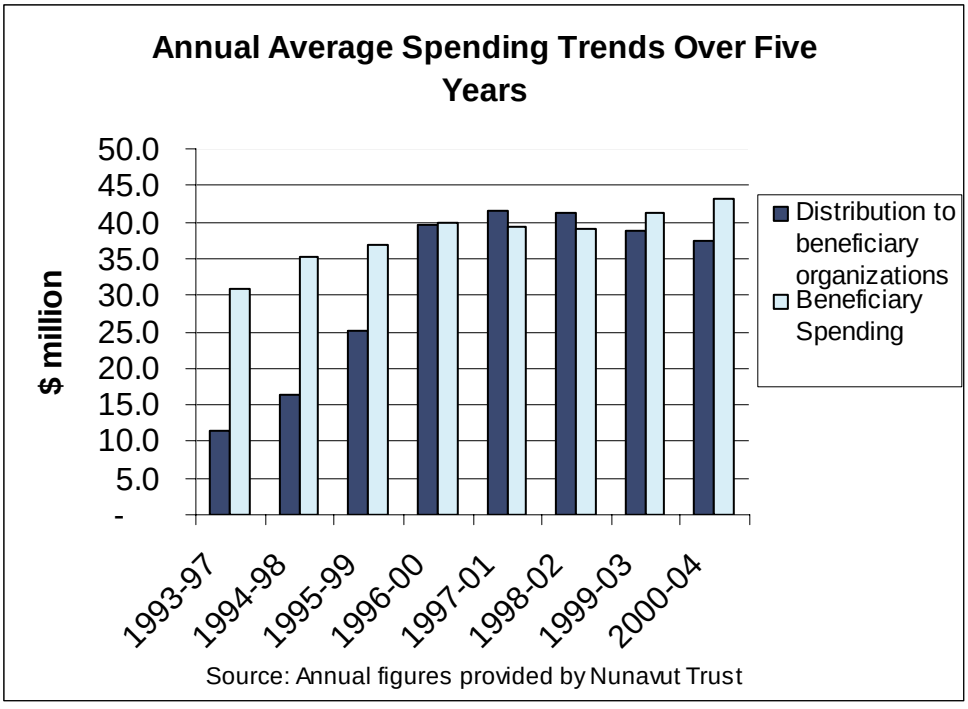
The Trust is continuously evaluated to ensure that the assets are protected and preserved. The goal is to have the $1.14 billion in market value of the assets in the Trust, by the end of 2007. They examine payments, net of negotiating debt and found that last year they were ahead of target by about $2 million. In addition, Deloitte and Touche worked with the Trust on an internal audit. In their report, they concluded the following:

- "*The Trust has put in place sound management practices that take into account the nature of the Trust and the requirements under the Deed of the Trust."*
- "*Th*e Trust's costs of operations are in line with industry standards."

Deloitte and Touche did state that it was important for NTI to repay its debt to the Trust. Nunavut Trust provided the following assessment of debt owed to Nunavut Trust. NTI owed the Trust a little over $101 million and the Nunavut Elders' Pension Trust owed almost $18 million for a total outstanding debt of approx $119 million at the end of 1994. Although the 2005 external audit is not yet complete Nunavut Trust expects the balance to increase. NTI's debt accumulated because NTI requested funding for operations and one-time investments from the Trust that in aggregate was in excess of the annual income distribution. A portion of the accumulated debt was repaid in the late 1990's when the income distribution exceeded the total requests for funding bringing the total to its current balance.

Investment market returns are cyclical. Some years the returns exceed the long term averages, and in others the returns do not, and may on occasion actually be negative. Given the cyclicality of the investment market, and the variance in inflows, the income paid to NTI varies substantially on an annual basis. Similarly, NTI's spending is likely to be somewhat varied on an annual basis, and this variance is unlikely to be related to market cyclicality. The following chart illustrates the five year annual average distribution and spending. It is clear that the distribution increase up until 2001. The rapid increase in these years, followed by the slight decline in later years was largely attributed by Nunavut Trust to the technology boom and bust.

Spending also increased dramatically over the early years and then leveled off. It has increased again slightly in recent years. In order to preserve the capital as intended, slight reductions in spending and/or increased income are required. NTI is developing a strategic plan to reduce spending. They also noted that a large part of the debt can be attributed to the $88 million one time investments in Atuqtuarviq Corporation, a health facility and economic development investments. NTI indicated that it wanted to pursue a more aggressive investment strategy near the turn of the century and the Trust increased its equity proportion from 60% to 75% to increase its average long-run returns.



Currently, the Trustees have decided to provide funding in aggregate to beneficiary organizations at a level of 4% of a moving average of the market value of Trust assets. Nunavut Trust indicated that studies done in the USA of major endowments show that this is consistent with the norm in order to preserve the

capital. Nunavut Trust believes it can provide this level of funding, pay their operating expenses and still grow the corpus of the Trust at the rate of inflation thus preserving the real buying power of Trust assets. If Nunavut Trust does better than this, they have indicated there should be excess income available to repay the debt gradually over time. Practically speaking, Nunavut Trust believes it would be difficult for NTI to make massive budget cuts to repay the loan quickly. At the present time, they are starting a review to bring spending into line with the amount of funding that will be available under the 4% formula. Since Trust assets are a little ahead of schedule (without taking the NTI loan into account) the Trustees aren't requiring immediate repayment of the outstanding loan. They do want to see the loan extinguished over time. As long as the debt is outstanding, the Trust is foregoing the opportunity to earn income on $119 million of assets and the taxable amount of that income would be available for distribution so as long as the loan is outstanding there is an opportunity cost.

NTI has also noted that while there was a foregone opportunity to earn interest on the money, the money did contribute to "capital developments" in Nunavut.

According to Nunavut Trust, a study by RBC Global showed that Nunavut Trust was ranked at about the 35th percentile (the top third) of their peer group (the peer group was comprised of about 90 foundations and endowment groups measured by RBC) global, *for the 10-years ended December 31, 2005*.

31.2.1 *The following information shall be freely available to all Inuit:*

(a) the trust deed establishing and governing the Nunavut Trust;

(b) the constituting documents of the principal beneficiary and any other beneficiaries of the Trust; and

(c) annual reports detailing the activities and finances of the Trust, its principal beneficiary, and any other beneficiaries.

The first Five Year Review found that this Section was being partially met on an ongoing basis. The Trust Deed and annual reports appeared to be generally available. Constituting documents, although rarely asked for, were not readily available when requested.

In the course of this review, we have learned that the trust deed, constituting documents and annual reports are freely available. However, only one of the constituting documents are in Inuktitut.

The Nunavut Trust web site provides a host of information on the investment philosophy, strategic plan, Board and Advisory Committee, financial highlights, etc.

This obligation was being met, with the exception of the availability of all of the constituting documents being available in Inuktitut.

5.31.2 Effectiveness of Implementation

The Nunavut Trust has been successful in preserving the capital, and has outperformed many similar types of funds. It is also important to report that two of the four staff are Inuit. The Nunavut Trust reported that their strong performance has encouraged other land claim interest groups to look to the Trust for advice and support over the last couple years.

It is also important to report that in addition to having the required Inuit involvement (through the Trustees), and achieving sound market performance, Nunavut Trust has sought to respect the broader goals of the NLCA. Two of the four employees are Inuit (even though there is no requirement for this). In addition, Trustees and one of the Inuit, Inuktitut-speaking staff members travel throughout the communities. They speak at the schools, with the goal of raising awareness about: the mandate and the

performance of the Trust, the importance of managing money properly, and the skills required to perform the job of the Trust. They strive to visit about two communities in each of the three regions each year (expecting to visit all communities over a five year period). Despite the cost of travel in the north, they do not see this as a costly activity. They keep costs down by just having one staff member and Trustees closest to the communities go, and by tagging these events along with other events.

We have heard concerns from numerous beneficiaries who fear that NTI's spending is not careful enough. In particular, we have heard concerns about "excessively high salaries" within NTI. We have also heard concern from the communities about royalty sharing. There are two types of royalties: those paid to the Trust from royalties earned on Crown Land and those paid to NTI for royalties on Inuit Owned Land. Beneficiaries within the community have indicated that they feel that development from economic opportunities should result in royalty payments being made to the local communities, not just the Trust and/or NTI. One of the challenges with doing so would be splitting up the debt by organization however.

Another concern is that NTI has increasingly borrowed more money from the Trust in order to support high average spending levels. This is particularly important as there are currently no royalties being received by the Trust since there are no mines paying royalties at this time. There are many mines that are currently in the early stages of development, but it will likely be many years before they generate any royalties because arrangements usually enable companies to focus on writing-off all their capital costs before they have to pay royalties (as is the common market standard). NTI is aware of this problem, and is implementing a plan to reduce spending to a sustainable level

5.31.3 Barriers

Currently there are three issues or potential concerns to note:

- **Increases in spending by NTI.** As discussed, current annual spending is outpacing current distribution levels, and needs to be reduced.
- **Volatility in the market**. The market will always be subject to some volatility. In addition, the general rule of investment is the more risk you take, the higher, on average over a long period of time, your returns will be. There is always a risk that returns will be lower than expected.

5.31.4 Recommendations

Caution about Spending is Required

We understand that beneficiary organizations have over spent, relative to their income, particularly in recent years. The debt was approximately $120 million in 2004. We understand that the recent increases were planned to strategically support key initiatives in Nunavut, and that reductions in spending are planned for the future. It will be important to ensure that costs are brought back down to about 4% (approximately $40 million annually). NTI should also focus on generating additional revenues (e.g. compensation from IIBAs for resource development, accessing other government funding, etc.). This would provide greater financial resources to NTI (either to pay off the debt faster, or invest in new initiatives), and would be consistent with the community's desire for economic development.

Publish Annual Report in full on the Internet in Inuktitut, Innuinaqtun and English

Currently only financial highlights are published on the Internet. We understand that Nunavut Trust will be posting the annual report there as well. This Article does not require that information be published in Inuktitut or Innuinaqtun. However, the Trust's annual report is published in English, Syllabics and Innuinaqtun. The Trust Deed is also available in English and Syllabics. Given that the information on the

Internet is primarily English, we recommend that the annual report (and other key information), be published in Inuktitut and Innuinaqtun. We understand that this was being done.

Consultation with Communities

NTI and the RIAs should consider the interest of the communities in receiving some of the royalty payments associated with economic opportunities in the region. NTI should also communicate NTI's spending behaviour and seek to provide comfort to the communities that it is spending responsibly.

5.32 Article 32 – Nunavut Social Development Council

5.32.1 Status

5.32.1.1 Background

The NSDC was incorporated to operate as a non-profit DIO in accordance with Section 32.3.2 of the NLCA in 1996. NSDC headquarters were moved from Iqaluit to Igloolik in 1997. Later, in March 2002, the Board of Directors of NTI revoked the NSDC's status as a DIO and established the Social and Cultural Development Department (SCDD) within NTI to act as the "NSDC" NTI's Board Members assumed the additional role of serving as Members of the Board of SCDD and its headquarters was moved back to Iqaluit.

5.32.1.2 Assessment

32.1.1 *Without limiting any rights of Inuit or any obligations of Government, outside of the Agreement, Inuit have the right as set out in this Article to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area.*

32.2.1 *Government obligations under Section 32.1.1 shall be fulfilled by Government:*

(a) providing Inuit with an opportunity to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, in the Nunavut Settlement Area; and

(b) endeavouring to reflect Inuit goals and objectives where it puts in place such social and cultural policies, programs and services in the Nunavut Settlement Area.

While the last Five Year Review did not assess the status of 32.1.1, it found that the obligations of Section 32.2.1 had been met in the distant past; however, it was not being met at the time of the last Five Year Review. It was reported that INAC had not implemented mechanisms to advise federal government departments of the provisions of this article.

Assessing whether the objectives of this section have been met is a very complicated task. We considered the following points:

- NTI highlighted the complexity of the obligations under this Section. The intent of the article is to enable Inuit to participate, which is a significant undertaking. There are approximately ten files that fall under SCDD, some of the main files are: health, education, language, justice. Each one of these individual files is enormously complex. SCDD has not had the capacity to extensively review and comment on all aspects of the design and delivery of all the programs that fall under Inuit social and cultural issues. For example, there are many working groups and SCDD does not have the resources to act as full participants on all of these working groups. It is very difficult to assess at what level of detail SCDD should be involved in.
- Many interviewees noted that there was little consultation with Inuit until NTI took over the SCDD (in 2002).
- There were differences in opinion regarding whether the objectives of this Section have been met. Most interviewees with the GN indicated that there was some involvement of Inuit, through NTI. Some people thought this was infrequent, while others thought it happened all the time. Similarly,

interviews with GC elicited responses varying from: this objective was always achieved, to it was not achieved.

- There were several more detailed points concerning **GN and SCDD:**
  - There are numerous examples of how GN and NTI have been working together.
    - The DMs of Executive and Intergovernmental Affairs of GN and the CEO of NTI (the lead responsible for SCDD within NTI) meet on a weekly basis to discuss issues as they arise. This provides an opportunity for SCDD to clearly and efficiently influence decision-making at the highest level.
    - The GN and SCDD have a working group that is developing a document with new legislation and policies on a variety of subjects that fall under this Section, such as archaeology, education and languages.
    - SCDD sits on an official GN committee on language in the NSA.
  - One of the interviewees from GN noted that this article has been achieved, but it has happened at the expense of survey fatigue and consultation overload. They further note that some people do not see the importance of the consultations because they think the decisions are not going to change anything; that the organization will do what it has always planned on doing, regardless. The challenge is to ensure that effective consultation, which the organizations are having difficulty achieving.
- There were also several detailed points concerning **GC and SCDD:**
  - An interviewee from GC noted that GC was involving Inuit in the development of social and cultural programs and in the design. However, they noted that GC has not been very successful in ensuring that Inuit needs and priorities are the drivers for the development of policies. They further note that there are well established national agendas driven by the needs of "First Nations", but these do not take into account the specific needs of Inuit in Nunavut. They conclude that while GC may be meeting the obligation to involve Inuit in program development and design, it is not meeting the spirit of the NLCA, which would mean involving Inuit in the priority setting that would guide program development. Finally, it was noted that the commitment that was made at the November 2005 First Minister's Meeting, and the establishment of the Inuit Secretariat could address these issues.
  - The Department of Canadian Heritage (DCH) prepared an "NLCA Report on DCH Activities for 2004-2005 Fiscal Year" (Ref 13.2). The report indicates: PCH activities undertaken, progress report (key successes and priority areas), major event times and schedules, difficulties and/or problems encountered, overall assessment of NLCA implementation, and comments on status of sensitive or unresolved issues. The report provides an excellent summary of how PCH's activities are respecting the obligations and objectives of the NLCA, and challenges encountered. For example, the report includes notes such as the following:
    - With regard to "program audits and evaluations", the report cites as a difficulty and/or problem encountered, "including NTI within consultations as per Article 32, rather than only clients, national organization delivery agents and lobbying groups".
    - The report notes in the "assessment" that they had included Inuit beneficiaries in consultation, and that "Consultation and funding supports the spirit and intent of the NLCA and Inuit aspirations".
    - The report notes that no contracts were let in the NSA (as per the monitoring requirement of 24.8.1)
  - In the NTI section of the Nunavut Implementation Panel Annual Report 2001-2004, NTI notes that "GN has confirmed the extent of these costs through detailed monitoring of actual consultations and although these expenditures are unquestionably significant,

> incremental and directly attributable to the NLCA, INAC has refused to acknowledge this financial burden."

There were several comments that arose in discussions with beneficiaries through our focus groups in relation to this Article. We frequently heard that there are "too many rules and regulations" and that these are inconsistent with Inuit culture, in both form and quantity. We also heard that IQ is not taken into account enough during the design and delivery of programs. We have also heard general comments that beneficiaries are not consulted enough.

We also note that this Article refers to consultation with Inuit. It does not specify that this shall be with a DIO or NTI in particular. We did not observe of practices to ensure that Inuit were consulted more generally. It appears that the parties have taken the view that this objective shall be achieved primarily through discussions with SCDD. We question whether this is sufficient, particularly in view of SCDD's limited resources and the comments from the community focus groups. Given Section 32.3.1, it is clear that NSDC was expected to be the champion to "promote the principles and objectives of Sections 32.2.1 and 32.2.2", but it does not say that it shall have sole responsibility for all the participation.

We note that if Article 23 were to be achieved, then Inuit would be leading the development and it would be more likely that this objective would inherently be achieved. Article 23 (on Inuit employment in government) is outside the scope of this review, so we cannot comment on this aspect in detail here. However, we believe it is critical to note that we understand, from our previous work in this area that Inuit representation rates had been sufficiently low, particularly at the middle manager level, that Inuit were not effectively leading decision-making and management.

Taking into consideration the aforementioned issues, it has been concluded that progress has been made over recent years (particularly since 2002). However, there is no clear and consistent format regarding how each of the Parties operationalize the process needed to achieve the objectives of this Section; SCDD has not had the capacity to participate as fully as they would like; Inuit are not dominating in the government workforces, and beneficiaries do not believe that they are not consulted enough. Therefore, **the obligations and objectives of these sections have only been partially achieved.**

32.3.1 *A Nunavut Social Development Council (Council) shall be established to promote the principles and objectives in Sections 32.1.1 and 32.2.1, notwithstanding that there may be other bodies established in the Agreement or outside it which also promote these principles and objectives.*

The last Five Year Review reported that this Section was fully met as the Council was created in 1996.

The status of the Council was revoked in 2002 and was created as a department within NTI. The department is staffed and the Board of NTI serves as the Board for the Council.

In conclusion, given the concern noted above about the ability of SCDD to fully participate "*in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery"*, **the obligation to form the Council has been met, but the objective of promoting the principles and objectives has not been fully met.**

32.3.2 *The Council shall be incorporated to operate as a non-profit DIO and its tax status shall be in accordance with laws of general application applicable from time to time.*

While the Council is not independently operated as a non-profit DIO, it is a department within NTI, which is a non-profit DIO. There is no requirement in the NLCA that SCDD be an independent body. **Hence, we conclude that this obligation, and the objective underlying it have been met.**

32.3.3 *The Council shall assist Inuit to define and promote their social and cultural development goals and objectives and shall encourage Government to design and implement social and cultural development policies and programs appropriate to Inuit. Accordingly, the Council may:*

(a) conduct research on social and cultural issues;

(b) publish and distribute information on social and cultural issues to Inuit, governments and the public;

(c) consult and work in collaboration with community, regional, territorial, federal and other bodies and agencies involved in social and cultural issues;

(d) advise Inuit and governments on social and cultural policies, programs and services that relate to the Nunavut Settlement Area; and

(e) undertake other activities relating to social and cultural issues in the Nunavut Settlement Area.

There have been two annual reports produced by NSDC/SCDD on the State of Inuit Culture and Society, one for 2000 (Ref. 6.10) and one for 2002/2003 (Ref 6.11). These reports provide an extensive discussion of the various cultural and social challenges in Nunavut. It also provides a discussion of many of the government activities in these areas. Finally, it provides a discussion of recommendations in each of these areas. It is beyond the scope of this review to include a comprehensive presentation of the information included in these reports. Hence, we provide a discussion below, based on these reports, illustrating how some of the obligations of this Section have been achieved.

The following activities illustrate the activities that SCDD has taken in regards to points b), c) and d).

In our opinion, developing the term IQ has been a very important step in enabling Inuit culture and values to drive government decision-making and activity. This term describes "all aspects of traditional Inuit culture including values, world-view, language, social organization, knowledge, life skills, perceptions and expectations". The term was adopted "to replace and broaden the limited connotations typically attached to the term Inuit traditional knowledge" (Ref. 6.10, p. 79). The report describes what IQ includes. Assigning a name is very important – particularly an easy one to remember and spell, and one that is defined. In almost all aspects of our work on this review, we have about the importance of IQ. We note that in almost all cases, people also report that IQ has not been fully or effectively incorporated into the government process. Nevertheless, giving it a defined name is important for identifying a clear goal of what needs to happen – it forces people to continually ask: is this consistent with IQ? The pervasiveness of the term, and the fact that it is defined, suggests that people are at least aware of what needs to be achieved, even if they do not yet know how to achieve it. An analogy would be monitoring: monitoring is critical, because it is impossible to assess how to reach a goal, unless you monitor where you are at with respect to that goal. Even if the monitoring finds that the status is poor, the simple fact that the organization did the monitoring is a credit to them. If the status is poor, monitoring provides the opportunity to first recognize that the status is poor, and then take steps to improve it.

The 2000 report on the State of Inuit Culture and Society notes that "In May 1999, immediately after the establishment of the Government of Nunavut, the NSDC presented a discussion paper entitled "Toward an Inuit Qaujimajatuqangit Policy" (Ref. 6.10, p. 87). The paper described NSDC's concerns about the status of IQ and recommended that a task force "develop IQ policy options and initiatives applicable to all departments, boards and agencies of the Nunavut Government. GN responded in two ways. "First it sponsored an [IQ] Workshop in September 1999 to seek counsel from the elders on ways to preserve,

promote and integrate [IQ] into all [GN] programs, services [and] policies. Delegates to the workshop made twelve recommendations" (Ref 6.10, p. 87), which are listed in the report. The second response by GN was to establish a Working Group on IQ in September 2000. This group included two elders, one chosen by GN, and one by NSDC, two representatives of the NSDC and two representatives of GN.

The 2002/2003 report on the State of Inuit Culture and Society (similar to the 2000 report) provides a discussion of some of the current problems, and how these relate to different cultural values, which then translate into different policies. The education section is a good illustration of this. The report notes that:

> *"in the eyes of Southern Canada there are two labour force categories: the wage-employed and the unemployed. Nunavut has an additional category-people with sporadic or no wage employment who nonetheless lead fulfilling lives and earn at least some of their living through land-based activities…This fundamental human need for culture and identity has to be acknowledge and fostered by the education system, where a child spends a significant amount of time. But it also has to be fostered and protected outside the school by supporting the traditional ways of passing on Inuit skills, namely young and old working side by side out on the land.*
>
> *This dual approach to retaining and celebrating culture recognizes that the school system does not have an exclusive monopoly over education – nor should it. Inuit know that most of the skills, traditions and cultural understanding that make a person know who they are and where they come from – that enable every Inuk to assert that knowledge with a sense of confidence, pride and social responsibility – are not taught in schools.*
>
> *It follows that there must be a much better balance between the months spent in classrooms and days out on the land. The longer the school year, the less time is available for young Inuit to spend with older generations. For three decades, Inuit have urged governments to build greater flexibility into school calendar, so that families can go out on the land during prime hunting, fishing and berry-picking seasons. In order to pursue this simple and sensible opportunity, Nunavut's school year calendar must be flexible enough to accommodate the arrival of spring in Iqaluit in April, but later in Arctic Bay (May or early June, to recognize that sea ice breaks up in June in Iqaluit but in mid-August in Grise Fiord. This could be achieved by leaving to each community to design the school year that suits it best, with the understanding that local decisions will always be based on the natural rhythms of life and the cultural practices that reflect them."*(Ref 6.11, p.15 – 16)

The report then goes on to provide more specific recommendations on how to achieve some of these goals.

With regard to sub-Section a), other than the research required to prepare the Annual Reports (which is significant, given the information in the report), the reports do not cite research that NSDC itself has done. Interviewees pointed out that one of the most significant problems inhibiting effective research is the lack of data. NTI interviewees noted that Statistics Canada has requested participation from NSDC in the design of the data collection process to improve the quantity and quality of data, but that NSDC has not had the resources to respond to those requests. However, the reports do cite other research, and point to the need to have research coordinated, and further point out that there is a central body (Nunavut Research Institute, www.nunanet.com/~research/) that has this mandate. Examples are provided below.

- The 2000 report on the State of Inuit Culture and Society also notes that, in regards to cultural research, "there are a number of projects underway to interview elders and gather their knowledge" (Ref. 6.10, p. 89). The report lists several of these projects. They note that "overall, it is difficult to assess just how much cultural research is happening as there is no overview of what different organizations are doing and no coordinated plan to carry it out" (Ref. 6.10, p. 89). The report suggests that research should be coordinated through a central agency responsible for

research in Nunavut. It further notes that Nunavut Research Institute was a partner in many of the projects, and has this central agency status.

- The 2002/2003 report states that "in accordance with the Bathurst Mandate, [GN] struck an [IQ] Task Force…in November 2001 to make recommendations to the government on how to incorporate IQ in its operations and programs. In August 2002, the IQ Task Force produced the first Annual Report on Inuit Qaujimajatuqangit. In it, the Task Force made 12 recommendations, which this report endorses. These recommendations are grouped into three broad areas: building upon primary relationship, creating a corporate culture and creating an IQ Council. This report … repeat[s] those recommendations, in addition to the last three which this report authors." (Ref. 6.11, p. 58).

In addition to reviewing the annual reports, we conducted numerous interviews and focus groups in regards to this Article, and reviewed additional documentation. Most interviewees noted that they do not believe that the objectives of these sub-Sections have been fully met. Interviewees indicated that progress has been made, but much more needs to be done. Several reasons were cited.

- We have frequently heard, through our discussions with beneficiaries, that the traditional Inuit form of consultation involves all Inuit, rather than having representatives speak on behalf of Inuit.
- *SCDD does not have the resources to fully engage in detailed research and debate, and publish extensive information in this area.*
- *Interviewees have indicated that the strategies and actions that have been recommended have not contained enough detail to be practically implemented.*

We conclude that progress has been made. The annual reports contain a lot of information and useful case illustrations. However, we note that SCDD does not appear to have been conducting research and publishing reports on an ongoing basis, and there is a demand for greater input into both GC and GN. Therefore, **the obligations were being achieved to a degree, but more work is needed to achieve the full objective.** We will provide a fuller discussion of this in the barriers and recommendations sections.

32.3.4 *The Council shall prepare and submit an annual report on the state of Inuit culture and society in the Nunavut Settlement Area to the Leader of the Territorial Government for tabling in the Legislative Assembly, as well as to the Minister of Indian Affairs and Northern Development for tabling in the House of Commons.*

The last Five Year Review found that the obligation of this Section had been met. The annual report of on implementation was tabled in the Legislative Assembly and Parliament contained a report from the NSDC.

As discussed above, annual reports have been produced, but they have not been done every year. Several interviewees noted that there needs to be more information included in this report. Specifically, they noted that the report should include information to monitor progress. We note that the Section does not require that the report include monitoring of activities. However, as will be discussed in the recommendations Section, we believe this would be a good addition to the obligations already noted in this Section (we discuss this further in the recommendations section). In conclusion, **this obligation of this Section has been met, but not on an ongoing basis.**

5.32.2 Effectiveness of Implementation

The NSDC was incorporated as a non-profit DIO in 1996. NTI revoked its status in 2002, and created a department, Social and Cultural Development Department (SCDD) in NTI. All interviewees seem to agree that since 2002 there has been Inuit "participation in development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area".

There were two annual reports produced during the review period, one for 2000 by NSDC and one for 2002/2003 by SCDD. Section 32.3.4 requires that "An annual report on the state of Inuit culture and society in the Nunavut Settlement Area be prepared by NSDC". This report provided this information, and also provided a discussion of government actions and policy problems in each of the areas, and provides recommendations for policy actions. The latter two parts (policy problems and recommendations), strictly speaking, are outside the scope of the obligation as written. However, we find that this discussion provides useful information. We agree with the sentiments expressed by interviewees that it would also be useful for this document to provide information on monitoring of progress towards social policy objectives. Here again, we find that this is outside the scope of Section 32.3.4 as it is currently written. While we note that there is a significant amount of information on the state of culture and society, more detailed data across a broader scope would be more helpful. For example, the section on language presents how many people had Inuktitut or Innuinaqtun as their first language, but does not present information on how many people read, write and comprehend these languages now. Such information would be useful, particularly by region, so as to better inform on communication formats by government.

A beneficiary offered this experience "Although the GN has made good effort to include IQ principles in its values, the lack of insight into the IQ principles by GN senior staff made the efforts towards including IQ in the GN difficult to measure. There were many attempts to make IQ principles part of the GN budgeting process but those who lacked understanding and insight of IQ principles did not have the vision to carry and direct the genuine initiatives to integrate IQ into government. It is important to note that IQ principles are not just "good management" terms, they are the identity and cultural strength of the Inuit."

The overall objective of this Article is to assess the state of Inuit Culture and Society and ensure that Inuit have the right to participate in the "development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area". We understand that SCDD has not had the resources to fully support this objective. There is an outstanding demand for more specific input on more issues than was being provided. Moreover, we note from our discussions with beneficiaries that they feel that they have not had the opportunity to participate in this area, and that IQ was not being sufficiently considered.

It is also important to note that Inuit in Nunavut are experiencing a range of severe socio-economic difficulties, including unemployment, housing shortages, crime, poor health, etc. The profiling of these challenges is critical. In addition, in order to achieve objectives two and three of the NLCA, it is critical to identify policy options for improving circumstances.

We conclude that while there has been a significant amount of work done and that there has been progress, the objectives of this Article are not being met.

5.32.3 Barriers

General lack of knowledge in the South of the Socio-economic Issues in Nunavut

Many people noted that there is generally a lack of knowledge of the NLCA and a general lack of understanding of Inuit life from people who live in the South. In the 2002/2003 states that:

> *"There is growing unease over the trends that are evident in many key indicators of social well-being…The fiscal arrangements put into place has made it impossible for the GN to carry out the social and cultural responsibilities normally held by government. While there is undoubtedly room for improved efficiency, that does not diminish the fact that the territorial government is not receiving sufficient resources to even maintain current levels of social services, let alone meet the needs of a rapidly growing population…Perhaps our greatest sense of concern however, stems from a belief that the overall approach taken by government, particularly the federal government, to the problems faced by Nunavut today is not proportional to the seriousness of those problems. The people working on these issues, whether at the political or bureaucratic level, need to ask themselves whether the investment of time, effort and resources put into Nunavut's situation is proportional to the magnitude of the problems. Is the investment made in education and training, housing and health for Inuit in proportion to the need, given Nunavut's population growth, to grow the economy? Or are we just tinkering?" (Ref 6.11, p. xiii)*

Insufficient Interaction between SCDD and GN and SCDD and GC

In large part this is due to the fact that SCDD has not had enough resources to fully participate. It is also in part due to a greater need for GN and GC to proactively involve SCDD, however we note that in both cases that there is an increasing trend to seek SCDD's involvement. One particular area of concern, especially at the federal level, was that there has not been enough involvement in the identification of priorities as the basis for developing and/or modifying programs and policies.

Insufficient Involvement of Inuit More Generally

There appears to be no common standard for what is meant by "consultation". There are two typical venues: in the individual communities and through Iqaluit. NWMB does consultations with Inuit in each of the individual communities. Most other consultations appear to be concentrated in Iqaluit. Beneficiaries have repeatedly stated that they are not consulted enough and that the current system of program design and delivery does not involve IQ enough. We find that the term "Inuit have the right to participate", in combination with the rest of the Sections to be somewhat ambiguous. Most interviewees seem to equate SCDD (formerly NSDC) with Inuit, and we believe that greater involvement from Inuit more generally is required. We also note that achieving a representative level of Inuit in government will substantially reduce this problem, although we cannot comment in detail on this, as Article 23 is out of scope for this assignment.

Lack of Monitoring

There appears to be little ongoing monitoring of progress against the objectives of the Article. There was one example of monitoring that was provided to us. PCH prepared an "NLCA Report on PCH Activities for 2004-2005 Fiscal Year. The report indicates PCH activities undertaken, progress report – key successes and priority areas, major event times and schedules, difficulties and/or problems encountered, overall assessment of NLCA implementation and comments on status of sensitive or unresolved issues.

We found this to be a very useful report, and would add only that one more section be added, entitled "perceived cause of the lack of resolution". We recommend that all departments prepare such a report. Without ongoing monitoring of the effectiveness of activities, it is unlikely that substantial progress can be made.

There needs to be Clarity in Regards to where Inuit fit Within the Definition of 'Aboriginal Group'

Interviewees indicated that the word 'Aboriginal' tends to be associated with Aboriginal people living on-reserve, especially in terms of federal program policies. There is a belief that this has prevented Inuit from enjoying benefits of many of the programs and funding they should be entitled to receive. For example, interviewees have said that Inuit are not able to access the $100M that has been earmarked for Aboriginal people, and when this issue is raised to the federal government, they tend to push back by citing they provide funding under the Territorial Formula Financing (TFF).

5.32.4 Recommendations

Fundamentally, we see several problems with the implementation of this Article:

- First, while Section 32.2.1 specifies that "Inuit have the right as set out in this Article to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area", it appears that most people have interpreted this to mean SCDD (formerly NSDC), and Inuit more generally are not as involved as they would like to be.
- Second, SCDD is attempting to produce a report that is broader in scope than its mandate allows and (perhaps as a result of this) is unable to meet demands for participation in these activities.
- Third, in general, there is no ongoing monitoring of the implementation of this Article.

It is for these three reasons that we suggest offering the following recommendations:

- **Bi-annual report**: Produce a bi-annual report that includes, in addition to the state of Inuit society and culture, a discussion of the policies by area, detailed recommendations by area, and monitoring of activities. In many cases, the problems and solutions are overlapping across GC and GN, in part because GC is providing funding to GN, but also because in many cases there are GC programs that complement territorial programs (e.g. Aboriginal education funding from INAC). Consequently, we believe that the report should be coordinated with input from all parties. We believe that SCDD, in its capacity to promote the objectives of Sections 32.2.1 and 32.2.2, should continue to have lead responsibility for preparing this report, but that GC and GN should contribute resources (both financial and human), to this initiative. This would afford not only greater efficiency (than GC and GN producing monitoring reports and SCDD producing an annual report that delves into these areas anyway, separately), but would encourage ongoing collaboration. This would also allow them reduce the financial burden on SCDD to produce the annual report, thereby allowing them to focus on their main objective of promoting Inuit participation. Finally, we recommend that this report be done on a bi-annual basis for two reasons. First, social and cultural issues are complex, and outcomes of programs designed to influence or complement these often take time to be realized. We believe a one year period is too short to see the effects of policy or program changes. Second, producing the report bi-annually would lead to costs savings (without detriment to the overall objective, as noted in the first point).
- **Consultation process**: SCDD should focus on facilitating Inuit involvement. For example, SCDD should develop a strategy and a process (in consultation with government and Inuit) for what constitutes "consultation". More specifically, there should be a consultation process policy

that documents what types of consultation are appropriate in what circumstances. SCDD should also advise government on how, when and where to consult Inuit. It is important to note that GN and NTI signed a document, entitled Iqqanaijaqatigiit which outlines the working relationship between NTI and GN. Specifically, the document notes that "*GN recognizes that NTI occupies a special place in the affairs of Nunavut as the primary Inuit organization with the mandate to speak for the Inuit of Nunavut with respect to the rights and benefits of Inuit under the [NLCA]. The GN further acknowledges that NTI's mandate embraces additional responsibilities designed to protect and promote the interests of the Inuit as an aboriginal people*." (Ref. 6.13) The discussion regarding consultation of Inuit is not meant to detract from this agreement in any way. Rather, the point is to say that individual Inuit have also indicated that they would like to be consulted more frequently, and that a process for doing so should be documented.

- **Complement, not duplicate**: In the annual reports, SCDD and NSDC both referred to work that was done by other parties in relation to the objectives that have been set for SCDD. We believe this is a good approach – it is important for SCDD to complement, rather than duplicate efforts. We understand that direct consultation with Inuit, rather than with a representative of Inuit, is key, and that SSDC should facilitate that.
- **Advise at the strategic and priority level:** SCDD should have overall responsibility for advising on Inuit priorities and needs and major initiatives, and respond to request for clarification and assistance, but it should not be involved at the working level on all initiatives.

Consider Whether Interim Incremental Funding is Required

Depending on the finding of Article 23, it may be worthwhile to consider providing SCDD incremental interim funding, until such time as a representative level of Inuit can be achieved in government.

More Communication among the Three Parties is Needed

All the parties need to better communicate and coordinate their efforts regarding social and economic issues in Nunavut. The three parties all have different mandates, but must figure out how to work together. For example, we believe that working jointly on the report would facilitate better communication.

Nunavut-centric Solutions need to be Developed

The needs and priorities of Inuit need to be defined and communicated. The parties need to create made-in-Nunavut models and solutions because the southern models currently being implemented are not working. This is how Nunavut was envisioned when it was being created. Also, to help in further achieving this, a proper definition of the priorities and needs of Inuit is essential. This is the role that SSDC should focus on, rather than the details of program design.

5.33 Article 33 – Archaeology

5.33.1 Status

33.2.1 *The archaeological record of the Inuit of the Nunavut Settlement Area is a record of Inuit use and occupancy of lands and resources through time. The evidence associated with their use and occupancy represents a cultural, historical and ethnographic heritage of Inuit society and, as such, Government recognizes that Inuit have a special relationship with such evidence which shall be expressed in terms of special rights and responsibilities*

Inuit feel very close and connected to this article. One of the strong points to this is Inuit feel their identity is expressed in the archaeological record and their land. According to interviewees at the IHT and the GN, the objectives set out in this Section have mostly been achieved because the GN tries to accommodate the special rights of Inuit as much as possible. An interviewee from the GN mentioned that when there is staff turnover at the GN, incumbents may not be as well-versed in the necessity of taking Inuit rights into consideration, leading to less emphasis given to special rights and responsibilities. Therefore, it has been concluded that **the objective, to recognize that Inuit have a "special relationship with such evidence", has been mostly achieved**.

33.2.4 *There is an urgent need to establish facilities in the Nunavut Settlement Area for the conservation and management of a representative portion of the archaeological record. It is desirable that the proportion of the Nunavut Settlement Area archaeological record finding a permanent home in the Nunavut Settlement Area increase over time.*

Progress has been made on this Section; however, there is still an urgent need to create a heritage centre. Since 1999, through a Shared Services Agreement for Museum and Archives Collections, with the GNWT the Government of Nunavut has paid $1M for the storage of its museum and archives collections. The Government of Nunavut does not have the required infrastructure to house the collection in Nunavut. The contract for storage of artifacts expired on March 31, 2006. Officials from the Government of Nunavut and the GNWT have agreed to discuss a renewal of the Shared Services Agreement.

Although they are housed in the NWT, Nunavut owns all the artifacts. The creation of a heritage centre has implications for the implementation of this Article and in several other areas, such as employment and training

A trilateral Working Group comprised of representatives from GN, NTI and IHT was established to develop a capital funding strategy for the Nunavut Heritage Centre. All parties agree that both public and private funds should be sought to construct and operate the Centre. The cost of the Nunavut Heritage Centre is estimated at $60M. A consultant was engaged to undertake a capital financing study and provide a fundraising plan for the planned Heritage Centre. The final report is currently being completed and Nunavut recently announced that the heritage center would be built in Iqaluit. However, the funding for the centre has still not been raised.

One of the challenges in assessing the status of this obligation is that while this Section clearly articulates that there is a need for the facility, it does not articulate whose responsibility it is to establish it, or who should fund it. **Regardless of whose responsibility it is, this obligation has not been achieved to date,** but all parties recognize that the creation of a Nunavut Heritage Centre will take time and are taking the necessary steps to undertake this project.

33.3.1 *The Trust shall be invited to participate in developing government policy and legislation on archaeology in the Nunavut Settlement Area.*

The first Five Year Review found that this Section was being met on an ongoing basis; however the creation of legislation was put on hold until after the creation of the GN. The IHT was invited to participate in developing government policy and legislation, including consultation and review of drafts.

The current Review found that there was consensus among the GN and IHT that this Section has been fully implemented. GN policy development is timely and complex, and while it took approximately 2 years to complete and included a consultation on regulations for archaeology and paleontology; it is now in place. There is every expectation that IHT will continue to be involved in policy development. **Therefore, it has been concluded that this obligation was achieved through the establishment of regulations, and is continuing to be achieved through ongoing collaboration.**

33.4.3 *The Trust shall assume increasing responsibilities for supporting, encouraging, and facilitating the conservation, maintenance, restoration and display of archaeological sites and specimens in the Nunavut Settlement Area, in addition to any other functions set out in the Agreement.*

The first Five Year Review found that this Section was partially being met on an ongoing basis. Without additional physical facilities and professional resources, most of the progress in implementing this obligation, had been made.

The current Review found that there was a belief among the GN and IHT interviewees that this Section is mostly being achieved due to several initiatives underway by the IHT to engage students and communities in archaeological sites in the NSA. Through third party funding, the IHT has been working to preserve and restore the archaeological site(s) as well as try to get students interested in archaeology. Communities are being engaged by invitations for them to see what the IHT is undertaking at the sites. This move has been very well received by communities; they are appreciative of the effort to be kept informed about happenings in their community and to be provided the opportunity to be involved in the process. Annual summer schools for high school and college/university students have been set up each year since 2001/02. For example, last year it was in Pond Inlet and in this coming year the school will be in Whale Cove.

There was some concern that this Section is too broad and therefore the success of its implementation is unclear. Clarification is needed before an accurate picture of the degree to which this Section has been achieved can be drawn.

Although there are concerns regarding the interpretation of the Section, there are concrete examples of how elements of this Section are being achieved on an ongoing basis, so it has been concluded that **this obligation was being partially met.**

33.5.1 *The legislation and policy referred to in Part 3 shall establish a permit system with respect to the protection, excavation and restoration, recording and reporting of archaeological sites. Appropriate sanctions against unauthorized disturbance of archaeological sites and specimens and unauthorized dealing in archaeological specimens shall be contained in appropriate legislation.*

The first Five Year Review found that this Section was partially being met on an ongoing basis. Through cooperation, the parties strove to incorporate the permit system in this obligation by amending their operating practices. All the working parties were in agreement that the legislative sanctions against

unauthorized disturbance of archaeological sites and specimens and unauthorized dealing in archaeological specimens were too weak.

The current Five Year Review found that there was consensus between the IHT and the GN that this Section has been fully implemented. The examples provided by interviewees showed that CLEY has always been involved in the process outlined in this Section. CLEY provides the IHT with applications which are then reviewed at the IHT Board meetings. There have been some minor changes in the permit system, whereby CLEY requested that IHT review the deadline for applications and the technical side of archaeology. Also, the GN has been consulting IHT on issues as they arose. Both these mechanisms have proven to work well and efficiently for the parties involved**. Therefore, in conclusion this obligation was being achieved.**

33.5.6 *"Where the objections referred to in Section 33.5.5 are reasonably founded on*

(a) inadequate efforts to secure Inuit participation and benefits or inadequate performance of commitments to provide such participation and benefits under permits issued at an earlier date, or

(b) disturbance of a site of Inuit religious or spiritual significance, as such significance is defined by the Trust in consultation with the Designated Agency, the Designated Agency shall reject the application for the permit."

The first Five Year Review found that this Section was being achieved on an ongoing basis. When a permit holder failed to adequately secure Inuit participation, as required in the permit, the permit was subsequently cancelled.

The current Five Year Review found that the establishment of National Parks in Nunavut is providing ways for Inuit to protect their sites. Some Inuit are disturbed by the idea of having to obtain permits when they used to be able to visit archaeological sites freely. They are particularly concerned about this where archaeological sites are located within parts, ask parks often have strict regulations. It was also found that this Section was being implemented by the GN and IHT whenever necessary. As an interviewee at the IHT mentioned, when they receive permits from the GN, they weigh it against the two sub-Sections to see if there has been an adequate effort to hire Inuit. When it concerns sites with spiritual significance to Inuit, the Trust consults with the local community to assess their views and concerns and subsequently communicate them to the GN with any recommended actions. Interviewees from the GN stated that it is rare for them to reject the recommendations from the IHT.

Given that communities are now being consulted and the sub-Sections are being respected by the IHT and the GN, it has been concluded that **this obligation has been met on an ongoing basis.**

33.5.8 *Notwithstanding Section 33.5.6, where the application before the Designated Agency is associated with a proposed land use requiring a land use permit, the Designated Agency may, instead of rejecting the application, issue a permit with terms and conditions that adequately deal with the reasonably founded objections.*

The first Five Year Review found that there was no occasion to implement this Section.

The current Five Year Review also found that there was **no occasion to implement this Section.**

33.5.9 *The legislation and policy referred to in Part 3 shall provide that every permit holder shall submit a report to the Designated Agency and the Trust. Upon reasonable request, the Agency shall provide the Trust with an Inuktitut summary of the report.*

The first Five Year Review found that the legislation referred to in Part 3 has not been passed, although the parties had strived to meet the spirit and intent of this obligation and there had always been reports submitted by permit holders. There had been no requests for a translation to be conducted; however, the Prince of Wales Northern Heritage Centre provided an annual summary in Inuktitut of the work that had been done.

The current Five Year Review found that there was consensus that the obligation has been generally met. All reports are due once a year and archaeologists usually submit their reports on time. According to a representative of the GN, to date, the IHT has not requested an Inuktitut summary of any reports.

Given that there have been achievements made since the first Five Year Review, it is to be concluded that **the obligations under this Section were met**.

33.5.10 *The Designated Agency shall make available Inuktitut translations of its publications that are aimed at informing the Canadian public about archaeology in the Nunavut Settlement Area.*

The first Five Year Review found that this Section has been met on an ongoing basis. The Territorial Designated Agency translates an annual report of activities in the NSA and assists the IHT in translating materials into Inuktitut. Further, the Department of Canadian Heritage makes Inuktitut translations of many relevant publications available.

Interviewees from GN noted that GN provides Inuktitut copies of reports when requested to do so. They further noted that GN does, however, routinely translate communications pertaining to archaeology in Nunavut into Inuktitut and Inuinnaqtun. The Department of Canadian Heritage also continues to provide funding for translation. (Ref. 13.2)

To conclude, the IHT and GN, along with the Department of Canadian Heritage are all working towards providing translations of documents in the NSA, and the obligations under this Section **were usually being achieved on an ongoing basis.**

33.5.12 *Where an application is made for a land use permit in the Nunavut Settlement Area, and there are reasonable grounds to believe there could be sites of archaeological importance on the lands affected, no land use permit shall be issued without the written consent of the Designated Agency. Such consent shall not be unreasonably withheld.*

There was consensus among interviewees for the current Review that **this Section has been achieved on an ongoing basis**. Permits are issued through NIRB for all archaeological sites and there have not been any cases where consent was unreasonably withheld.

33.5.13 *Each land use permit referred to in Section 33.5.12 shall specify the plans and methods of archaeological site protection and restoration to be followed by the permit holder, and any other conditions the Designated Agency may deem fit.*

The last Five Year Review did not directly address this obligation.

There was consensus among the parties that the obligations under this Section have been achieved. The permit application provides the location, map, and proposed work. Also, if artifacts are found on Inuit owned land, they are owned by both the IHT and the GN.

33.6.1 *"Where any agency of the Government intends to contract for carrying out of archaeological work in the Nunavut Settlement Area, the agency shall:*
(a) give preferential treatment to qualified Inuit contractors where the agency proposes to tender such contract; and
(b) ensure that all contractors give preferential treatment to qualified Inuit."

The last Five Year Review found that this Section was being met on an ongoing basis; however, there had been no occasion for the Federal Government to implement this obligation. They noted that the main barrier to achieving this obligation was that there were very few qualified Inuit archaeologists.

In terms of the current review, the IHT examines applications for the participation of Inuit in the proposed archaeological work, as well as determining the appropriateness of the location, and also any concerns from the local community. Interviewees from the GN and IHT were not in agreement as to the degree to which this Section was being implemented. An interviewee at the GN indicated that those being hired are primarily summer students and that there are generally not many archaeological digs in the NSA. Alternatively, the interviewee from the IHT felt that the Section was being achieved.

Given the difference in opinions, combined with the fact that there are some examples of how this obligation has been met, we conclude that **this obligation was being partially met.**

33.7.1 *"Government and the Trust shall jointly own all archaeological specimens that are found within the Nunavut Settlement Area and that are not:*
(a) public records;
(b) the private property of any person; or
(c) within areas administered by the Canadian Parks Service."

The current Review found that there was a consensus among interviewees that **the obligations under this Section have been achieved.** A working group composed of NTI, the GN and the IHT is mandated to help address these obligations. There continues to be the caveat that there is no physical building in the NSA to accommodate all artifacts in Nunavut and, therefore continue to be housed in YK.

33.7.2 *Specimens found within areas of the Nunavut Settlement Area administered by the Canadian Parks Service shall be managed in accordance with the provisions of the Agreement.*

Many interviewees were not familiar with actions in relation to this obligation. IHT has noted that Parks Canada works alongside with the GN when they are conducting archaeological work on Crown land. In view of the comments from IHT, we conclude that **this obligation was being achieved.**

33.7.4 *The Designated Agency and the Trust must jointly consent, in writing, prior to any long-term alienation of any archaeological specimen found in the Nunavut Settlement Area.*

The first Five Year Review found that there was no occasion to implement this obligation. However, there were two issues that evolved subsequent to the review period. Firstly, collections out on short-term loan automatically become long-term after three years. Hence, prior written consent will not have been obtained, although all tracking of these loans will continue. Secondly, Government and the IHT jointly own all archaeological specimens that are found within the NSA as provided by 33.7.1 of the NLCA. However, there is a difference of opinion between the Canadian Museum of Civilization and the IHT. Does the joint ownership refer to the entire collection originating from Nunavut or just the collection since signing of the Agreement? It was understood at the time of the last Review that the parties were discussing a resolution of the question.

GN interviewees noted that the IHT reviews requests and submits their recommendations. Normally they do not recommend loans of over one year.

Given this difference in opinion, **we are unable to conclude whether the obligation was being met.**

33.7.5 *Where the Designated Agency and the Trust cannot reach an agreement on a proposal for a long-term alienation, as outlined in Section 33.7.4, the matter shall be referred for resolution by arbitration under Article 38 by the Designated Agency or the Trust. In arriving at a decision, an arbitration panel shall take into account the overall intent of the Agreement, the provisions of this Article, and any other relevant consideration.*

The first Five Year Review found that there was no occasion to implement this Section.

The current Five Year Review found there was consensus that there has not been any occasion to implement this Section. GN and IHT had never gone to an arbitrator because they are both working to keep artifacts within the NSA. To conclude, there has **been no occasion to measure whether the obligations under this Section have been achieved and to what degree.**

33.7.6 *The Trust shall determine the disposition of all specimens found on Inuit Owned Lands.*

The first Five Year Review found that this Section was being achieved on an ongoing basis. **The current Review also found that the obligations under this Section have been achieved on an ongoing basis.** There was consensus that the GN and IHT are working together to keep specimens from leaving the NSA.

33.7.7 *Designated Agencies shall determine the disposition of specimens found in NSA other than on Inuit Owned Land subject to the rights of the Trust*

The first Five Year Review found that the Section was being met on an ongoing basis.

The current Review found a consensus among interviewees that the **obligations under this Section are being met.**

33.8.1 *The Designated Agency shall endeavor at all times to dispose of a maximum number of specimens to institutions in the Nunavut Settlement Area such as the Trust.*

The first Five Year Review found that the obligations were met in the past, but were not being met at the time of the last Review. The obligation was not being met due to limited facilities in the NSA to ensure the preservation, safekeeping, and access to archaeological material. The few requests for material received from Nunatta Sunakkutaagit and the Baker Lake Inuit Heritage Centre had been met.

The current Five Year Review found that **there has been no occasion to implement this Section** and there will continue to be no occasion to implement until the artifacts are properly housed in Nunavut**.**

33.8.2 *"The Trust may request possession of any specimens found within the Nunavut Settlement Area or from any federal or territorial government agency, including the Canadian Museum of Civilization, and any territorial archaeological agency. Such requests shall not be refused by the agency unless:*

(a) the Trust is unable to maintain the specimen without risk;

(b) the Trust is unable to provide access to the specimen commensurate with scientific or public interests;

(c) the agency is unable to give up possession because of some term or condition of its original acquisition from a non-governmental source;

(d) the Canadian Museum of Civilization, the National Archives of Canada, the Canadian Parks Service or a territorial government agency currently requires the specimen,

(i) for its own active display or research, or

(ii) on account of the unique characteristics of the specimen;

(e) the condition of the specimen prohibits its movement; or

(f) the specimen has previously been made available to, and is in the possession of, a party other than a federal or territorial government agency."

The first Five Year Review found that there was no occasion to implement this Section because the IHT had no place for the safe presentation of archaeological material in the NSA. It was also mentioned that the IHT had never requested a loan.

In terms of the current review, interviewees from the GN and the IHT were in agreement that the IHT has no capacity for storage and it is only once the Nunavut Heritage Centre is created that it will be asking museums to repatriate the artifacts back to Nunavut. Therefore, **there has been no occasion to implement this Section.**

33.9.1 *The Inuit of the Nunavut Settlement Area have traditionally referred to various locations, geographic features and landmarks by their traditional Inuit place names. The official names of such places shall be reviewed by the Trust and may be changed to traditional Inuit place names in accordance with the process described in Section 33.9.2.*

The first Five Year Review found that this Section had not always been met in the past, but was found to have been met at the time of the last Review. Initially, the GNWT sought a review of place names, but not from the Trust. This was an unintentional oversight. The procedure was reviewed and was subsequently followed in accordance with the obligations.

The current Five Year Review found that interviewees from the IHT and GN were in agreement that the obligations under this Section were being achieved on an ongoing basis. The IHT had been collecting traditional place names with the aid of local elders and then reviewing the updated maps with elders to provide accurate maps. The process of collecting and creating maps with traditional place names was underway and therefore, it has been concluded that **this obligation was being partially achieved**.

33.9.2 *The process for review of place names within the Nunavut Settlement Area shall be comparable to that set out in the Territorial Government Directive 17.03 on Geographical And Community Names, dated May 28, 1990, subject to the requirement that the Trust be consulted on any place name decisions.*

The first Five Year Review found that the objectives have not always been met in the past, but were being met at the time of the last Review. Initially, the Territorial Government sought a review of place names, but from someone other than the Trust. This was an unintentional oversight. The procedure was reviewed and is now being followed in accordance with the obligations.

Currently, this Five Review found that there is movement forward in meeting the obligations under this Section; however, interviewees did raise some concerns. The issues are firstly, that there have been no mechanisms put into the policy that would allow the IHT to object to the Ministers decision; and secondly, that an arbitration process to deal with issues has not been put in place. The GN and IHT are committed to fixing the issues and are currently working on resolving them. Thirty-nine place names have been submitted and subsequently approved.

An interviewee from the GN mentioned that the policy has been put in place; however, there are some procedural issues that are in the process of being resolved.

The GN and IHT are consulting on pertinent issues; however, the IHT would like to see more in-depth consultations between the two organizations.

One area where the IHT would like the GN to play more of a role concerns the researching of traditional place names because they have a toponymist on staff and they have a budget to undertake this work. Another concern from the interviewee at the IHT is that ITK sits on behalf of all Inuit on a federal board that deals with Canadian place names. The GN sits on the same Board as the official representative of Nunavut. The interviewee at the IHT would like to be granted access to this Board and approach the ITK. ITK offered to give the IHT a seat, but later rescinded that offer. GN has noted that the IHT is not a government body, and the GNBC membership is restricted to FTP government representatives appointed by their respective Ministers.

In conclusion, given that there are several issues still needing to be resolved, **this obligation has not been fully achieved.**

5.33.2 Effectiveness of Implementation

In general, the obligations and objectives of this Article were being achieved. Archaeological records were being kept and sites were being respected. The Trust had authority for archaeology-related issues and there was ongoing collaboration with GN and most documents were being translated into Inuktitut.

Several areas where ongoing work is needed include: hiring of Inuit contractors, identifying place names and establishing a cultural centre. However, it is important to note that there is very little archaeological contracting done in Nunavut and there are few qualified Inuit contractors.

5.33.3 Barriers

Lack of a cultural centre. The main barrier to implementing this Article is the lack of proper infrastructure to house artifacts within the NSA. Without the capacity to house the artifacts, they remain under the custody and care of GNWT.

Lack of qualified Inuit Archaeologists and Qualified Assistants. Focus groups emphasized that Elders' knowledge about culturally sensitive issues were not being utilized at all and that knowledge will die with them. Inuit should be the ones directing and conducting these culturally sensitive issues. It is important

for Inuit to be trained in the area of archaeology; however, it is also important for archeologists to be trained in the area of IQ.

Losing traditional knowledge about place names and geography in the NSA. Elders are dying before their knowledge of traditional places has been collected. This poses a grave problem for ensuring this invaluable cultural history is passed on to future generations. Stakeholders have noted that collection of this information is not happening fast enough.

5.33.4 Recommendations

Cultural Centre

The GC, GN and NTI, along with the IHT need to make the plan to build a Cultural Centre in the NSA a reality. Inuit are being denied parts of their heritage and Nunavut is losing potential tourism and research opportunities by not displaying the artifacts.

Unclear on what Constitutes 'Consultation'

The GN and IHT seem to have different ideas of what 'consultation' entails. Both parties need to define the parameters of this relationship.

Lack of Representation on Federal Board

The GN and ITK are not providing IHT the opportunity to officially sit on the federal board that makes decisions that within the mandate of the IHT. A resolution needs to be achieved that will satisfy the GN, ITK and the IHT.

Insufficient Number of Inuit Archaeologists and Qualified Assistants

Interviewees recommended that there be a training program through Arctic College. It is critical that IQ must be implemented in a tangible and effective way in order to ensure that Inuit will seek out this area of expertise. A program which integrates training in both archaeology and IQ is recommended. Article 33 is a prime example of how taking IQ seriously will make a difference in training and development.

5.34 Article 34 – Ethnographic Objects and Archival Materials

5.34.1 Status

5.34.1.1 Background

Article 34 defines a number of GN responsibilities in such areas as the establishment and implementation of information management systems, the acquisition of ethnographic and archival collections, and the provision of conservation, curation and storage facilities to maintain and to utilize these collections. In recognition of its obligations for the management of Nunavut's heritage assets, CLEY commissioned a major study to develop a strategic plan for the establishment of a territorial Heritage Centre providing professional curatorial and conservation services, through which heritage programs and services for Nunavummiut would be developed and delivered.

All Parties agreed to the long-term objective of establishing an Inuit Heritage Centre in Nunavut, and accepted the principle that both public and private funds should be sought to construct and operate the Centre.

While the NLCA explicitly recognizes the urgency of establishing these facilities, funding was not provided to enable Nunavut to meet this key obligation, and implementation of the recommendations of the Heritage Centre Study remains on hold pending access to the required resources.

5.34.1.2 Assessment

34.3.1 *The Canadian Museum of Civilization and any territorial government ethnographic agency shall endeavour at all times to lend a maximum number of ethnographic objects to institutions in the Nunavut Settlement Area such as the Trust.*

The first Five Year Review stated that this obligation had sometimes been met in the past, but was not being met at the time of the review. It is noted that **"**The obligation could not be met due to limited safekeeping facilities in the NSA. The few requests for material received from Nunatta Sunakkutaagit and the Baker Lake Inuit Heritage Centre had been met."

During the current Five Year Review an interviewee commented that it will be possible to meet this obligation once there is a Heritage Center in Nunavut in order for artifacts to return to Nunavut from the Canadian Museum of Civilization.

As there is not a facility to house artifacts in Nunavut there has been **no occasion to implement this** obligation.

34.3.2 *Where the Trust requests the loan of any ethnographic objects originating in or relating to the Nunavut Settlement Area, and in the possession of a federal or territorial government ethnographic agency, including the Canadian Museum of Civilization, the National Archives of Canada and the Canadian Parks Service or territorial government agency, such request shall not be refused unless:*

(a) the Trust is unable to maintain the object without risk of damage or destruction, including provision for climate control and security;

(b) the Trust is unable to provide access to the object commensurate with scientific or public interest;

(c) the agency is unable to lend the object because of a term or condition of its original acquisition from a non-governmental source;

(d) the Canadian Museum of Civilization, the National Archives of Canada, the Canadian Parks Service or territorial government agency requires the object;

(i) for its own active display or research, or,

(ii) on account of the unique characteristics of the object;

(e) the condition of the object prohibits its movement; or

(f) the object has been previously lent to, and is in the possession of, a party other than a federal or territorial government agency.

34.3.3 *Where the agency referred to in Section 34.3.2 complies with a request by the Trust, the agency may attach any terms or conditions consistent with professional and institutional practice, including terms or conditions dealing with duration or termination of the loan.*

The first Five Year Review stated that there was no occasion to implement 34.3.2 or 34.3.3 because the Trust has no place for the safe presentation and access to ethnographic material in the NSA and therefore, it has never requested a loan.

As a place for the safe presentation and access to ethnographic material does not currently exist in the NSA, and the Trust has not requested of ethnographic objects originating in or relating to the NSA, there has **not been occasion to implement** these obligations during the current Five Year Review.

34.3.4 *Where the Trust requests the loan of an object mentioned in Section 34.3.2, but such object is currently on loan to a party other than a federal or territorial government agency, the Trust shall have priority over all other persons to obtain a loan of the said object, subject to compliance with any conditions outlined in Sections 34.3.2 and 34.3.3.*

The first Five Year Review stated that there was not occasion to implement this obligation because the Trust does not have a place for the safe presentation and access to ethnographic material in the NSA. The Trust has never requested a loan.

As was stated by an interviewee during the current Five Year Review, this obligation would be met if there was a Heritage Center, but the process has not been undertaken. Therefore, there remains no **occasion to implement** this obligation.

34.4.1 *Where the Trust requests the loan of original archival materials relating to the Nunavut Settlement Area for display or exhibit, or copies of archival material for research or study purposes, from the National Archives of Canada, the Canadian Museum of Civilization or any territorial government archival agency, such request shall be treated on at least as favourable a basis as similar requests from any other institutions.*

The first Five Year Review stated that there was not occasion to implement this obligation. No loans of archival material had been requested by the Trust as they had no place for the safekeeping, presentation, and access to the material in the NSA.

The situation has not changed, and as such, there has been **no opportunity to implement this obligation.**

5.34.2 Effectiveness of Implementation

Given that a cultural centre has not yet been established in Nunavut, there has been no opportunity to implement these obligations.

5.34.3 Barriers

The largest barrier to the implementation of Article 34 is the lack if a Heritage Center in Nunavut to house Ethnographic objects and Archival Materials.

5.34.4 Recommendations

If obligations under Article 34 are to be achieved, a Heritage Center must be built in Nunavut to house Ethnographic objects and Archival Materials.

5.35 Article 35 – Enrolment

5.35.1 Status

5.35.1.1 Background

Enrollment issues are Inuit internal issues. The question of who is Inuk is, and should, remain an Inuit issue. The criteria for enrollment deals more with whether someone is accepted by the community as an Inuk by Inuit, rather than if they are an Inuk by blood, which can lead to some confusion about the criteria. Blood descent is clearly a very important factor for the community to take into account in this process. Given these issues, Inuit can find it challenging to implement this article. To help with the implementation of this Article, there is a manual which acts as a guide as to how to ascertain who is an Inuk. The manual states relevant principles and gives guidance but leaves the decision up to the community. There have been concerns that an outsider will come into a community, take advantage of the generosity of the community by becoming Inuk, and take a position of power. For this reason, there have been discussions with ITK about an Inuit identity card. A study on NTI Enrolment photo I.D. was examined and decided against, due to logistics and the finding that Transport Canada was not willing to recognize such a card for travel purposes (post 9/11).

5.35.1.2 Assessment

35.2.1 *A DIO shall establish and maintain a list of Inuit (Inuit Enrolment List), and enroll thereon the names of all persons who are entitled to be enrolled in accordance with this Article.*

The first Five Year Review stated that this obligation was being met on an ongoing basis**.** The NTI enrollment office had created an Interim Enrollment List dated July 31, 1994 and had likely maintained the list effectively since that time. While the enrollment list appeared to be properly maintained, there was a significant lack of written procedures and controls surrounding the enrollment process. This could have led to an increased risk that problems would have gone undetected and were a barrier to verification. Additional cross-training was also needed.

NTI released an Enrollment Manual to document the process for enrolling beneficiaries (Ref 15.9). NTI interviewees noted that this manual is followed. We do note that given that enrollment is decided upon at the community level, and there are differences in approaches by community. We found that this has caused some concern, particularly in regards to Article 24. Specifically, given that the decision as to who is an Inuk is made at the community level, some people are classified as Inuit in one community, and thus if they have a business the business may be classified as an Inuit-owned business. Conversely that same person might not be classified as an Inuk if they lived in another community. This can create frustration when firms compete in communities that have different criteria for classification as Inuit.

We conclude that **this obligation was being met.**

35.2.2 *A person who is enrolled on the Inuit Enrolment List shall be entitled to benefit from the Agreement so long as he or she is alive and his or her name is enrolled thereon.*

NTI that reported that **this obligation was being met**.

35.4.1 *A Community Enrolment Committee (Enrolment Committee) shall be established in each community in the Nunavut Settlement Area.*

The first Five Year Review stated that this objective was being met on an ongoing basis. The set-up and operation of the enrollment committees appeared to be functioning in an effective manner and in general complied with the terms of the NLCA. Little documentation was available for review, particularly with respect to set-up activities. No substantive problems were identified during the interview process.

NTI that reported that **this obligation continued to be met**.

35.5.1 *A Nunavut Enrolment Appeals Committee (Appeals Committee) shall be established to hear and decide:*

(a) appeals, commenced by an applicant for enrolment or another enrolled person, from a decision of an Enrolment Committee as to whether the applicant is entitled to be enrolled on the Inuit Enrolment List;

(b) appeals, commenced by a person whose name would be removed or another enrolled person, from a decision of an Enrolment Committee as to whether a name should be removed from the Inuit Enrolment List; and

(c) applications for enrolment by persons who believe that they meet the enrolment requirements of Paragraph 35.3.1(e) (ii) but not Paragraph 35.3.1(e)(i).

The first Five Year Review stated that this obligation was being met on an ongoing basis. The process and instances described by the Enrollment Coordinator and the documentation received were consistent with the requirements of the NLCA.

NTI that reported that **this obligation continued to be met**.

35.5.2 *The Baffin Region Inuit Association, the Kitikmeot Inuit Association and the Keewatin Inuit Association, or their successors, shall each appoint one person from each community in its Region to a standing list of members for its Region.*

The first Five Year Review stated that this obligation was being met on an ongoing basis. The process and instances described by the Enrollment Coordinator and the documentation received were consistent with the requirements of the NLCA.

NTI that reported that **this obligation continued to be met**.

35.6.4 *All proceedings of the Enrolment Committees, interim or otherwise, and the Appeals Committee shall be in Inuktitut and, at the request of a member of a Committee, the applicant or the appellant, in one or both of Canada's official languages.*

The first Five Year Review stated that this obligation was being met on an ongoing basis. Rules and procedures for the appeal process were published in 1996. Correspondence and minutes indicated at least some appellants had been allowed to make representations. Reasons for appeal decisions appeared to be given as required. There was evidence of Inuktitut being used for conducting meetings, taking minutes, and communicating procedures.

NTI that reported that **this obligation continued to be met**.

35.7.1 *Each Enrolment Committee, interim or otherwise, shall make available to the public without charge a list containing the names of persons enrolled on the Inuit Enrolment List.*

The first Five Year Review stated that this obligation had not always been met in the past, but was being met at the time of the Review. Copies were available on a reference basis. A process existed, but appeared to be undocumented. The required copies were not distributed to the Federal and Territorial Governments in 1996 and 1997 due to an oversight. The problem had been corrected.

NTI that reported that **this obligation continued to be met**.

35.7.2 *The DIO shall annually provide a free copy of the Inuit Enrolment List to the Government of Canada and to the Territorial Government, and shall make the Inuit Enrolment List available to a member of the public on request.*

The first Five Year Review stated that this obligation had not always been met in the past, but was being met at the time of that Review**.** Copies were available on a reference basis. A process existed, but appeared to be undocumented. The required copies were not distributed to the Federal and Territorial Governments in 1996 and 1997 due to an oversight. The problem had since been corrected.

NTI that reported that **this obligation continued to be met**.

5.35.2 Effectiveness of Implementation

All of the obligations of this Article have been met.

5.35.3 Barriers

There were no barriers highlighted in the current review of this Article.

5.35.4 Recommendations

As there were no issues or concerns raised, implementation of this Article should proceed on an ongoing basis

5.36 Article 36 – Ratification

This Article describes the ratification process. Given that ratification was a precondition for the NLCA to come into effect, the obligations associated with this Article have been met. Hence, no further review is required.

5.37 Article 37 – Implementation

5.37.1 Status

5.37.1.1 Background

Article 37 specifies the obligations concerning the implementation of the NLCA. We begin our review with a discussion on the structure, roles and responsibilities related to implementation.

There are a large number of groups involved in implementation of the NLCA. They fall primarily into five categories:

- **Federal Government**: Various federal departments are involved in implementation, either because they are offering programs and services in the north or because they have some oversight or regulatory responsibility. Federal government departments impacted by the NLCA include: Public Works and Government Services, Environment Canada, Fisheries and Oceans Canada, Transport Canada, TBS, Coast Guard, Defence, Parks Canada Agency, Justice Canada, NRCAN, RCMP, Human Resources and Skills Development. Many of these activities are specifically guided by the NLCA, such as the setting of regulations, the appointment of board members, etc. Many departments also have responsibilities in Nunavut that are not dictated by the NLCA (e.g. Health Canada). INAC represents all the agencies and departments of Canada (who have obligations under the NLCA); it serves as a one-window approach for all issues relating to federal obligations under the NLCA.
- **Government of Nunavut**: The territorial government has a variety of responsibilities in terms of programs, services and regulatory controls. Like the federal government, many of these activities are dictated by the NLCA, while others are not. Departments with responsibilities linked directly to the NLCA include: CLEY, Education, HR, EIA, Environment, Justice, and Community and Government Services.
- **Designated Inuit Organizations:** DIOs consist of NTI, and the Regional Inuit Associations (KitIA, KivIA and QIA). These are organizations that have powers and rights as set out in the NLCA.
- **Institutions of Public Government:** These consist of a number of bodies with advisory and/or regulatory responsibilities. There are five such bodies: Nunavut Water Board, Nunavut Wildlife Management Board, Nunavut Impact Review Board, Nunavut Planning Commission and the Nunavut Surface Rights Tribunal.
- **Beneficiaries:** Beneficiaries of the NLCA are provided with specific rights and obligations in the NLCA.

There were two bodies created to facilitate the implementation of the NLCA and the resolution of disputes..

- **Nunavut Implementation Panel:** Pursuant to Article 37, NIP was struck to oversee the implementation of the NLCA. The Nunavut Implementation Panel consists of four members: two representatives of NTI, one representative from the federal government and one from the Territorial Government. All members on NIP must have senior positions within their respective organizations and be able to make decisions on the part of those organizations. At the same time that the NLCA was signed, an Implementation Contract and funding agreement was signed for the first 10 years following the signing of the NLCA. NIP is responsible for overseeing the implementation as set out in the NLCA. This involves planning and monitoring activities related to implementation, resolving disputes, etc. It also involves updating funding levels at ten-year intervals. Given the large number of

organizations involved in the NLCA, multi-party forums are necessary and NIP has the primary responsibility for facilitating this.
- **Arbitration Board:** This is a Board that has the responsibility to arbitrate when the three parties cannot come to agreement.

In addition, there have been two other groups, comprised of members of all parties, who have had interests related to the implementation process. It should be noted that both of these groups were created subsequent to the signing of the NLCA; their creation was not dictated by the NLCA.

- **Nunavut Senior Officials Working Group.** This group is comprised of the senior Deputy Minister of the GN, the Deputy Minister of INAC and the CEO of NTI. As per the Terms of Reference, the objectives of the group include:
  - To establish a three party forum to identify shared organizational priorities and to respectively identify, direct and assign appropriate resources to carry out initiatives and measure timely results.
  - To continue to develop collaborative and effective strategies, structures, mechanisms and processes by Government and NTI so that "made in / made for Nunavut" approaches and benefits are realized.
  - To assist in the achievement of benefits that can flow from the most appropriate use of resources.
  - To exchange information and points of view.
- **The Nunavut Panel Support Group**. This group was created following the first Five Year Review to provide support to the NIP members. Each of the three parties appointed one person to the group. The PSG was a three year pilot and was disbanded in 2004.

Finally, the **Nunavut Federal Council has evolved over the review period.** Its mandate is to promote and facilitate communications and cooperation among federal managers responsible for programs and services in Nunavut with department headquarters, regional offices and central agencies and where appropriate, with the Government of Nunavut and Inuit birthright organizations.

The first Five Year Review, covering the period from 1993 to 1998, concluded that the objectives of 37.3.3 were being partially met on an ongoing basis.

- The report provided several illustrations of how the implementation objectives were being achieved. The Implementation Working group, comprised of managers from each of the three parties, succeeded in creating awareness of responsibility, resolving potentially contentious matters and finding practical ways of making the administrative systems of the three parties work together. The Review stated that "the work of this group was effectively brought to a halt when NTI questioned the rational and framework for using such a group. The questions posed were reasonable, as there was no stated framework in place. NIP did not address the issues raised by NTI's questions and an effective means of implementation was seriously degraded" (First Five Year Review, P 5-4).
- The report also noted several illustrations of objectives that where not being fully achieved by NIP. The Review found that there was a lack of planning and direction, a frequent failure to fully consider the need to involve representatives of other Parties, frequent delays in implementation, a lack of joint monitoring, and an absence of a mechanism for ascertaining whether there has been genuine satisfaction of an obligation. By the end of the review period the federal panel representative lacked sufficient authority to enable the federal government to meet its objectives under this article.

This current review covers the time since the last review (January 1999), up until July 2005. It is important to note that negotiations on funding for the next ten-year period (2003-13) began in May 2001. The launch of this process appears to have demarcated a point in time in which the nature and

effectiveness of implementation activities declined substantially. In fact, since 2002, the relationship amongst the parties has deteriorated significantly and NIP has only met very infrequently and made few decisions.

5.37.1.2 Assessment

During the review process, we sought to assess whether the principles, as defined in the NLCA, were achieved. It is noteworthy that this was a challenge for some of the parties. Because people did not see this Section as providing specific actions that they had to undertake, they questioned whether it was possible, or appropriate to assess whether these principles had been achieved. In our opinion, it is important to assess not just what actions were undertaken, but the perception of whether those actions were undertaken and achieved as per the spirit of the guidelines. Our investigation here is further guided by the finding of the Auditor General (Ref. 3.3) that INAC seemed focused on fulfilling the letter of the land claims' implementation plans but not the spirit.

37.1.1 *The following principles shall guide the implementation of the Agreement and shall be reflected in the Implementation Plan:*

(a) there shall be an ongoing process for Inuit and Government to plan for and monitor the implementation of the Agreement which shall mirror the spirit and intent of the Agreement and its various terms and conditions;
(b) implementation shall reflect the objective of the Agreement of encouraging self-reliance and the cultural and social well-being of Inuit;

Assessing whether these principles were respected is inherently challenging, given that, as noted above, there are no concrete actions that definitely prove whether they were achieved or not. The following factors were taken into account in our assessment.

- With regard to an ongoing process, we noted the following
  - Interviewees note there is an ongoing process in place through the NIP structure, but many note that the results of the actions have not mirrored the spirit and intent, particularly in the latter part of the review period.
  - During our community focus groups, we learned that many people in the community are not aware of their rights under the NLCA or the stated objectives and obligations therein. If people are not aware of their rights and the processes, then they cannot be participating in planning and monitoring.
  - In the 2001-2004 Annual Report on Implementation (Ref.8.4, p. 41-42), GC noted that "NTI and GN were unwilling to meet regularly at the NIP level during the period covered by this Annual Report." See notes on barriers for a broader discussion of this issue.
- With regard to respecting the spirit, we noted the following
  - Numerous interviewees indicated that there was no shared understanding of what the "spirit" was. Several INAC interviewees noted that it was not until the negotiations for the next period began that the parties started to realize this difference.

  - While representatives of each of the three parties indicated that the members of their own group saw this sub-Section as a guiding principle for all of their activities and tried to follow the spirit of this article, most people agreed that the intended outcome had not been achieved, particularly since 2002.
  - Each of the parties had different views of the other parties' beliefs and motives.
  - NTI indicated that they did not believe that the Government of Canada had consistently sought to respect the spirit of the agreement. This assertion is held not just by Inuit of Nunavut, but also by all of the participants of the Land Claims Agreement Coalition (Ref.6.8), which reported that "*There is a growing frustration with the Federal government's approach to implementation, and unmistakable signs that the original goodwill and hope generated with the signing of these agreements is being undermined. Federal agencies, particularly Indian and Northern Affairs Canada, take the view that agreements are successfully implemented if federal contract commitments have been discharged in a way that withstands legal challenges. This is a minimalist view that prevents agreements from delivering to us the full range of rights and benefits we negotiated.*"
  - INAC reported that the GN and NTI expected INAC to achieve all of the objectives, and did not accept responsibility themselves. INAC has further noted that there is a lack of a collaborative approach to meeting common goals.
- With regard to planning, we noted the following. The first Five Year Review recommended that NIP develop workplans to guide and focus respective efforts. The idea of developing a Panel Joint Action Plan was discussed, by way of a Panel meeting, and through letters amongst the parties throughout the spring to December 2001 period. All thought the concept was a good idea and there was agreement on seven key issues. The GN expressed concern that this might impinge upon the negotiation process. One of the seven issues was the development of a Joint Action Plan (JAP), which was developed in September 2002. This plan did lead to the forming of working groups on Negotiation and Article 23. The Territorial Parks were also agreed to following the development of this plan (although there has not been agreement on funding with INAC).
- With regard to monitoring, we noted in Section 37.3.3 (b) that this obligation has not been met on an ongoing basis.

In conclusion, on the positive side, there is a process in place and there have been some proactive steps (JAP). All parties do take these principles into account. Conversely, given the general agreement that the principles were not in fact achieved due to outcomes, the differences in views, and the lack of awareness on the part of Inuit in the communities, we conclude that **these objectives were partially achieved on an ongoing basis.**

> *(c) timely and effective implementation of the Agreement with active Inuit participation, including those provisions for training, is essential for Inuit to benefit from the Agreement;*

Interviewees consistently cited long delays in responding to proposals and making decisions. Several interviewees had noted that this resulted in Boards not having a sufficient number of directors to form a quorum and approve decisions. INAC noted that there was a case in which the Nunavut Water Board almost did not have a quorum. Approval of the required Board member was provided the day before a Board meeting. They also noted that the Board may not have been aware that this approval had been processed. Regardless of the exact timing, numerous interviewees indicated that they believed that the long approval process was posing a threat to have a quorum. Disputes regarding Article 23 and 24 have persisted for years, without any apparent resolution in sight. Agreement on the next ten year contract had not been reached even two and a half years after the first ten-year period had passed. Accordingly, we find that **this objective was not being reached**.

> *(d) to promote timely and effective implementation of the Agreement, Inuit and Government shall (i) identify, for multi-year planning periods, the implementation activities and the level of government implementation funding which will be provided during any planning period, and*

As of November 2004, negotiations were unsuccessful and GN, GC and NTI engaged Thomas Berger in June 2005 to act as a conciliator to assist in moving the negotiations forward. The background documentation for this conciliation contract (Ref 6.6) summarizes the status and issues as follows. It should be noted that NTI has stated that this summary represented GC's perception, and was not sanctioned by NTI or GN.

> *"The parties are far apart in their respective funding proposals with no apparent resolution in sight. The representatives of Government of Nunavut (GN) and Nunavut Tunngavik Incorporated (NTI) are adamant that Canada must obtain a significant mandate increase before engaging in further negotiations. Canada considers the federal offer to be reasonable and sufficient to meet the implementation requirements of the NLCA.*
> *"The key issues that are contributing to the impasse are:*
>
> *1. Levels of implementation funding for the GN: The significant increases sough by the GN are based on their perspective that all of GN's activities that can be linked in some way to the implementation of the NLCA should be funded by the federal government through the Contract. Canada disagrees and has proposed funding for the costs of implementing new and incremental obligations set out in land claim agreements;*
> *2. Funding for Article 23: The parties cannot agree as to whether or not additional funding is required under the Contract to promote Inuit employment in government pursuant to Article 23 of the NLCA.*
> *3. General Provisions: GN and NTI have put forward substantive changes to the general provisions of the Implementation Contract which Canada believes to be beyond the scope of this update exercise.*
>
> *"The parties are reasonably close to an agreement with respect to their proposals on funding levels for the Institutions of Public Government (IPGs) and Nunavut Arbitration Board." [Note that this was GCs perception]*

In order to break the stalemate that had occurred, the background document indicated that:

> *"The parties wish to embark on a new approach that involves engaging a recognized problem solver who could make a neutral assessment of the issues and provide the parties with recommendations that may resolve our difference and bring about mutually acceptable solutions."*

In addition, NTI has noted that it has requested that GC provide information on federal implementation activities and funding levels and that it has not done so.

Each of the three parties made recommendations for the next 10 year contract. The Working Group established to negotiate, update and amend the Contract did not come to an agreement; therefore, there were no recommendations for NIP to consider. **This objective was not being achieved**.

> *(ii) allow flexibility through an implementation panel to reschedule activities, and consistent with government budgetary processes, to re-allocate funds within the planning period; and*

As noted in 37.3.3 (f), there was one instance in the first five year period of the contract period, in which funding was reallocated amongst IPGs. The IPGs were upset with the change and as such, guidelines

ensuring that IPGs were effectively consulted were developed in 2000 and amended in 2001 (Ref. 7.8). There was a perception on the part of GC that NTI had indicated that it would refuse to reallocate amongst the IPGs in the future. NTI has clarified that it would not agree to unilateral changes, but rather would support changes that respected the guidelines for financing of IPGs (Ref. 7.8). We understand that no reallocations have been made since 1998. **We have not observed any cases in which this sub-Section has been implemented in the review period for this Five Year Review**.

> *(e) reflecting the level of independence and the authorities of the NWMB and the other institutions of public government identified in Article 10, the funding arrangements for implementation of the Agreement shall*
> *(i) provide those institutions with a degree of flexibility to allocate, reallocate and manage funds within their budgets, no less than that generally accorded to comparable agencies of Government,*

All parties agreed that the fact that IPGs now have authority from TBS to carry-forward surpluses significantly enhances their flexibility. Hence, we conclude that **this objective was being achieved.**

> *(ii) provide those institutions with sufficient financial and human resources to plan for and carry out the duties and responsibilities assigned to them in the Agreement in a professional manner with appropriate public involvement,*

Most of the representatives indicated that this objective was partially achieved. These institutions are functioning; they are planning and conducting activities within their mandate. However, there are two caveats:

- Several representatives indicated that the IPGs are significantly under funded. For example, the RWO/HTO network has experienced ongoing and extreme stress - including the collapse of some of the RWOs and HTOs - due to lack of resources and capacity, and due to the explosive and unforeseen expansion of HTO mandates following the Claim. We understand that following this review period, the Parties have all agreed to funding levels higher than what the federal government had originally been prepared to provide (although it has not yet been approved by GC), and this problem is likely to be reduced, if not eliminated in the future.

- Most representatives also indicated that they believed that the IPGs required more support, such as training, policies and guidelines, etc, to fully achieve this objective.

In view of the fact that the IPGs are functioning, we find that **the objectives of this article have been partially met,** subject to the two caveats noted above.

> *(iii) require those institutions to follow normally accepted management and accounting practices, and*
> *(iv) ensure the accountability of those institutions for expenditure of their resources in fulfilling their obligations under the Agreement (iii) require those institutions to follow normally accepted management and accounting practices, and (iv) ensure the accountability of those institutions for expenditure of their resources in fulfilling their obligations under the Agreement.*

Most of the representatives of the Parties indicated that this objective has only been partially met. The April 2005 Report of the Auditor General of Canada (Ref. 3.11) conducted an audit of the process by which INAC interacts with four boards in the Northwest Territories that have responsibility for the development of non-renewable resources in the Northwest Territories. The audit concluded that INAC

was not providing sufficient guidance and oversight to the Boards. Interview participants suggested that the same conclusions would be applied to the IPGs in Nunavut.

We find that the **objectives of this article were being partially met.**

37.3.3 *Implementation Panel* shall have the following duties:
(a) oversee and provide direction on the implementation of the Agreement;.

Most interviewees of each of the three parties indicated that the objective of this sub-Section was only met infrequently. Many of the government representatives indicated that they believed that this objective was typically being met up until disagreements began in 2002 in regards to the negotiation of the next ten year period funding agreement. However, NTI has indicated that it believes the relationship was dysfunctional before this time as well (although they concur that it worsened in 2002). In addition to this information from the interviews, we have taken into account the following:

- Even prior to the deterioration of relations in 2002, NIP has typically acted in a reactive fashion. While NIP did put together a Joint Action Plan in 2001, 2002, the deterioration in relations at the NIP level has meant limited activity.
- NIP has undertaken a number of its oversight duties: it has provided some oversight to the IPGs; it has approved funding for public hearings; and it did begin the process of undertaking this Five Year Review. It recognized that it was failing in coming to agreement on funding levels for the second ten-year period and hired a well-respected conciliator to assist in moving things forward.
- It is clear that NIP was meeting and recording its decisions up until 2002. However, while these meetings were undertaken, documented and well attended, there are several concerns associated with these. The approval of the minutes sometimes took place as much as six months after the meeting. In addition, the March 28th, 2002 meeting notes that, with regard to the minutes of the meetings, "contentious issues should be removed". NIP has not been meeting on a regular basis since this time, and has not approved the minutes of any of the informal, or conference call meetings since that time. Other than funding for IPG hearings (which all interviewees indicated had been continuously addressed), it has only recorded two records of decisions: one in regards to the conduct of this review, and one in regards to the signing of the conciliation contract.
- There was a formal meeting of NIP in October 2004, the first one attended by current DG,l where the parties agreed to move forward on the 5-year review and the annual report.

Given this evidence, we find that this objective was only being partially met on an ongoing basis.

> *(b) monitor the implementation of the Implementation Plan, determining whether the ongoing and time-limited obligations, specific activities, and projects have been and are being carried out in accordance with the Plan and in the context of the Agreement and shall for that purpose, without duplicating other independent reviews, arrange for an independent review at five-year intervals unless otherwise agreed by the Panel;*

Representatives of each of the three Parties indicated that this objective has only been achieved infrequently, although the federal representatives from INAC indicated that this was usually achieved up until 2002. The letter from the chief negotiators in 2004 (Ref. 6.6) concluded that: the implementation worksheets were not up-to-date and the parties were not in agreement on the basic concepts of, or strategies related to, (amongst other things) general monitoring. The Auditor General's report of 2003 (Ref.3.3) stated that they noted in their September 1988 report "*INAC's land claim obligations system (LCOS) database for managing land claims agreements, which tracks progress, status, critical dates of projects and activities of all federal departments that have responsibilities under land claims agreements*

.. was too general to be useful in assessing the status of certain obligations. In addition, the database tracks only activities and process, not the results produced and the costs incurred." They reconfirmed this finding in the 2003 audit. (p13-14).

Each of the parties has been developing separate monitoring programs. NTI presented its computerized monitoring system ("IMS") to NIP in the summer of 2001. All parties seemed to appreciate this program, but thought it was too complex. Since that time, NTI has invested time and resources to create a streamlined program to track and monitor obligations of the NLCA. INAC has also since hired a contractor and is revising the database accordingly. The parties have not agreed on a joint monitoring program.

We conclude that **this objective has not been met on an ongoing basis.**

> *(d) accept or reject, with direction as appropriate, the Implementation Training Plan and monitor its operation when accepted;*

The "Implementation Training Plan" approved by NIP was a strategy developed by NITC to address the needs of DIOs and IPGs, a slate of funding programs that NITC makes available to its clients, linked to categories of need identified in the 2004 Implementation Training Study. It did not define measurable, quantifiable outputs or outcomes, or establish a timeline or measurable objectives for development of capacity within client DIOs or IPGs.

None of the interviewees of the three Parties referred to or made decisions about this strategy: and there are, in fact, no measurable elements to the strategy approved by NIP.

This obligation was not being met on an ongoing basis.

> *(e) attempt to resolve any dispute that arises between the DIO and Government regarding the implementation of the Agreement, without in any way limiting the opportunities for arbitration under Article 38 or legal remedies otherwise available;*

Most interviewees from each of the three Parties indicated that in general, NIP had not accomplished this goal. In terms of the challenges that have been raised to the NIP level, such as perceptions about the failure to meet Article 23 and Article 24, and the inability to come to agreement on funding issues or a new implementation contract, NIP has been unsuccessful. No interviewees were able to cite a single dispute issue that NIP had resolved. NIP did agree to hire a conciliator to assist in the negotiations, but did not actually resolve any disputes during the period.

It is important to note that in the AG's report, INAC acknowledged that greater coordination is required across the federal family to achieve efficiencies in implementation, and the Federal Steering Committee on Self-Government and Comprehensive claims (an ADM level interdepartmental committee mandated to oversee all self government and comprehensive claims activities across the federal system) was established to achieve this. Since the AG's report there have been several meetings at the FSC level to provided updates on implementation. This structure may help to ensure that disputes are less likely to arise due to a lack of awareness of the government's obligations under the NLCA.

We conclude that **this objective was not being met.**

> *(f) when it deems it necessary, revise the schedule of implementation activities and the allocation of resources in the Implementation Plan, obtaining consent of the parties to the Plan where such revision requires an amendment to the Plan;*

There was one instance in the first five year period of the contract period in which funding was reallocated amongst IPGs. At the December 9, 1998 Nunavut Implementation Panel meeting, NIP reviewed a request from the Nunavut Impact Review Board for an additional $200,000 to cover the increased workload for screening projects. NIP decided that it would reallocate $100,000 for 1998-99 and the situation would be reassessed the following year. The funds came from unexpended balances of three IPGs. All members of NIP agreed that this reallocation would be done proportionately amongst these three IPGs. The Action Item read: Canada to reallocate $64,000 from the Nunavut Wildlife Management Board; $28,000 from the Nunavut Planning Commission and $8,000 from The Nunavut Water Board. The IPGs were upset with the change and as such, guidelines ensuring that IPGs were effectively consulted were developed in 2000 and amended in 2001 (Ref. 7.8). There was a perception on the part of GC that NTI had indicated that it would refuse to reallocate amongst the IPGs in the future. NTI has clarified that it would not agree to unilateral changes, but rather would support changes that respected the guidelines for financing of IPGs (Ref. 7.8). Interviewees from INAC indicated that they were continually hearing of requests from IPGs for additional funding, and they could see that some IPGs were operating with a surplus, but NTI would not entertain discussions to shift funding amongst IPGs. We understand that no reallocations have been made since 1998. **We have not observed any cases in which this sub-Section has been implemented in the review period for this Five Year Review**.

> *(g) make recommendations to the parties to the Implementation Plan respecting the identification of funding levels for implementing the Agreement for multiyear periods beyond the initial ten-year period; and*

The handbook on implementation for federal officials (Ref. 6.1) indicates that a plan should be developed which describes who should be involved in implementation, how, and at what costs. It also indicates that the plan should describe in detail the steps that the federal government representatives must take (e.g. meeting minutes, preparation, etc.). It should be noted that it had been normal practice for the parties to take turns in taking minutes. The previous contract does not provide this type of specificity. This is likely part of the reason why disputes of responsibilities and actions have persisted, particularly in the areas of Article 23 and 24.

The parties began discussions about funding for the second ten-year period (from the 2003 to 2013 period) in 2001. Each of the parties made recommendations for the next 10 year contract, but NIP was unable to come to agreement. According to a letter dated October 8th, 2004, (Ref 6.6) from the Chief Negotiators for the three parties, to NIP,

> "a meeting of the Chief Negotiators was held on August 23, 2004 to review the progress of the negotiations to renew the Nunavut Implementation Contract. Given that the Government of Canada's Chief Negotiator's assignment to the file was ending, it was felt by all three parties that a review of the three years of negotiations and a report to the Nunavut Implementation Panel was needed. The three parties met in Ottawa and reviewed 18 core issues and concluded that there was no agreement on any of them. The attached document was developed to provide you with an overview of the current situation with regards to negotiations and some of the broad areas of disagreement for each issue."

The list of issues appended to the letter is included in Appendix E, Article 37. The scope and nature of these issues is summarized as follows:

- The parties had not agreed on the general provisions, processes for annual adjustments or costs for the Nunavut Arbitration Board, NIRB, NPC, NWB, NWMB, Surface Rights Tribunal, IIBA negotiations, IPGs, the Heritage Centre.
- The implementation worksheets were not up-to-date

- The parties had not agreed on the basic concepts of, or strategies related to: the Arbitration Board, communication and education, Nunavut Marine Council, general monitoring, Article 23, and Article 32.

It is also noteworthy that, in the latest Annual Report on Implementation (Ref 8.4. p. 14), NTI reported that "Negotiations have been further hampered by INAC's refusal to discuss funding levels and implementation activities as required by Article 37.2.2 (d). All other Parties have complied with this obligation. INAC's refusal to comply has prevented the working group from evaluating the effectiveness and full costs of implementation".

We understand that, as per a letter dated February 6, 2006 (Ref. 7.4), all members of NIP have come to agreement on recommended funding increases for the IPGs and a number of other matters. The levels of funding endorsed by NIP remain subject to the internal approval policies of each party to the Contract. However, agreement on incremental funding, in relation to the NLCA, for the GN, has not been met.

Consequently, given that a new contract had not been agreed to within the period under study, we conclude that **this objective was not being met.**

> *(h) prepare and submit an annual public report on the implementation of the Agreement including any concerns of any of NIP members, (i) to the Leader of the Territorial Government for tabling in the Legislative Assembly, (ii) to the Minister of Indian Affairs and Northern Development for tabling in the House of Commons, and (iii) to the DIO.*

The last annual report that was completed was for 2000/01. Annual reports have not been completed since that time. These reports do contain factual information on what transpired in the previous year. The Auditor General, in the 2003 report stated that "*We expected annual reports like these to contain information that is useful to stakeholders in holding to account those responsible for meeting the objectives of the claims. They should be able to tell the reader what is working and what is not. Yet the agreements provide no direction on the content of these reports .. When we looked at the annual reports, we found that they were not results-based; they focused primarily on activities and events rather than on useful accountability information.*"

A report for the 2001 to 2004 period was completed in September 2005, and was released in April 2006. The Parties have attempted to produce an annual report that identifies the challenges as recommended. However, the Parties agreed that they would be unlikely to come to consensus, and have chosen to each write a section of the report that presented their own views. While such a course of action may be better than not documenting concerns, NIP is still abdicating its responsibility to at least jointly document what they disagree on. Moreover, the conflicting statement and accusations leveraged at other Parties may do more harm to public confidence than silence. We note that, largely because the report did not jointly conclude what had and had not been done, it suffers from the same problem that the OAG had noted.

We find that this **objective was only being met to a very limited degree**.

37.3.4 *The costs of NIP shall be funded by the Government of Canada except that each of the governments and the DIO shall be responsible for the costs and expenses of its members.*

All parties are in agreement that **this obligation was being met on an ongoing basis.** Several interviewees noted that NIP has met so infrequently that this cost is very low.

37.3.5 *All decisions of the Implementation Panel shall be by unanimous agreement of all members.*

All parties are in agreement that **this obligation has always been met**, with the proviso that there have been very few decisions made, particularly within the last three years of the period under review.

5.37.2 Effectiveness of Implementation

We assessed the effectiveness of NIP, the Arbitration Board, Panel Support Group, the Annual Report (as an Information Tool), the DIOs, and the IPGs

Implementation Panel
Most interviewees rated the effectiveness of NIP as ranging from mostly ineffective to totally ineffective. A smaller number of interviewees rated NIP as mostly effective, indicating that the recent breakdown in communications was an aberration. Given the fact that NIP has not been able to consistently and effectively plan for and monitor the implementation of the NLCA, and that it has not been successful in resolving disputes, we agree that NIP has been significantly less effective than it should be.

Arbitration Board
Everyone interviewed rated the Arbitration Board as totally ineffective, given that the Government of Canada has not allowed anything to go to arbitration. We concur with this assessment. This does not reflect in any way on the members of the Board.

Panel Support Group
The Panel Support Group was created for a three year trial period following the last review. It was supposed to be evaluated and never was. The PSG did do a self-assessment (Ref. 6.17), assessing itself against each of its responsibilities as follows:

- **Drafting an annual NIP implementation Workplan for NIP approval:** "In April, the PSG released a draft joint action plan to guide NIP in establishing business lines and priorities over the next five years. NIP did not come to a consensus on the use of this tool", and ultimately did not provide feedback to guide the PSG in this activity.
- **Maintaining an integrated database on the status of NLCA obligations:** Investments, mostly by the GN were made into developing a database. The computers were stolen, and the information was lost, and no alternative was put in place.
- **Administering the Financial Guidelines adopted by NIP**. The PSG contacted the IPGs to explain the new financial guidelines. NIP also provided additional follow-up support. No further information was available in the self-assessment in regards to whether this support achieved its intended outcome of assisting IPGs.
- **Arranging NIP meetings.** The PSG sought to provide support through the preparation of minutes and circulation of documents. Once again, no information was provided on NIP's satisfaction with these activities.
- **Managing NIP correspondence:** NIP and PSG established some guidelines and standards for panel correspondence. The self-assessment noted that "there is room for improvement in the provision of information and materials to NIP".
- **Carrying out research and other special tasks referred to it by NIP.** The PSG was involved in a number of major research tasks, including Article 23 documentation, database research, IQ discussion paper, website development. Once again, no information was provided on NIP's satisfaction with these activities.
- **Liaising with specialists to carry out particular work required by NIP.** The self assessment noted: "NIP has not given the PSG any direction on undertakings that would require PSG involvement with specialists."

- **Drafting NIP's annual report for approval by NIP**. The self-assessment while the PSG had received information from the IPGs, "obtaining this information from GC, NTI and GN has been problematic".
- **Drafting an annual budget for Panel approval.** The self-assessment noted that the PSG budget was drafted and approved by GC for 2002-2003.

In summary, the PSG assessment indicates that they attempted to fulfill a number of roles. The key barrier to effectiveness appears to have been a lack of direction and response by NIP.

While there was no official evaluation, interviewees from INAC offered the following points. In December 2002, the federal NIP member indicated to NIP that the PSG had not met its objectives and had not been an efficient use of resources**.** The GC also noted that it was the only party that appointed a senior official and therefore was doing all the work. Regardless of the actual functioning of the PSG, interviewees with GC indicated that they do not believe in the fundamental concept. They have indicated that they believe it would add an inefficient layer of bureaucracy to implementation. For example, if such a group were to function properly, there would need to be additional office space and a manager. In addition, it would then require senior representatives in each of the parties to go "through" the boss to communicate with their own staff, rather than doing so directly. INAC has suggested that a contractor handle the administrative aspects of NIP meetings and an ad hoc working group of senior officials from the three parties deal with research and policy issues.

During our interviews, we found that interviewees recommended by NTI and GN indicated that they support the basic principle. NTI noted that they believed that both NTI and GN assigned people that had ready access to NTI's CEO and GN's Deputy Ministers, while GC assigned people that did not have this access. NTI has indicated that they believe that INAC would not allow any issues other than clerical ones to be handled by the PSG, and consequently the potential effectiveness of the group was limited. (It should be noted that GC refutes this point; they argue that they were the only Party to appoint a senior person to the PSG). NTI has indicated that it repeatedly requested an evaluation of the PSG and INAC refused. It has further noted that the one challenging task that had been assigned to them – preparing minutes of NIP meetings, had been severely complicated by the fact that it took NIP members a long time to approve the minutes.

Regardless of the debate about whether Parties had assigned senior enough members, all interviewees agreed that the PSG was not assigned tasks of real substance. Without any formal assessment by NIP (as was supposed to have happened), it is difficult to provide an assessment of the effectiveness of the PSG, other than to note that all interviewees seemed to agree that the PSG and/or the communication process between the PSG and NIP did not function as any of the Parties would have liked.

In our opinion the problems encountered by NIP are largely due to significant differences in interpretation at the senior levels. We believe there is a current and pressing need for the senior people in each group to be dealing directly with each other. We do not believe that a generic, centralized group of more junior people is the most efficient and effective way to resolve these issues. We believe instead (as discussed in the recommendations) that there will be a need for many working groups, also comprised of senior people, to conduct detailed research and resolution plans.

Annual Report

INAC rated this as somewhere between mostly ineffective and mostly effective, although they do agree with the OAG's recommendations. NTI rates it as totally ineffective because it has lacked critical assessment. GN indicates that an annual period is too short to see real effects. Given that the annual report was either not done during the period, or did not provide clear assessments of the key challenges and

actions plans, we agree that these have been mostly ineffective. In addition, as noted above, we agree with the OAG's points and we believe that the recent report, by not jointly concluding on what was done and what was not done, suffers from the same criticism.

5.37.3 Barriers

The mandate of NIP is not clear. It appears to have acted in a reactive manner, rather than proactively developing plans, identifying research that needs to be done and monitoring. The planning and monitoring that has been done is not specific enough, as evidenced by the Auditor General's report, the feedback from interviews, and a review of the documents. In addition, NIP does not have any obvious way of ensuring that all Parties are meeting their obligations. For example, if certain organizations (e.g. federal or territorial departments, or NTI or IPGs) have responsibilities under the NLCA, but they do not meet them, NIP has no way of forcing them to do so.

There are substantial differences in expectations. The parties have not discussed, nor come to agreement on the "spirit" of the agreement in many cases. There are numerous examples, discussed throughout this report (e.g. Article 24, Article 15), where the parties have substantially different interpretations of the objective and spirit of the Article. Hence, each of the parties has different expectations about what is required. INAC believes that NTI and the GN demand large sums from the GC and expect the GC to accept all responsibility for achieving the articles. There are also different expectations about whether the government has responsibilities in regards to undertaking certain activities under the NLCA.

Several interviewees expressed a concern that NTI is continuously trying to negotiate more and expand the scope of the Contract. Interviewees reported that NTI was continually trying to expand the scope of the contract, at the expense of focusing on planning for and monitoring implementation activities. NTI has argued that it has not tried to expand the scope of the NLCA. In our opinion, this difference in opinion appears to be due to a difference in interpretation of the NLCA.

The nature of implementation activities is becoming harder to define and assess. The activities in the initial years of implementation primarily involved establishing organizations, structures and regulations. Because the NLCA called for the creation of a new territory and a wide range of institutions, there was no "blueprint" or model for how they should proceed. Consequently, many organizations and processes were established based on models from the south or from the Northwest Territories. The cultural appropriateness of their structure, governance or decision making models was viewed as less critical than their creation. Those organizations, and many of the other clear outputs defined in the claim, have now been established. The challenge of the latter period has been to ensure that the "spirit" of the agreement is reflected in the outputs of these organizations, and in the longer term outcomes. These outcomes - the incorporation of Inuit culture, the involvement of Inuit in decision-making and the building of self-reliance - are much more difficult to quantify and evaluate than the tangible outputs of the first phase of implementation.

There is an absence of a comprehensive, detailed, commonly agreed-to plan and monitoring system. The Implementation contract is organized by subject area. It lists for various obligations the responsibilities and related sections. Given the cross-referencing to Sections that do not follow in chronological order, it is very difficult to assess what was being done for those Sections that are not "primary" obligations. For example, under the subject heading "NIRB", under the obligation "Establishment of NIRB", Sections 12.21, 12.2.6 and 12.2.10 are listed as the obligations (for lack of a defined term, we call them "primary" obligations here). Section 13.5.1 is cited as a referenced clause. However, there is no Subject area where Section 13.5.1 is a "primary" obligation. Hence, if one wanted to examine who had responsibility for this Section, one would need to read through the contract page by

page to see where it might be referenced. Hence, there should be an index listing, for every Section of the NLCA, where it can be found in the implementation contract. Otherwise it is not possible to easily find what, if anything was being done on an article by article basis. The same point can be made of GC's monitoring system.

An additional point, as noted by the Auditor General, is that the information in the system is too general to be useful. INAC is currently developing a new system, which has room for additional information on sub-activities. The real challenge though will be the rules around how information should be included. In the old system, there was information related to the projects included in the status, but no assessment of whether the obligations associated with the project had been satisfied. Finally, the fact that each of the three Parties are developing separate monitoring systems, rather than shared, leaves an obvious opportunity for differences in expectations.

There is significant disagreement of funding requirements. Several people have noted that Provincial models are being used in Nunavut but don't work since the context is different. For example, the logistics of training a small population spread over a large area are very different from those of trying to train a similar number of people in a more densely populated area.

There is a significant trust gap. The parties often do not trust each other's motives. This lack of trust has severely limited the Parties' ability to work collaboratively towards solutions. Examples of the lack of trust are provided below.

- NTI and the GN have several concerns with the GC
  - There is concern that the federal government cannot effectively commit to and follow through on plans. Clearly, it is difficult for all the parties involved if the federal representatives must retract on a position, due to a lack of authority within the federal party involved to ensure that GC follows through. Two examples are provided here:
    - For example, in a letter to John Lamb of NTI, dated May 28, 2003, DM Jolicoeur indicated that, among other things, the parties would work on a two-part approach. The first part involved working towards "agreement on specific commitments (including a specified financial commitment) by Canada, with respect to labour force survey, employment plans, pre-employment training and support measures referenced in Article 23." NTI wrote a follow-up letter on June 3, 2003, indicating that "as it appears we have now reached a high level of consensus on the key points, I would propose that Barry Dewar and representatives from NTI and GN meet as soon as possible to prepare for the commencement of formal discussions with your negotiator." NTI received a letter from INAC, over sixteen months later, that reported that "In response to an undertaking by DM Jolicoeur dated May 28, 2003, the department sought to obtain funding for short term initiatives under Article 23. We were not successful".
    - In 2002, CWS obtained direction allowing the parties to agree to a specified amount of funding for an IIBA for Migratory Bird Sanctuaries and National Wildlife Areas. From 2002 through 2004, the parties negotiated the details of the IIBA, based on the agreed funding amount, until negotiations were halted in early 2005 while CWS sought approvals from INAC and TBS for an inflation adjustment mechanism to be included in the IIBA. This approval was finally obtained in November 2005. CWS has still not signed off on the agreement-in-principle, advising that INAC has not approved the funding amount CWS committed to in 2002.
  - There is a concern that the GC is not very committed to real change. For example, the GC has been repeatedly accused of being focused on the letter of the agreement, rather than the spirit of the agreement. This was stated in the Auditor General's Report of 2003. It is also consistent with comments from interviews. Throughout our review we have encountered several GC representatives that, in our opinion, appear not to appreciate these comments, and essentially

reflect the attitude that the Auditor General had criticized so strongly. We do note that the current team at INAC and many federal officials do appear to recognize that the Auditor General had noted real problems, and that change, and in particular proactive focus on achieving the objectives was required.

- INAC has reported that NTI has gone directly to the press on certain occasions, or pushed for arbitration, rather than dealing directly with them, and this is contrary to the spirit of partnership and collaboration that the parties need to adopt to work successfully. INAC has also reported that NTI wants all promised actions to be articulated in writing in detail - that they are unwilling to work collaboratively towards solutions. Specifically, INAC has reported that they have tried to engage NIP in strategic planning and that NTI is preventing this.
- Several interviewees also noted that there is a lot of distrust of individuals, and personality conflicts had been limiting real progress.
- In many cases the lack of trust has led people in each of the parties to make assumptions about the motives of other parties - for example, people claim that the government has lost the "will" to keep the spirit, while INAC views NTI's refusal to attend at meetings as a negotiation tactic. NTI strongly refutes this assertion. In our review we have encountered almost universal support and sincere commitment to implementing the spirit of the NLCA; we believe that lack of understanding, rather then an insincere will is driving many conflicts.

Disagreement is often the standard of protocol. Representatives frequently indicated that each of the parties involved were so used to being in conflict with each other that the automatic response is to disagree.

The articulation of the implementation plan in the form of a contract can limit flexibility. Some interviewee participants noted that implementation was more successful with other claims because they were not limited by a contract, and could be flexible in setting and acting on priorities. PwC recognizes that business between organizations is frequently conducted based on a "contract" and this does not have to limit flexibility. Generally speaking, contracts can afford the opportunity to clearly document expectations, roles, responsibilities, consequences of outcomes, and change management procedures, as required.

There is inadequate communication at all levels.

- Each of the parties has indicated that there is not enough communication at the implementation manager level. Line managers used to have weekly calls, and only problems were bumped up to NIP level. All of this has "ground to a halt".
- NIP had not been meeting regularly. NIP had not been meeting regularly over the latter part of the period, beginning in the summer of 2003. This appears to have largely been because NTI, following discussion and agreement with GN refused to meet with the GC. Interviewees from GC indicated that they perceived that NTI was refusing to meet on implementation as a technique for improving its bargaining position. NTI strongly refutes this assertion. NTI has offered several reasons for their refusal to meet. NTI interviewees noted relations had severely broken down. NTI indicated that it believed that the negotiation process and the process for handling disputes within NIP were fundamentally flawed. It wanted to discuss changes to these, and indicated that GC refused to do so. Furthermore, interviewees from NTI noted that, at the time that negotiations around the second contract began, GC brought their chief negotiator into NIP meetings. NTI reported that the chief negotiator was senior to GC's NIP member, and effectively limited any discussions about restructuring NIP. In NTI's opinion, the first real panel meeting since 2002, with a DG was in October 2004. The primary purpose of the meeting was to start the process for producing the five year review and annual report, both of which were several years overdue. In addition to these two issues, NTI presented a series of issues that they wanted to resolve. They noted that the federal people

listened without commenting. They interpreted the lack of response as a refusal to discuss these issues. GC in turn has refuted this assumption. They have indicated that given that the DG was new to the process, and that the parties had agreed that these items were for information only (i.e. they had agreed in advance that substantive discussion would not occur on these items), the DG thought it appropriate to listen without commenting, and that this was not intended as a refusal to discuss these issues.

- In addition, GN interviewees noted that Canada had a lack of commitment to engaging in meaningful discussions to move things forward, and this was frustrating and unproductive for the GN
- When NIP did meet they did not agree on the minutes of the meeting. This has happened repeatedly, and yet the parties have not identified a solution to resolve this.
- The IPGs and Government of Nunavut submitted detailed funding proposals. INAC submitted a counter offer with substantially lower amounts. In May of 2004 it provided its rational for the lower funding amounts. However, we believe that the discussion and rationale should be provided at a much finer level of detail. Given the relative newness of these organizations, it is likely that it will take many years before the actual funding requirements are well understood. Until such time as the organizations are functioning smoothly, we believe funding discussions should be at a very detailed level (as would be the case in any new or young organization). Specifically, the funding plan should identify all aspects of the mandate, the demand for services, the delivery mechanisms, the assumptions (including assumptions about wage rates, inflation, training, etc.) and the calculations on an annual basis. This type of detail then provides a basis for reassessment should the assumptions vary through time.
- All parties have at one time refused to meet on or discuss critical issues. NTI and GN refused to attend implementation meetings until there was agreement on the next contract, while the GC refused to engage in further discussions about the next 10 year funding for an extended period of time.
- Communication styles vary between Inuit and government. A lack of understanding of these limits effective communication.

There is no effective dispute resolution. The requirement for unanimous consent, combined with the fact that the Government of Canada has refused to allow any issue to go to arbitration effectively has meant that issues can go unresolved perpetually.

Lack of political attention. Several interviewees indicated that they believed that the federal government had attracted favorable media coverage for the NLCA and the creation of Nunavut, but subsequently "had lost interest in it". Our interviews with federal officials, and the attention paid to Nunavut by the Auditor General of Canada issues and organizations suggests that there is no lack of interest or commitment within the federal bureaucracy. It must be acknowledged, however, that Nunavut is a federal riding represented by a single Member of Parliament: it is thus difficult to ensure that Nunavut-related issues are viewed as high priorities by senior members of the federal government.

NTI's lack of ability and willingness to engage in discussions about reallocation of funds amongst IPGs. NTI has stated that it will not agree to reallocations of funding between IPGs, as per Section 37.1.1 (d) (ii) or 37.3.3 (f), although it does support reallocation within IPGs.

Lack of experience in public governance amongst the IPGs. Reports and interviewee comments have illustrated that executives of the IPGs sometimes lack experience in operationalizing good governance principles in publicly funded bodies.

5.37.4 Recommendations

Essentially, we believe that all of these barriers boil down to five serious principle-based problems, and that the Parties should focus on overcoming these five issues. We first discuss recommendations based on five key principles. We then discuss several additional more specific principles. Finally, we present key tactical recommendations to improve the effectiveness and accountability of NIP.

- **Interpretation:** Each of the parties has different interpretations of many of the Articles, Parts or Sections of the NLCA. Too often discussion appears to focus on what the parties should or should not do, but from their own interpretation of the Agreement. Where the parties have different interpretations, such efforts are likely to be fruitless. For example, the interpretation of the term "procurement policies respecting Inuit firms" is ambiguous: the parties cannot come to agreement on what should be done, until they agree on what the term "respecting" means, and/or what the overall spirit of the Section is. It is critical that the parties meet to discuss the overall expectations, as well as the expectations regarding key problem areas.
- **Regular and fully documented communication at the NIP level.** Article 37 is clear in its indication that there shall be an "ongoing process for Inuit and government to plan for and monitor the implementation of the Agreement", and further directs that NIP shall "Oversee and provide direction on implementation". There must be ongoing meetings about implementation. We understand that there is concern amongst all Parties about the fact that in several critical areas discussions have been protracted and not led to resolution. We believe two factors have contributed significantly to this. First, there has been no documented process for how issues should be raised and resolved. Throughout this review we have found that information is often fragmented; consideration of key issues, including the background/context, the problem and the proposition of solutions, with input from all parties, has not been tracked in a consolidated way. Second, there has been no ultimate process for ensuring that resolution is reached. Because of the requirement for unanimous consent for any issue to go to arbitration, disputes have persisted. We believe the parties must commit to a process where they meet and document communications regularly and where Arbitration as a final step provides certainty that these communications will lead to a resolution within a reasonable period of time.
- **Greater certainty and accountability is required on the part of GC.** We understand that part of the difficulty in concluding on key issues has been that there are sometimes many layers of federal approval required for final conclusion on key issues. In some cases discussions are held sequentially, and as new federal parties become involved, all of the stakeholders have to revisit certain issues. This process of attempting to invest time and effort in working together to find solutions, only to have a third party (e.g. another federal person or department) nullify, or severely reduce the plans does a disservice to all parties. This burden is borne disproportionately by GN and NTI. Their budgets are fixed, from previous negotiations with GC. For them to commit resources to engaging in activities which they have no influence or control over the outcome is not fair. This matter is also present with non-financial issues. In part, this is about building trust. But it is more than that. The problem is not that the people at the table cannot be trusted; most interviewees agreed that all of the people involved had the right intentions. The issue of trust, at least in terms of trusting the GC, is that the process itself conveys no certainty or accountability to the parties involved in working through problems and developing solutions.
- **There must be an effective dispute resolution process in place,** particularly given that issues around certainty and accountability are a serious barrier to successful implementation. There are many issues where the various parties have "dug their heels in" with a particular position. The inability to have anything go to an arbitration board, despite the clear intent of this as illustrated by Article 38 has resulted in problems and disputes persisting indefinitely. We have provided a detailed description of a process that NIP should follow (see Key Tactical Recommendations to Improve the

Effectiveness and Accountability of NIP) in order to ensure that there is an effective issue identification and dispute resolution process in place.

- **Ongoing comprehensive joint monitoring.** One of the serious problems with the implementation of the NLCA has been that there has been no shared ongoing monitoring of the implementation. It is critical that the parties develop a system that tracks objectives, expectations, key responsibilities, timing of activities, and the status of activities and outcomes. In order to ensure that each of the parties have similar expectations, this must be done jointly. We believe NIP should consider engaging an independent professional evaluator to ensure that the system effectively identifies and tracks the expectations of all parties.

In addition, there are several related, supporting and or more detailed recommendations that should be considered.

The expectations, mandate and accountability of NIP should be made clear. There needs to be agreement on what the mandate of NIP is. This needs to be agreed upon by all parties, both at the NIP level and at the more senior level (likely the NSOWG level). NIP should develop a plan, identifying short, medium and long term objectives and should monitor the implementation overall and the plan specifically. As stated in the Auditor General's report, along with credible reporting, good accountability requires: clear and agreed-upon expectations, clear roles and responsibilities; balanced expectations and capacities; and reasonable review, program evaluation and results. (Ref. 3.1, p. 13) Given NIP's history of poor communications, and its success with the Conciliation Process, we recommend that NIP engage an independent facilitator to ensure that discussions initiate productively.

Involvement of elders who were involved in the original negotiations in the process. We believe it would be very helpful if the elders who were involved in the negotiating process were involved as key advisors for resolving disputes. For example, they could sit on working groups, and share their opinion of what the original intent of the Article was.

Communications should be improved. This is true across a host of areas:

- Implementation managers should be meeting frequently and resolving issues as they arise.
- NIP should meet at least quarterly in person and monthly via telephone, just as any large organization with significant mandate would.
- Minutes of the meeting must be taken.
- Where there are disagreements about funding or programs or services, each of the representatives should share their rationale.
- Affected parties, such as IPGs, should be involved in discussions relevant to them.
- Inuit should share with non-Inuit the non-verbal communication tools.

Increase appropriate support to IPGs: Members of IPGs often lack knowledge about accountability protocols that are associated with managing tax payers' dollars. It is important to provide them with training on how to read a financial statement, why audits are important, and why accountability is important. However, it is also important that the governance regimes are sensitive to the needs of organizations in Nunavut. For example, a standard protocol for ensuring good governance is separation of decision-making from operations. However, when organizations consist of just 12 people, such separation is impractical.

Key Tactical Recommendations to Improve the Effectiveness and Accountability of NIP

One of the most serious problems with the implementation of the NLCA has been the failure of NIP to effectively resolve problems or disputes in a timely manner. As such we offer the five key recommendations on processes and priorities for NIP to pursue.

1. Meet regularly
2. Adopt a formal issue identification and resolution process
3. Change nature of discussion from negotiating positions to effective dialogue
4. Expand the content of the Implementation Contract
5. Begin with priority Issues

Each of these recommendations is discussed in greater detail below.

1 Meet regularly

Quarterly in-person meetings:

- NIP should meet in person quarterly.
- In order that NIP members can be continuously reminded of the impact on people's lives that the implementation of the NLCA is intended to have, and to ensure that beneficiaries have the opportunity to hear directly from NIP and present their concerns directly, at least two of these meetings should be held in Nunavut, and at least one of them should be held in a community other than Iqaluit. There should be an open forum with the community, with translation services available. By rotating the meeting places, NIP should attempt to visit all 26 communities over the next 10 years.
- We note that there have been no approved minutes of meetings since 2002. Prior to this period, when minutes of meetings were prepared and approved, it typically took months to do so. The minutes of the meeting notes that contentious issues should not appear in the minutes. Minutes of meetings should be prepared promptly so as to ensure accuracy and quick action upon them. They should also be comprehensive – if contentious issues are not included in the minutes, they are less likely to be resolved. Hence, we recommend that the sessions should be recorded and a transcript of the meeting, together with minutes of the meeting (i.e. a summary of the transcripts) should be prepared within a week of the meeting. All Parties should sign off on the minutes of the meeting within a week of having received the minutes and transcript. Each party should have the right to append comments indicating disagreement with conclusions, or repositioning of their own comments, in the minutes if they so choose. These appendages should not reflect considerations after the meeting. If there are changes to positions after the meeting, these should be so indicated in a separate follow-up letter.
- Each meeting should commence with a review of issues raised at the previous meeting, and an assessment of actions in regards to those issues.
- Given the historical deficiencies of NIP meetings (lack of minutes, lack of resolution on critical issues) an independent facilitator should be used to chair the meeting.

Monthly/ad hoc conference calls

- In between the quarterly in-person meetings, there should be conference calls to deal with issues as they arise. There should be minutes of these meetings prepared within a week of the conference calls and these should be approved by all parties within a week of having received the minutes.

2. Adopt a formal issue identification and resolution process

NIP members attended a procedural workshop on December 8, 1998. They developed an outline for documenting and resolving issues. We have reviewed and modified this plan and presented it below. We recommend that NIP formally adopt this process. Given the fluctuating number of days in a month, 30 days is used as a proxy for one month; the actual days over the course of the entire period may be longer by as much as five days depending on the time of the year.

Step	Time Frame	Procedural Step/Activity
1	Proposed at NIP quarterly in-person meeting (material to be circulated one week prior to the meeting)	Identification of implementation issue • Identification can be by any Member or Party. Screening Processes • The principles in the NLCA would be the initial screen. • There is need for "evidence" that the parties have identified this as an issue and attempted to resolve it, including documentation of the effort to date. Format of background documentation • The proponent must indicate the reference to the NLCA, and their interpretation of the objective and implied responsibilities. They should also include the actual obligations contained in the Implementation Contract (regarding actual obligation; budget; responsibilities and timelines) if the issue has been included in the Implementation Contract. Discussion at NIP meeting • The issue should be discussed at the meeting and the Parties should agree on the appropriate action to take (establish working group, prepare background documentation, conduct research, etc.)
2	Day 1 to 83 (up to one week prior to the next quarterly in-person NIP meeting)	Investigating the issue • A report shall be prepared by: the proponent of the issue, NIP's working group, third party contract or some other body as agreed to by the Parties. • This report should include: background, issue/problem statement, chronology of events, factors/considerations, implications, options, analysis and recommended actions.
3	Day 83 to 180 (next quarterly in-person NIP meeting)	Panel Review • NIP members consider the issue at the quarterly in-person meeting following the one at which it was raised and attempt to reach consensus. • NIP may request further investigation of the issue. NIP has the option to: o Request the parties to the issue to attend the meeting and/or make presentations; and/or o Request additional information respecting the issue.
4	Day 180 to 270	Panel Decision • If consensus is reached, NIP directs the Parties to comply with the decision. Notification should be sent by day 187 (one week following the third NIP quarterly meeting). • Where consensus cannot be reached, NIP notifies the Parties and recommends in writing and the issue proceeds to Mediation by an independent party.

		• If representatives of two or more of the parties believe that this step should be repeated prior to going to Mediation, the step should be repeated.
5	Day 260	Panel Decision • NIP will review the recommendations from the Mediator. • If NIP cannot agree on the recommendations of the best course of action, NIP may consider a second round of mediation, providing guidance to the mediators and Parties involved. However, if at least two of the Parties believe that a second round of mediation would not lead to progress, NIP should recognize its failure to effectively resolve a dispute and the matter should pass to Arbitration
6	Within 30 days of final decision from Step 5	Notification of decision • NIP shall send notice to all Parties of the final decision, with a detailed description of their responsibilities, the timelines for those responsibilities, and the consequences if they are not met.
7	At least each of the next four quarterly in-person NIP meetings after Step 6	Monitoring • A report documenting the status of the issue, the actions carried out by the Parties, and the outcomes should be submitted one week prior to each of the next four quarterly in-person NIP meetings • The Members should indicate their satisfaction with the progress, and identify any remedial actions that may need to be taken.

We have several recommendations on potential modifications to this process.

- The timelines proposed in this process are maximum recommended timelines. If resolution can be achieved more expeditiously through conference calls, this should be done. If all Members unanimously agree to extend the review timelines, due to the complexity of the issue, this should be allowed. However, if Members from at least two of the three bodies deem that the timelines are appropriate, then the issue should proceed according to this schedule.
- If the representatives of at least two of the Parties agree, any of these steps may be skipped or lengthened. For example, the issues surrounding Article 24 have been debated since the implementation of the NLCA (13 years ago) and the Parties do not appear to have made progress with regards to GC's obligations. Hence, we recommend that NIP agree on a terms of reference and strike a working group at the next quarterly in-person NIP meeting. Steps 2 and 3 should then be combined, such that if a resolution is not achieved within 90 days of the next quarterly in-person panel meeting, then the issue proceeds to mediation.

We note that Article 38 on Arbitration specifies that the parties must unanimously agree for an issue to go to Arbitration. Both the Auditor General of Canada and the Conciliator former Justice Thomas Berger noted that the requirement for unanimous consent has impeded the effectiveness of this Article as a dispute resolution process.

In the 2003 Audit, the Auditor General wrote "Our review of the work of the arbitration panels found that no cases had come before them since the claims were settled over 10 years ago. Yet disputes continue to remain unresolved. Furthermore, if it's true that Canada cannot agree to be bound by a decision of a third party funding matters, then any money dispute can never be resolved through arbitration." (Ref. 3.1 p. 9) We note that the Auditor does not say that Canada cannot agree to be bound by a decision of a third party.

We further note that the NLCA did not stipulate any such exclusion. It is hard to imagine that the lack of such an exception could have been unintentional, given that it seems that the potential disputes over funding would have seemed quite likely.

In the Conciliator's Interim Report, it states "It seems disingenuous for Canada to argue that the executive branch can take a position in defence of Parliament's prerogatives when Parliament itself has passed a measure which indicates that it is prepared to submit matters in the very broad category described by Article 38 to arbitration." (Ref 2.2, p. 38) It further goes on to note that "I recommend that in future a request for arbitration should be allowed to go forward unless it involves a vital question of policy with implications extending beyond the implementation of the NLCA". We interpret this to mean that the Arbitration Board cannot be requested to make decisions that would influence factors outside the NLCA. For example the Arbitration board could not be asked to change a national policy. However, we note as provided in Section 2.12.2, "where there is any inconsistency or conflict between any federal, territorial and local government laws, and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict." We interpret this Section, taken together with Conciliator's Interim report to mean that if there is a discrepancy between the national policy and the NLCA, the Arbitrator cannot be asked to change the national policy, but could advise on what exceptions should be implemented to make it consistent with the NLCA.

We agree with this finding. We note that the requirement for unanimous consent has prevented anything from moving to Arbitration. This has resulted in a lack of resolution of problems in certain critical areas. Hence, we recommend that the parties consider the recommendations in this section and revise the Article on Arbitration accordingly.

We further suggest that Mediation be inserted as a precursor to Arbitration, for two reasons. Mediation allows for an independent third party to comment on the reasonableness of the requests and positions of the various parties (as does Arbitration) but allows the Parties to be involved in crafting the solution that works best for all stakeholders. It is particularly important to note that the Parties will always have a better understanding of the issues and most workable solutions, than an Arbitrator that has not been involved to the extent that the Parties have. Second, we found throughout our review that beneficiaries were frequently concerned that decisions were made too hastily, without sufficient consultation.

Specifically, we recommend that the revised Arbitration Article include the following elements.

- A process for identifying issues and resolving disputes with time lines and clear points of authority.
- Mediation as an intermediate step prior to going to arbitration.
- Requirement that at least two of the three Parties represented on NIP (either GC and GN, GN and NTI or GC and NTI) consent to extend any timelines.
- Unanimous consent be required (in the form of a signed letter, or signed minutes of meetings) to shorten timelines or skip steps.

3. Change nature of discussion from negotiating positions to effective dialogue

Discussions at the NIP level appear to have been hampered by several inter-related problems. There appears to be distrust amongst the various member parties. This is not an issue of distrust of the personal integrity of the people involved. Rather it is a distrust of the intent and ability of the organizations they represent. For example, we have frequently heard that GC is focused on just doing what it is obligated to do as spelled out in the NLCA or the Implementation Contract, and is not focused on achieving the inherent "objectives" (Ref 3.1). We have also heard that NTI is continually trying to expand the scope of

the agreement and negotiate more. We believe these are examples of how the Parties are making assumptions about what is driving the other Parties' actions and that this prevents effective dialogue.

Peter M. Senge, in his 1990 book "The Fifth Discipline" provides an excellent discussion of these common problems. He notes "in dialogue, different views are presented as a means toward discovering a new view." (p. 247). He presents guideline for enabling effective dialogue amongst teams of people. He notes that three basic conditions are necessary for effective dialogue.

- All participants must "suspend" their assumptions, literally to hold them "as if suspended before us"..."as if it were hanging in front of you', constantly accessible to questioning and observation". "This does not mean throwing out our assumptions, suppressing them, or avoiding their expression. Rather, it means being aware of our assumptions and holding them up for examination. This cannot be done if we are defending our opinions. Nor can it be done if we are unaware of our assumptions, or unaware that our views are based on assumptions, rather than incontrovertible fact." (Reference 26.1, p 245).
- All participants must regard one another as colleagues. He notes "Dialogue can occur only when a group of people see each other as colleagues in mutual quest for deeper insight and clarity...The conscious act of thinking of each other as colleagues contributes toward interacting as colleagues" (Ref. 26.1, p. 245). We have heard from numerous people involved in the implementation process that each of the three "parties" need to work together, as a collective group, in a collaborative fashion.
- There must be a "facilitator" who "holds the context of the discussion". In the absence of a skilled facilitator, we are often naturally drawn to defending our positions and away from dialogue around collective solutions. "*This is especially true in the early stage of developing dialogue as a team discipline...The facilitator of a dialogue session carries out many of the duties of a good process facilitator. These functions include helping people maintain ownership of the process and the outcomes – we are responsible for what is happening. The facilitator also must keep the dialogue moving. If any one individual should start to divert the process to a discussion when a discussion is not actually what is called for, this needs to be identified...The facilitator always walks a careful line between being knowledgeable and helpful in the process at hand, and yet not taking on the "expert" or "doctor" mantle that would shift attention away from the members of the team, and their own ideas and responsibility*". In addition, the facilitator helps to influence the flow of dialogue. "*For example, after someone has made an observation, the facilitator may say 'But the opposite may also be true'*." (Ref. 26.1, p. 246). By encouraging everyone to openly share thoughts and consider issues, the facilitator is encouraging people to not think in terms of their positions, but rather to consider various possible scenarios.

In some ways these ideas seem rather obvious. However, from the discussions we have had with people involved in this process, it seems that this spirit of collaboration, while desired by most, has proven elusive. In order to move towards this type of dialogue, and overcome some of the "distrust" that exists, we recommend that a skilled facilitator lead quarterly in-person panel meetings until such time as the group feels that they are working collaboratively and effectively.

It is common for organizations to send people who must work together as a team to courses or workshops on team building and effectively dialoguing. Given that NIP is a team that wants and needs to work collaboratively together, it should consider doing the same.

It is critical to note that this approach does not eliminate the need for mediation and/or arbitration – it merely reduces the frequency with which these would be required.

4. Expand the content of the Implementation Contract

We have usually found that contracts of a significant size and duration typically describe the objectives – both detailed and overall – and the dispute resolution process, as well as the specific obligations of each of the parties. The NLCA defines the objectives of the NLCA, and it provides for the parties to go to Arbitration. However, it does not describe how the parties will interact together and how they will resolve disputes. The obligations of the parties were described in the last Implementation Contract, but were not put into the context of what the objectives were behind the obligations, nor did it provide substantive detail on who should do what by when. As NIP negotiates the next contract, we suggest that the following issues be included.

- We recommend that the Members agree to a partnership model. This partnership model should state the overall objectives, the role of each of the Parties, and the expected outcomes. As much as possible, this should be written in simple, clear and unambiguous terms.
- We recommend that the contract also describe how the group will act when disputes or disagreements arise. For example, the working group on IPG legislation developed guiding principles to identify what the expectations were, and how concerns would be handled (Ref. 6.25).
- We also note that it is common in long-term contracts to specify processes for changing the contract. It is impossible to write a contract for ten years and anticipate all the changes in needs and circumstances that will occur. The NLCA specifies that there should be flexibility and the contract should describe the process for enabling that flexibility.
- We recommend that the Implementation contract should identify for each Article, the objectives of the Article, the obligations of each party, the timelines for meeting those obligations.
- The contract should also describe what the consequences will be if the Parties fail to meet their obligations, or if the intended outcomes intended by those obligations do not occur.

5. Begin with Priority Issues

We recommend that the following issues be considered at the next quarterly in-person NIP meeting.

- Partnership Agreement for the Implementation Contract
- Article 24 – Government Contracts
- Article 8 – Parks (Territorial)
- Article 9 – Conservation Areas
- Define an appropriate and consistent process for “consultation” with beneficiaries
- Define an appropriate and consistent process for involving IQ in all aspects of policy and program development, design and delivery

5.38 Article 38 – Arbitration

5.38.1 Status

5.38.1.1 Background

The Nunavut Arbitration Board was created to resolve disputes arising in the interpretation, application and implementation of the NLCA where the DIO and the GC agree to be bound by the decision, as well as matters specifically designated in other Articles (specifically, 19, 21, 33), which include disputes between parties. The Board resembles the IPGs in that it is a stand-alone tribunal established under a Section of the NLCA and; therefore, makes submissions together with other IPGs.

Justice Berger's Interim Report found that the most important issue facing the Board is its role in the implementation process, rather than the level of funding and scope of its activities (Ref. 2.2). Specifically, the most significant challenge is that in order for something to go to the Board, all parties have to unanimously agree. GC has indicated on several occasions that they would not allow anything regarding funding to go to Arbitration. They have also not allowed Article 24 to go to the Board, despite repeated requests by NTI. Finally, while there has been a level of readiness maintained by the Board in the past, there are currently no members of the Board.

5.38.1.2 Assessment

38.1.1 *An Arbitration Board shall be established.*

38.1.2 *The Board shall have nine members. The chairperson and the vice-chairperson shall be selected by and from the members of the Board.*

38.1.3 *The Government of Canada, the Territorial Government and the DIO will consult and attempt to reach agreement as to the persons to be initially appointed by them jointly to the Board.*

38.1.4 *If agreement is not reached within six months of the date of ratification of the Agreement for any or all of the nine appointments under Section 38.1.3, the remainder of appointments, upon request of the Government of Canada, the Territorial Government or the DIO, shall be made by a judge of the superior court having jurisdiction in the Nunavut Settlement Area.*

The current review found that the Board had been established and appointments had been made. However, the terms of all nine board members expired in April 2005. GN, GC and NTI must jointly appoint the members. In April of 2005, the three parties jointly placed a newspaper advertisement in the newspapers in the NSA and 20 responses were received but no decisions have been made. Therefore, **this obligation was achieved up until April 2005 and has not been achieved since.**

38.1.5 *Re-appointments or new appointments to the Board shall be made in accordance with Section 38.1.3 and 38.1.4, except that a judge may be requested to make any such appointment if agreement is not reached within six months of the vacancy occurring.*

38.1.6 *The term of appointment of a member of the Board shall be for five years and a member shall be eligible to be re-appointed.*

38.1.7 *Any staff of the Board shall be provided by Government and any office of the Board shall be in the Nunavut Settlement Area. The Board shall prepare an annual budget, subject to review and approval by Government. The approved expenses of the Board shall be borne by Government.*

The last Five Year Review found that 38.1.5 has not always been met in the past, but was found to be met at the time of the last review.

As noted previously, as of April 2005 there were no Board members on NIP. **Therefore, while the obligation had been met in the past, it was not being met at the end of this review period.**

38.2.1 *An arbitration panel shall have jurisdiction to arbitrate in respect of any matter concerning the interpretation, application or implementation of the Agreement where the DIO and Government agree to be bound by the decision, and matters specifically dedicated in other Articles of resolution by arbitration under this Article.*

Justice Berger's Interim Report found that "there is no general submission of the parties to arbitration; they decide on a case by case basis whether to go to arbitration. This is in contrast with other provisions of the Agreement conferring jurisdiction on the Arbitration Board where there is no need for the consent of the parties. But thus far no disputes have come to the Board under the latter provisions, that is, there have been no occasion for the exercise of the Board's jurisdiction under the provisions of the Agreement where arbitration is mandatory." *(Ref. 2.2 p.36)*

The report continues, pointing out that only disputes under this Section have arisen; however, "as of today, no case has come before the Board owing to Canada's refusal to agree to arbitrate when such requests have been made." It was then surmised that this places NTI and the GC in an unequal partnership (Ref. 2.2 p.36).

The Auditor General Report of 2003 noted that NTI stated that GC had indicated that it would not be bound by decisions of the Arbitration Board on financial matters and funding levels. NTI has indicated that this finding in the report was based on an email from GC in response to a question on whether there were any issues that GC would refuse to refer to the Arbitration Board. They stated that Canada cannot agree to be bound by a funding decision of a third party that could affect appropriations of the Parliament of Canada. The report went on to noted that they found that no cases had come before the Arbitration Board since the claims had been settled 10 years ago and that "*if it is true that Canada cannot agree to be bound by a decision of a third party on funding matters, then any money dispute can never be resolved through arbitration.*" (Ref 3.1, p. 9)

In a letter dated October 15, 2003 from the DM of INAC to the Assistant Auditor General, the following was noted:

> *"In our response to the Principle Draft Chapter, we communicated our surprise at your criticism of the dispute resolution mechanisms under the Land Claims Agreements (LCAs). We believe that the fact that no disputes have been brought to the arbitration panels is a sign of the implementation committees' ability to resolve disputes as was anticipated by the LCAs. Instead viewing this as a failure of the dispute resolution mechanisms, we see this as a testament to the*

success of implementation committees and the staff of the parties who are dedicated to ensuring obligations are fulfilled. Most disputes are resolved outside the arbitration process although some outstanding issues are to be expressed in these types of complex agreements" (Ref. 21.1 p.1).

Over the course of this independent review, PwC received feedback from interviewees and documentation to support the fact that there have been issues that the parties have tried to bring to the Arbitration Board; however, the GC has not allowed any of those issues to be brought to the Board. As a result, we believe it is not appropriate to view this as a "testament to the success of implementation committees". We suggest that if there must be unanimous consent to bring things to the Board, then success too can only be claimed by unanimous consent.

There has been no occasion to implement this obligation, owing to GC's refusal to allow any matter to proceed to the Arbitration Board.

38.2.2 *An arbitration panel is prohibited from making a decision that alters, amends, deletes, or substitutes any Article of the Agreement in any manner.*

To date, the Board has not considered any matters for arbitration, therefore, there has **never been an occasion to implement**. The Arbitration Board has met and has conducted meetings on budgets, training, etc.

38.3.1 *The Board may establish rules and procedures for the conduct of references under this Article.*

The last Five Year Review found that the Board has adopted and published rules and procedures; therefore **this Article was met at the time of the last Five Year Review**.

38.3.2 *It is intended that the process of arbitration will resolve disputes submitted to it in an informal and expeditious manner.*

38.3.3 *"A reference shall be heard and determined by an arbitration panel selected from among members of the Board, consisting of:*

(a) one arbitrator, if agreed to by the parties to the arbitration; or

(b) three arbitrators, where one is selected by each of the parties to the arbitration, and a chairperson appointed in accordance with Section 38.3.6."

38.3.4 *An arbitration shall be initiated by a reference to arbitration filed with the Board by any party to a dispute. The reference shall name the other party to the dispute, set out the nature of the dispute, a summary of the facts, describe the issue to be arbitrated, name an arbitrator from the Board and describe the relief sought.*

38.3.5 *Within 30 days of being notified by the Board of a reference to arbitration, the other party to the dispute shall file a reply responding to the reference, agreeing to the arbitrator named in the reference or naming its arbitrator from the Board and describing any relief sought.*

38.3.6 *The chairperson shall be a person agreed upon by the two arbitrators named under Sections 38.3.4 and 38.3.5, except that, failing agreement, the chairperson shall be appointed by a judge pursuant to the territorial Arbitration Act, and in such case the judge may appoint any person as a chairperson as the judge thinks fit, whether the person is a member of the Board or not.*

38.3.7 *The arbitration panel may, on application, allow any person to participate in an arbitration as an intervener, if in the arbitration panel's opinion the interest of that person may be affected by the arbitration, and on such terms as the arbitration panel in its discretion may order.*

38.3.8 *The arbitration panel shall have jurisdiction to determine all questions of fact, and to make an award, including interim relief, payment of interest, and costs; but no costs shall be awarded against the DIO in any arbitration within Section 38.2.1 where the arbitration panel upholds the decision of the DIO.*

38.3.9 *If an arbitration panel makes no decision as to costs, each party to an arbitration shall bear its own costs and its proportionate share of the other costs of the arbitration, including the remuneration and expenses of the arbitration panel.*

38.3.10 *Notwithstanding Section 38.3.9, the parties to an arbitration shall not bear the costs of the arbitration panel in any expropriation proceeding where such costs are normally paid by Government.*

38.3.11 *In the absence of a majority decision, the decision of the chairperson shall prevail.*

38.3.12 *The decision of the arbitration panel is final and binding and is not subject to appeal, but the decision may be reviewed by the superior court having jurisdiction in the Nunavut Settlement Area for a failure to observe the principles of natural justice or otherwise acting beyond or refusing to exercise its jurisdiction.*

38.3.13 *The territorial Arbitration Act, shall apply to any arbitration to the extent that it is not inconsistent with these provisions.*

38.3.14 *The Board shall maintain a public record of the arbitration decisions of the arbitration panels.*

The last Five Year Review found that there was no occasion to implement these Sections. The rules provide for a registrar to implement this obligation; however, the Chairperson of the Board was appointed as the Registrar on July 4, 1998. We find the same conclusion here, that **there was no occasion to implement this Section.**

5.38.2 Barriers

The overarching barrier to this Article was highlighted in the Conciliator's Interim Report and reiterated in our interviews with stakeholder groups. It was repeatedly reported that GC has refused in the past and continues to refuse to bring matters to the Arbitration Board. GC has cited Parliament's ultimate authority

concerning the appropriation of funds as the main reason for not allowing matters to be sent to arbitration, even though this was what had been committed to in the NLCA. Ultimately, this has lead to many issues remaining unresolved.

As previously mentioned, without any conflict resolution, implementation of the NLCA was being held back. Issues have grown into more serious problems or have migrated into other areas of implementation, such as with the Implementation Contract. This barrier must be addressed in order to ensure the spirit and intent of this Article be realized.

5.38.3 Recommendations

As outlined in the Conciliator's Interim Report, a new approach to arbitration is required. It was further recommended that requests for arbitration should be allowed to proceed "unless it involves a vital question of policy with implications extending beyond the implementation of the NLCA". Further, "a veto over arbitration should be an exceptional measure, not the norm" and "the mere fact that Canada believes the issue at stake should not be determined by a third party is not a sufficient reason to deny adjudication of important questions, nor is it a reason that is consistent with the spirit of Article 38." (Ref. 2.2 p.38)

What was suggested by Justice Berger was that a "meaningful and effective dispute resolution process" be put forward (Ref. 2.2 p.38). This would entail a non-binding process such as mediation to be undertaken when there is no consensus to arbitrate or when they are deadlocked in any decision-making. It was further outlined that "Canada need not fear the imposition of a third party's judgment on a matter that raises policy implications that it believes should not be determined by a third party" (Ref. 2.2 p.39). What this process offers is neutral assessments and recommendations put forth to help resolve issues of implementation by way of mutually acceptable solutions.

We agree that mediation is an important tool for NIP to turn to. We further note that in addition to mediation, Arbitration should still exist as a final option if the Parties cannot come to a resolution. Without Arbitration as a final option, there is a risk that disputes will not be resolved, as there would be not effective consequence of a lack of resolution.

We also note that having Arbitration as the final option, following all the other recommendations noted for Article 37, will ensure that all Parties do their sincere best to come to resolution without having to go to Arbitration. If the Parties follow the process identified in Article 37, there will be clear documentation and understanding of the key assumptions made by all parties, and the realities of the situation. In our opinion, the lack of this clear documentation has been a key barrier to the effective resolution of disputes. Furthermore, if necessary, the Parties will have had the benefit of an independent mediator in assessing that information and providing recommendations. If any of the Parties abuse this process, by not providing sufficient information or not making demonstrative efforts to come to a resolution, such abuse would likely lead to a very negative impact for the offending party in Arbitration. Hence, in this way, there is a disincentive for all Parties to go to Arbitration without having first made a serious effort to resolve the dispute.

In conclusion, PwC asserts that an effective dispute resolution process is critical. This Article should be reviewed and amended in order for issues to move forward without being held back by one party. Without a mechanism to deal with disputes, those issues can grow into larger issues; can become part of the discussion of implementation of other articles and can ultimately leads to a stalemate in the overall implementation of the NLCA.

5.39 Article 39 – Inuit Organizations

5.39.1 Status

5.39.1.1 Assessment

With the exception of Section 39.1.5, the First Five Year Review did not cover this Article. For 39.1.5, it was mentioned that this objective had not always been met in the past but was being met at the time of the Review.

Over the course of the review period NTI carried out a second round of designation analysis, planning and assignment exercise. As of this writing, all sections of claim identified for assignment to DIOs have been designated to the appropriate organizations by motion of the NTI Board, and the required motions of designation and implementation plans are now centrally filed.

NTI's remaining obligations under this section require that the organization ensure on an ongoing basis that:

- All Designated Organizations continue to meet the statutory conditions of designation per Article 39 (i.e., that they remain Inuit-controlled, and retain capacity to carry out their obligations).
- All Designated Organizations adhere to the negotiated requirements of their specific designation agreements.

During the current Five Year Review, NTI **did not mention any problems or issues with this Section, and thus we understand that the obligations had been met**.

39.1.2 *Inuit shall maintain the Tungavik and ensure it operates in accordance with this Article.*

39.1.3 *The Tungavik may, on such terms and conditions as it deems appropriate, designate an Organization as responsible for any power, function or authority of a DIO under the Agreement, where that Organization has the capability to undertake that power, function or authority.*

39.1.5 *The Tungavik shall establish a public record of all Organizations designated under Section 39.1.3 and of all jointly designated organizations exercising powers of a DIO in accordance with Section 40.2.12, which record shall specify the powers, functions or authorities under the Agreement for which each one has been designated, and shall keep the record up to date.*

39.1.6 *The Tungavik and every Organization shall be constituted and operate with accountability to, and democratic control by Inuit.*

5.39.2 Barriers

At this time, there does not seem to be any concerns or issues with the implementation of this Article.

5.39.3 Recommendations

As there were no issues or concerns raised, implementation of this Article should proceed on an ongoing basis.

5.40 Article 40 – Other Aboriginal Peoples

5.40.1 Status

5.40.1.1 Background

The first Five Year Review contained the following NTI statements of position regarding overlapping claims:

- Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the rights of the Inuit of Nunavut.
- Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the territorial integrity of Nunavut and the jurisdictional competence of its legislation and government.
- Any agreement entered into with respect to the overlapping of the Manitoba Denesuline must address the rights of the Inuit of Nunavut in Northern Manitoba.
- Any agreement with respect to the overlapping claims of adjacent aboriginal peoples should be negotiated in consultation with NTI and the GN, and the consultation process must be acceptable to NTI and the GN.

The primary issue in connection with Article 40 concerns the claims of the Manitoba and Athabaska (Saskatchewan) Denesuline to land in Nunavut, and the process by which INAC addressed the issue was being decided. This process has been ongoing since 1993 when the Manitoba Denesuline initiated its lawsuit against the GC. The lawsuit has since been put in abeyance in view of a negotiation process being established. There are two tables proceeding concurrently: one regarding the Manitoba Denesuline claim, and the other regarding the Athabaska Denesuline claim. In both cases, INAC and the Dene are the main participants. INAC granted status to the GN as part of the federal negotiating team. NTI has more recently become directly involved. Legal Counsel for the GN told the interviewer that the GN recently withdrew from the Manitoba table.

In the *NIP Annual Report 2001-2004 – DRAFT 2*, Aarluk Consulting noted the following:

> The NLCA recognizes that, where neighbouring Aboriginal peoples have traditionally used lands in Nunavut for hunting and related purposes, and where they continue to do so, their access to lands in Nunavut is not impeded. At meetings in February 2004 in Ottawa, NTI and the Kivalliq Inuit Association (KIA) were finally informed that the federal government and Manitoba Dene have been bilaterally negotiating a proposed settlement area boundary for a Dene treaty within Nunavut.
>
> In NTI's view, INAC's negotiators with the Manitoba Dene are attempting to conclude a Dene treaty within Nunavut that exceeds in geographic scope areas that Dene themselves claim to use. The proposed settlement area boundary, which is not based on any objective analysis of relevant land use data, would be contrary to Article 40 of the NLCA, in that the NLCA recognizes Dene hunting rights only in areas of traditional and continued Dene use. Further, the proposed settlement boundary is not the product of consultation with NTI/KIA and would be contrary to federal land claims policy.

INAC's actions represent, in essence, an amendment to the NLCA, without prior discussion of such an amendment with Inuit.

40.1.3 *Nothing in the Agreement shall limit the negotiation of agreements between Inuit and any other aboriginal peoples respecting overlapping interests or claims, except that the provisions of such agreements shall not be binding on Government or any person other than Inuit and those aboriginal peoples without the consent of Government.*

Section 40.1.3 has not been implemented extensively. An Agreement between GC and the Inuit of Nunavik was signed in November 2005, while agreements with the Denesuline are still being negotiated. To the extent that there are agreements in place this section was being applied.

This obligation was being implemented as it was intended, although there has been limited occasion for its application.

40.2.4 *Subject to Sections 40.2.5 and 40.2.6, the Inuit of Northern Quebec have the same rights respecting the harvesting of wildlife in the marine areas and islands of the Nunavut Settlement Area traditionally used and occupied by them as the Inuit of Nunavut under Article 5 except they do not have the rights under Parts 2, 4 and 5, Sections 5.6.18 and 5.6.39, Part 8 and Sections 5.9.2 and 5.9.3*

According to interviewees from the GN, this section was being implemented in the context of the Agreement between the Inuit of Nunavut and the Inuit of Nunavik. NWMB and NTI respondents noted that Makivik has two members sitting on the NWMB (section 40.2.14) for matters pertaining to Areas of Equal Use and Occupancy (e.g., yearly walrus sport hunts), and that NWMB has always included those members in making relevant decisions.

This obligation was being implemented.

40.2.5 *The basic needs level for the Inuit of Northern Quebec shall be determined on the basis of available information. Where the basic needs levels of the Two Groups exceeds the total allowable harvest, the total allowable harvest shall be allocated between the Two Groups so as to reflect the ratio of their basic needs levels.*

According to respondents from the GN, NTI and NWMB, there has not been an occasion for the implementation of this section. However the NTI and NWMB respondents noted that the NWMB will soon start to rely on this section now that the Harvest Study Report has been released.

Section 40.2.5 has not been implemented to date. However, it appears that implementation will start soon in view of the release of the Harvest Study Report.

40.2.6 *Makivik shall exercise the power of an HTO or RWO on behalf of the Inuit of Northern Quebec.*

40.2.7 *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 the Inuit of Northern Quebec.*

An Agreement was recently signed by GC and the Inuit of Nunavik regarding harvesting rights on islands between the NSA and Quebec. A GN interviewee said that sections 40.2.6 and 40.2.7 were being fully implemented. Other interviewees did not cite any concerns with these sections.

Based on this information, we conclude that **the obligations contained in sections 40.2.6 and 40.2.7 was being met.**

40.2.10 *With respect to the lands described in Schedule 40-2 and notwithstanding any other rule or process provided by statute, at law or in equity, neither Group shall: (a) create or dispose of a legal or equitable interest to or in the lands; (b) seek or submit to sever or partition the lands; (c) establish or operate facilities associated with the sports or commercial use of wildlife or facilities associated with the observation, study or enjoyment of natural or cultural features of the lands; or (d) make use of the lands so as to cause physical alteration or in any way diminish their value; without the prior written agreement of the other Group and any act or instrument purporting to do shall be null, void and of no effect.*

A GN respondent indicated that both groups (Inuit of Nunavut and Inuit of Nunavik) are adhering to the terms of section 40.2.10. In view of the fact that the islands are jointly owned, it is the responsibility of both groups to adhere to the terms. Other interviewees did not cite any concerns with section 40.2.10.

Based on this information, we conclude that **the obligations contained in section 40.2.10 were being met.**

40.2.15 *In association with the conclusion of a Northern Quebec Inuit Offshore Land Claim Agreement, Government, the Inuit of Nunavut and the Inuit of Northern Quebec shall decide on appropriate permanent wildlife and land and water management regimes for the Areas of Equal Use and Occupancy.*

A GN interviewee noted that this section was now implemented in view of the fact that wildlife and land and water regimes had been agreed on in conjunction with the recently signed Agreement.

Section 40.2.15 has been implemented.

40.2.18 *In exercising rights with respect to harvesting and resource management which may affect the other Group, each Group shall be guided by the principles of conservation and the importance of effective environmental protection and, accordingly, shall pursue the application of appropriate management techniques aimed at the rational and sustainable use of resources.*

A GN interviewee indicated that this section was being implemented by the two groups in the Areas of Equal Use and Occupancy.

This obligation was being implemented.

40.2.19 *Each Group shall consult with the other with respect to all issues concerning all aspects of harvesting or resource management over which the Group has control or influence and which may affect the other Group. The obligation to consult shall include the obligation to give timely written notice and to facilitate in the making of adequate written representations.*

A GN interviewee indicated that this section was being mostly implemented. Occasionally the obligation to consult is not met as fully as it should be.

This obligation was being mostly implemented. Both groups on occasion do not consult as fully or in as timely a manner as warranted.

40.2.21 *Notwithstanding Section 31.1.1, the Two Groups shall share equally any revenues obtained by either Group resulting from any right to a share of resource royalties in the Areas of Equal Use and Occupancy pursuant to a land claim agreement.*

Respondents from NTI, NWMB and the GN indicated that there had not been any occasion to implement this section.

There has not been an occasion to implement section 40.2.21.

40.3.2 *Subject to the provisions of any agreement between Inuit and other aboriginal people of the Northwest Territories, Inuit may harvest wildlife in any area of the Northwest Territories west of the Nunavut Settlement Area which Inuit have traditionally used and continue to use for that purpose: (a) in an area where there is a treaty or land claim agreement, on a basis equivalent to the other aboriginal people of the Northwest Territories which is party to that treaty or land claim agreement, or (b) in an area where there is no treaty or land claim agreement, on a basis equivalent to any other aboriginal people of the Northwest Territories using that area.*

It is unclear as to whether Inuit from Nunavut have harvested in any area of the NWT west of the NSA. Respondents from NWMB and NTI therefore indicated that there has not been occasion to implement this section, while an interviewee from the GN said that the section was being fully implemented on the basis that Inuit from Nunavut could harvest in these areas if they so choose.

We conclude that this obligation was being implemented by virtue of the fact that Inuit from Nunavut can harvest in these areas of the NWT as they choose, whether or not they are currently exercising that right.

40.3.3 *Notwithstanding any provision of Article 5, members of an aboriginal people of the Northwest Territories other than Inuit may harvest wildlife within areas of the Nunavut Settlement Area which that aboriginal people has traditionally used and continue to use for that purpose, on a basis equivalent to Inuit under Article 5, subject to the provisions of any agreement between Inuit and that aboriginal people. Where a total allowable harvest is established for a species that is harvested by Inuit and another aboriginal people of the Northwest Territories, the NWMB shall allocate a basic needs level for that other aboriginal people, separate from any basic needs level for Inuit, based on available evidence of that other aboriginal people's harvesting of that species inside the Nunavut Settlement Area. Where the basic needs levels for Inuit and another aboriginal people of the Northwest Territories exceed the total allowable harvest, the total allowable harvest shall be allocated between Inuit and that other aboriginal people so as to reflect the ratio of their basic needs levels.*

Respondents from NTI, NWMB and the GN indicated that there has not been occasion for this section to be implemented. The NWMB has not been required to set total allowable harvests or basic needs levels for aboriginal people of the NWT. However, the NWMB and NTI respondents also point out that since the recent release of the Harvest Study Report, NWMB will soon start implementing section 40.3.3.

There has not been occasion to date to implement section 40.3.3. However, the section is soon to be implemented by NWMB now that the Harvest Study Report has been released.

40.4.2 *Notwithstanding any provision of Article 5, the members of the Bands may harvest wildlife for personal, family or community consumption and may trap wildlife within areas of the Nunavut Settlement Area which they have traditionally used and continue to use for those purposes, on a basis equivalent to Inuit under Article 5. Where a total allowable harvest is established for a species that is harvested by members of the Bands and Inuit, the NWMB shall allocate a basic needs level for the Bands, separate from any basic needs level for Inuit, based on available evidence of the Bands' harvesting of that species inside the Nunavut Settlement Area, taking into account the Bands' harvesting of that species outside the Nunavut Settlement Area. Where the basic needs levels for Inuit and the Bands exceed the total allowable harvest, the total allowable harvest shall be allocated between Inuit and the Bands so as to reflect the ratio of their basic needs levels.*

An interviewee from a DIO spoke of the concerns of the Inuit that the Manitoba Dene who want more than hunting rights and that they, in fact, want to own Nunavut lands. The interviewee also noted that the Manitoba Dene want to select lands that are too close to Arviat and touch on archaeological sites. The respondent also stated that the issue has become a legal problem, whereas it used to be simply a question of sharing wildlife.

Interviewees from the NWMB and NTI stated that the Dene are not happy with Article 40 and do not feel that they are being treated appropriately. They are negotiating their own land claim. With respect to the establishment of TAHs and the setting of BNLs, NWMB will soon rely on this section now that the Harvest Study Report has been completed and released.

A GN interviewee indicated that the first part of this section – i.e., concerning the right of Band members to harvest and trap within the NSA – is fully implemented because the right exists. The second part of this section – i.e., concerning the establishment of TAHs and BNLs – has not had occasion to be implemented, although it will soon (see above).

We conclude that section 40.4.2 has been implemented in respect of the existence of the right of Manitoba Denesuline Band members to harvest and trap within the areas of the NSA which they have traditionally used and continue to use for those purposes. While it has not been implemented yet, that part of section 40.4.2 dealing with TAHs and BNLs will soon be implemented by NWMB following the release of the Harvest Study Report.

40.4.4 *Notwithstanding Sections 40.4.2 and 40.4.3, the NWMB may establish limits and regulations governing wildlife harvesting by members of the Northlands and Fort Churchill Bands within the Nunavut Settlement Area commensurate with any limits and regulations governing wildlife harvesting by Inuit in areas which Inuit have traditionally used and continue to use for wildlife harvesting in northern Manitoba.*

Respondents from NTI, NWMB and the GN confirm that, while NWMB is aware of this section, it has not had occasion to establish limits and regulations pursuant to it. (The GN respondent noted that the GN has established regulation, but not limits.)

Section 40.4.4 has not been implemented.

40.4.5 *The NWMB shall consult with the Councils of the Bands on decisions of the NWMB of direct concern to those Bands and to determine how fairly to give effect to Sections 40.4.2 and 40.4.4.*

There are differing views regarding the extent to which NWMB consults with Bands. As indicated below, the INAC interviewee's position is that the two Dene groups believe NWMB is not consulting adequately. A GN respondent confirmed this view. On the other hand, NWMB and NTI respondents maintain the NWMB is carrying out its obligation to consult under this section.

According to an INAC respondent, the Manitoba Dene maintains that NWMB does not consult with them regarding Dene rights in Nunavut. The INAC respondent also indicated that neither Dene group regards the NWMB as an unbiased IPG. As well, the Dene groups believe that the GN did not adequately accommodate their comments with respect to the GN's consultation on the *Nunavut Wildlife Act*. A GN interviewee confirmed that the NWMB consults with the Dene groups infrequently.

According to one respondent from NWMB, NWMB is fully implementing this section by consulting with the Dene. Another NWMB interviewee, together with a respondent from NTI, took a slightly different view in stating that section 40.4.5 is usually (but not fully) implemented. They stated that the Bands were consulted by the GN concerning the coming into force of the *Nunavut Wildlife Act*. As a result, there was no need for NWMB to conduct consultations at that time. Until recently, no further occasion had arisen requiring the NWMB to act pursuant to section 40.4.5. However, NWMB is currently planning to consult with the Councils of the Bands on relevant NWMB decisions connected to the Nunavut Wildlife Regulations and Orders, which will soon be brought into force.

We conclude that section 40.4.5 has not been fully implemented. NWMB has not fully adhered to the spirit of the intent of the section by consulting regularly and openly with the Manitoba Dene.

40.4.6 *The NWMB shall work cooperatively with any interjurisdictional management institutions for protecting and conserving caribou herds or other species which are harvested by members of a Band and Inuit.*

There appear to be differing views on the extent to which this obligation was being met. The position of a GN respondent is that this section is implemented infrequently. The reasoning is that Boards from the four jurisdictions, including the NWMB, work on wildlife management issues within their own jurisdictions, but that they do not work together very much. The response of interviewees from NWMB and NTI is that the section is usually implemented due to the fact that NWMB routinely works with the Beverly and Qamanirjuaq Caribou Management Board. Another NWMB respondent sees that section as being fully implemented. A INAC interviewee noted that the Inuit and the Dene meet at the Caribou Management Board but it is unclear if they will they work cooperatively.

Clearly there are concerns about whether sufficient cooperation is occurring. There is no objective measure against which one can say that "sufficient cooperation has occurred." In this case, it is important that the key stakeholders be aware of any concerns, and that sincere efforts are made to communicate openly and address concerns to the fullest extent possible.

Given that the Parties all agree that cooperation is required, but that there is concern about whether this is sufficient, **the obligation contained in this obligation was being partially met.**

40.4.8 *The NPC, NIRB and the NWB, in performing their review functions, shall allow full standing to the Councils of the Bands to make representations respecting their interests in areas they have traditionally used and continue to use, and shall take those representations into account.*

INAC respondents indicated that this section is mostly implemented. It was noted that on a few occasions, due to an oversight, the IPGs have not consulted with the Bands on land use planning matters; however, once reminded, the IPGs conducted the consultations. It was also pointed out by an INAC respondent that the Manitoba and Saskatchewan Dene do not feel their interests are adequately addressed by any Nunavut institutions. This respondent made the observation that more communication is needed between the IPGs and the Denesuline.

A respondent from NPC indicated that the three IPGs are consistent in sending notices to the Bands whenever they receive a proposal that might affect lands traditionally or currently used by the Dene. The matter is somewhat complicated by the fact that the area of Dene traditionally used lands remains unclear. However, the NPC respondent noted that the IPGs tend to err on the side of inclusion to ensure that the Dene have the opportunity to provide input. In a letter dated February 4, 2002 (Ref. 7.5) from the Executive Directors of NPC, NIRB and NWB to the Chiefs of all the affected Bands in Manitoba and Saskatchewan, the IPGs made clear their position on Article 40 and asked the Bands to identify traditionally and currently used lands. The letter was copied to INAC, the GN and NTI and these Parties were asked for their views on the matter of land definition. According to the NPC interviewee, this letter was sent in view of the complications at the time regarding land definition in the context of the overlap negotiations. The IPGs were interested in clarifying their position and in encouraging the Bands and the parties to the NLCA to address the issue of the definition of traditionally and currently used lands.

We conclude that this obligation was being implemented.

40.4.10 *In the event that there is any cabin of a member of a Band on Inuit Owned Land and that cabin existed on January 1, 1992, members of the Band may continue to use and occupy that cabin and the DIO shall, upon request of the Band Council accompanied by adequate evidence, relinquish to the Crown title to the site of the cabin. The obligation to relinquish title to the Crown shall not apply to any request made more than 2 years after the date of ratification. In the event of disagreement between the DIO and a Band Council regarding any matter concerning this section, either party may require the disagreement to be resolved pursuant to the territorial Arbitration Act. For greater certainty, the relinquishment to the Crown shall not have the effect of making the lands reserves within the meaning of the Indian Act.*

Respondents from NWMB and NTI indicate that there has not been occasion to implement this section. However, a DIO respondent noted that there is a concern because the Dene and Inuit from Nunavut say they had been using the same cabins prior to the NLCA.

There appears to be an ongoing conflict about the implementation of this obligation.

40.5.2 *Notwithstanding any provision of Article 5, the members of the Bands may harvest wildlife for personal, family or community consumption and may trap wildlife within areas of the Nunavut Settlement Area which they have traditionally used and continue to use for those purposes, on a basis equivalent to Inuit under Article 5. Where a total allowable harvest is established for a species that is harvested by members of the Bands and Inuit, the NWMB shall allocate a basic needs level for the Bands, separate from any basic needs level for Inuit, based on available evidence of the Bands' harvesting of that species inside the Nunavut Settlement Area, taking*

into account the Bands' harvesting of that species outside the Nunavut Settlement Area. Where the basic needs levels for Inuit and the Bands exceed the total allowable harvest, the total allowable harvest shall be allocated between Inuit and the Bands so as to reflect the ratio of their basic needs levels.

Interviewee responses for section 40.5.2 (Saskatchewan Dene) are similar to the responses for section 40.4.2 (Manitoba Dene).

Interviewees from the NWMB and NTI stated that the Dene are not happy with Article 40 and do not feel that they are being treated appropriately. They are negotiating their own land claim. With respect to the establishment of TAHs and the setting of BNLs, NWMB will soon rely on this section now that the Harvest Study Report has been completed and released. A GN interviewee indicated that the first part of this section – i.e., concerning the right of Band members to harvest and trap within the NSA – is fully implemented because the right exists. The second part of this section – i.e., concerning the establishment of TAHs and BNLs – has not had occasion to be implemented, although it will soon (see above).

We conclude that section 40.5.2 has been implemented in respect of the existence of the right of Athabaska Denesuline Band members to harvest and trap within the areas of the NSA which they have traditionally used and continue to use for those purposes. While it has not been implemented yet, that part of section 40.5.2 dealing with TAHs and BNLs will soon be implemented by NWMB.

40.5.4 *The NWMB shall consult with the Councils of the Bands on decisions of the NWMB of direct concern to those Bands and to determine how fairly to give effect to Section 40.5.2.*

Interviewee responses for section 40.5.4 (Athabaska Dene) are similar to the responses for section 40.4.5 (Manitoba Dene).

From the perspective of an INAC respondent, the Athabaska Dene maintains that NWMB does not consult with them regarding Dene rights in Nunavut. Both groups do not regard the NWMB as an unbiased IPG. The Dene groups felt that the GN did not adequately accommodate their comments with respect to the GN's consultation on the *Wildlife Act*. A GN interviewee indicated that the NWMB consults with the Dene groups infrequently. The interviewee noted that the NWMB consulted with the Athabaska Dene regarding the Thelon Game Reserve, although this was inadequate from the perspective of the Dene.

An NWMB interviewee, together with a respondent from NTI, stated that this section is usually (but not fully) implemented. They stated that the Bands were consulted by the GN concerning the coming into force of the Nunavut *Wildlife Act*. As a result, there was no need for NWMB to also conduct consultations. Until recently, no further occasion had arisen requiring the NWMB to act pursuant to section 40.4.5. However, NWMB is currently planning to consult with the Councils of the Bands on relevant NWMB decisions connected to the Nunavut Wildlife Regulations and Orders, which will soon be brought into force.

As was noted in regards to cooperation, it is difficult to define how much consultation, or what style of consultation is necessary. Consequently, we conclude that the obligation **had been partially met.** Key stakeholders should be aware of the concerns and sincere efforts should be made to communicate openly and to address concerns to the fullest extent possible.

40.5.5 *The NWMB shall work cooperatively with any interjurisdictional management institutions for protecting and conserving caribou herds or other species which are harvested by members of a Band and Inuit.*

Interviewee responses for section 40.5.5 (Athabaska Dene) are similar to the responses for section 40.4.6 (Manitoba Dene).

The position of a GN respondent is that this section is implemented infrequently. The reasoning is that Boards from the four jurisdictions, including the NWMB, work on wildlife management issues within their own jurisdictions, but that they do not work together very much. However, the respondent indicated that there may be slightly more cooperation in the case of Saskatchewan because it appears interjurisdictional management is more important for Saskatchewan than for Manitoba. The response of interviewees from NWMB and NTI is that the section is usually implemented due to the fact that NWMB routinely works with the Beverly and Qamanirjuaq Caribou Management Board. Another NWMB respondent sees that section as being fully implemented. An INAC interviewee noted that Inuit and Dene meet at the Caribou Management Board but it is unclear if they will they work cooperatively.

We conclude that the obligation in this Section was being partially achieved, and that dialogue is required regarding necessary cooperation**.**

40.5.7 *The NPC, NIRB and the NWB, in performing their review functions, shall allow full standing to the Councils of the Bands to make representations respecting their interests in areas they have traditionally used and continue to use, and shall take those representations into account.*

The following assessment of section 40.5.7 matches the assessment of section 40.4.8.

Two INAC respondents indicated that this section is mostly implemented. One respondent said that on a few occasions, due to an oversight, the IPGs have not consulted with the Bands on land use planning matters; however, once reminded, the IPGs conducted the consultations. The other INAC respondent pointed out that the Manitoba and Saskatchewan Dene do not feel their interests are adequately addressed by any Nunavut institutions. This respondent made the observation that more communication is needed between the IPGs and the Denesuline.

A respondent from NPC indicated that the three IPGs are consistent in sending notices to the Bands whenever they receive a proposal that might affect lands traditionally or currently used by the Dene. The matter is somewhat complicated by the fact that the area of Dene traditionally used lands remains unclear. However, the NPC respondent noted that the IPGs tend to err on the side of inclusion to ensure that the Dene have the opportunity to provide input. In a letter dated February 4, 2002 (Ref. 7.5) from the Executive Directors of NPC, NIRB and NWB to the Chiefs of all the affected Bands in Manitoba and Saskatchewan, the IPGs made clear their position on Article 40 and asked the Bands to identify traditionally and currently used lands. The letter was copied to INAC, the GN and NTI and these Parties were asked for their views on the matter of land definition. According to the NPC interviewee, this letter was sent in view of the complications at the time regarding land definition in the context of the overlap negotiations. The IPGs were interested in clarifying their position and in encouraging the Bands and the parties to the NLCA to address the issue of the definition of traditionally and currently used lands.

We conclude that this obligation was being implemented.

5.40.2 Effectiveness of Implementation

As indicated above, from the perspective of the Inuit of Nunavut there are two major issues with Article 40: (i) the claims of the Manitoba and Athabaska (Saskatchewan) Denesuline to land in Nunavut, and (ii) INAC's process by which the issue was being decided. From the perspective of the Manitoba and Athabaska Denesuline, related issues are (i) the extent to which the GN and the IPGs, especially the NWMB, communicate with them, and (ii) the extent to which Denesuline interests in wildlife management are accommodated.

Article 40 has not been implemented as intended. From the perspective of the GN and NTI, Article 40 was to have been complete in itself; that is, it was to have laid out Dene rights to harvesting in Nunavut and was not intended to result in negotiations and new agreements with the Dene.

Interviewees noted that the Dene and Inuit have always been in agreement that each should have unencumbered use of the land to meet basic needs. The challenge has not been around use of the land *per se*, but rather designation of those lands for ownership. The Manitoba Dene have been seeking to obtain the equivalent to the concept of "Inuit Owned Lands" within the Nunavut Settlement Area and, in some cases, close to Inuit Owned Lands.

The Dene argue that INAC excluded them from the original negotiations regarding the NLCA and that they should receive their Treaty Land Entitlement in Nunavut. In 1993 the Manitoba Denesuline initiated a lawsuit against the GC. The lawsuit has since been put in abeyance in view of a negotiation process established by INAC. There are two tables proceeding concurrently: one regarding the Manitoba Denesuline claim, and the other regarding the Athabaska Denesuline claim. In both cases, INAC and the Dene are the main participants. INAC granted status to the GN as part of the federal negotiating team. NTI has more recently become directly involved.

The various Parties have not been highly effective with respect to the implementation of Article 40 – as it concerns the Dene – although the situation appears to have improved in the last two years. From the perspective of the Nunavut Inuit and the GN, the Government of Canada decision to enter into negotiations with the Dene for ownership of land in Nunavut contradicts the NLCA. One interviewee noted that INAC's reluctance to involve NTI earlier in the process was counterproductive. INAC has changed its policy in this regard in the last two to three years and NTI has become more actively involved with the process and with the Dene directly.

The GN was remiss in its approach to informing and involving the Dene in the consultations on the *Wildlife Act*, a fact that was later acknowledged and corrected. Generally, it appears that the GN has improved in terms of information sharing with other Aboriginal groups. NTI has generally taken a strong stance with other Aboriginal groups, seeing its mandate as ensuring that the NLCA is adhered to by all parties, and protecting the interests of Inuit. Until recently, this has also contributed to the lack of progress in settling the Dene claims. IPGs have improved their communications with other Aboriginal groups in the past two years; however, prior to that the IPGs, particularly the NWMB, were more reactive than proactive in sharing information and getting feedback from groups outside Nunavut.

While relations with the Dene have provided significant challenges to the implementation of Article 40, the negotiations with the Inuit of Nunavik have proceeded more smoothly. The various Parties have worked well together, especially in the last two to three years, and an Agreement has been reached.

5.40.3 Barriers

Issues Regarding Land Ownership

Article 40 has been subject to different interpretations by the interested parties. In itself this has proved to be a barrier to implementation. Additional challenges were raised by the fact that the claims overlap; the Manitoba Dene, the Athabaska Dene, NWT groups, and NTI share interest to varying degrees in the same land and resources. In itself this creates some confusion.

The Federal Role

INAC's decision to re-visit land ownership after the signing of the NLCA has been problematic because NTI and the GN assumed that Article 40 covered the interests of other Aboriginal groups. With that understanding, neither the GN nor NTI has been inclined to discuss the possibility of turning over land ownership to the Dene groups. INAC's decision to enter negotiations with the Dene without involving the GN and NTI has created tensions.

The Role of Inuit

Several interviewees suggested that the real problem is in government officials and lawyers leading the discussion. They noted that it should be just Inuit and Dene negotiating with each other, and that government and legal involvement has been detrimental to relations between Inuit and Dene.

Issues Regarding Information Sharing and Input from Outside Groups

In NTI's view, the negotiations regarding the Dene claims were, until recently, not transparent. NTI was obliged to agree not to share information regarding the quantum of the Manitoba Dene claim, for example, with its constituents. Conditions such as these did not further the negotiation process.

The GN and Nunavut IPGs have tended until recently to be reactive in terms of sharing information with and getting input from other Aboriginal groups. Article 40 does not specify the extent to which the GN and the IPGs are obliged in this regard.

5.40.4 Recommendations

The recommendations are premised on the assumption that Canada will proceed to negotiate some form of land transfer, at least to the Manitoba Dene.

The Negotiation Process:

- Inuit and Dene should first have the opportunity to negotiate a solution that is acceptable to both. Once this has been done, it would be appropriate for government officials and lawyers to review the recommendations and work with the groups to produce the corresponding documents required to finalize the agreement. It is important to note that Aboriginal groups should be able to negotiate amongst themselves regarding a shared settlement area but should not be able to dictate to government how much Crown land should be transferred.
- NTI and the GN should be full participants at any negotiating table regarding overlaps and the possible transfer of Nunavut lands to other groups.
- Any process should be transparent and should allow reasonable disclosure of information from all parties to their constituents.

Communications

The GN and the IPGs should be proactive in sharing information with other Aboriginal groups regarding issues that might affect those groups, including land use planning and wildlife management. Information should be shared in a timely manner, and the other groups should be provided the opportunity to work with the information and provide their input to any decision making process. Further, the GN and the IPGs should seriously consider and give due weight to the input of the other Aboriginal groups.

5.41 Article 41– Contwoyto Lake Lands

5.41.1 Status

Section 41.1.1 of the NLCA states the following with respect to Contwoyto Lake Lands:

- Upon ratification of the Agreement, Government shall grant to the DIO fee simple title, including the mines and minerals that may be found to exist within, upon or under such lands, to the parcels of land described in Schedule 41-1.

The first Five Year Review points out that, while the transfer involved extensive negotiations and significant delays by the Government of Canada in responding to NTI positions, the process was completed on May 7, 1999. The grant was made as a notification under the *Territorial Lands Act*.

Article 41 was fully implemented in May, 1999.

5.42 Article 42 – Manitoba and Marine Area East of Manitoba

5.42.1 Status

In the first Five Year Review, NTI laid out its position regarding Article 42 (the same position as applied to Article 40) as follows:

- Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the rights of the Inuit of Nunavut.
- Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the territorial integrity of Nunavut and the jurisdictional competence of its legislation and government.
- Any agreement entered into with respect to the overlapping of the Manitoba Denesuline must address the rights of the Inuit of Nunavut in Northern Manitoba.
- Any agreement with respect to the overlapping claims of adjacent aboriginal peoples should be negotiated in consultation with NTI and the GN, and the consultation process must be acceptable to NTI and the GN.

42.1.1 *Notwithstanding anything in the Agreement, Section 2.7.1 shall not apply in and to lands and waters in Manitoba.*

Section 2.7.1 refers to the surrender of rights and claims by the Inuit to lands and waters in consideration of the rights and benefits provided under the Agreement. Section 42.1.1 says that Inuit harvesting rights in and to lands and waters in Manitoba are excluded from this surrender clause. Respondents from KIA, the GN and INAC indicate that Inuit have not had a problem harvesting on Manitoba lands or in Manitoba waters, and that this obligation was being implemented.

This obligation was being implemented.

42.1.2 *Inuit shall not be entitled to seek or secure from the Government of Canada any consideration other than a definition of Inuit wildlife harvesting rights in Manitoba in exchange for any Inuit aboriginal claims, rights, titles and interests in and to the lands and waters in Manitoba.*

An INAC interviewee said that this section could prove to be especially relevant; however, thus far there has not been any discussion regarding the use of Manitoba land by Inuit. A GN respondent expressed the same view. The INAC interviewee added that in the future NTI might talk to the Province of Manitoba about possible Inuit rights in Manitoba if rights are granted to the Manitoba Dene in Nunavut.

There has not been occasion to implement section 42.1.2; however, it could become relevant, particularly if the Manitoba Dene were granted rights in Nunavut.

42.2.2 *In the marine area east of Manitoba, Inuit designated by the Keewatin RWO shall have the right to harvest wildlife up to the level, taking into account Inuit harvesting of that species outside the marine area east of Manitoba, required to satisfy their personal, family or community consumption needs, subject only to restrictions or limitations imposed by management agencies necessary to: (a) effect a valid conservation purpose; (b) provide for public health or safety, or humane methods of harvesting; (c) implement those terms of an*

international agreement, as qualified by Section 5.9.1, that were in existence at the date of ratification of the Agreement; (d) provide for harvesting by other aboriginal peoples pursuant to an aboriginal or treaty right and the reasonable harvesting activities of other harvesters, provided that the Inuit right to harvest a species: (i) shall not be more severely limited or adversely regulated than is the case with any other aboriginal peoples harvesting the same species; and (ii) shall take priority over harvesting of that species by non aboriginal users; (e) provide reasonable limits on disturbance or depletion of any species important for tourism; or (f) in relation to a Park or Conservation Area, implement the terms of an agreement between the Keewatin RWO and the management agency responsible for that Park or Conservation Area.

Respondents from the GN, INAC and KIA indicate that Article 42 was being generally implemented. There is no issue with the implementation of the subsections of section 42.2.2.

Section 4.2.2 was being implemented.

42.2.5 *The Keewatin RWO shall cooperate with management agencies in monitoring harvesting pursuant to Section 42.2.2.*

The respondent from KIA noted that the HTOs have been cooperating with the Keewatin RWO and that there have been no problems. This view is shared by the GN and INAC respondents who say that the Article was being generally implemented.

This obligation was being implemented.

42.2.6 *The Keewatin RWO, in making its designations pursuant to Section 42.2.2, shall take into account which Inuit have traditionally and currently harvested in the marine area east of Manitoba.*

Respondents from the GN, INAC and KIA indicate that Article 42 was being generally implemented. There is no issue with the implementation of section 42.2.6.

This obligation was being implemented.

5.42.2 Effectiveness of Implementation

Generally Article 42 has been implemented effectively. Section 42.1.2 regarding Inuit seeking rights in Manitoba might become more important if NTI chooses to seek such rights in the event that the Manitoba Dene are granted rights in Nunavut.

5.42.3 Barriers

Thus far, there appears to have been no barriers to the implementation of Article 42.

5.42.4 Recommendations

There are no recommendations at this time.

5.43 Illustrative Successes

During interviews and focus groups, we found that participants often had a difficult time thinking of successes. Common ones that did come up are presented below. In addition several people did not progress on Article 23 within the GN. However, that is out of scope for this study.

DEW Line Clean-up

The DEW Line Project is a major initiative by DND. In Co-operation with two Aboriginal partner organizations, the project will remediate 21 former DEW Line radar sites under the Department's responsibility. Since the project commenced work in 1996, the Department has cleaned up eight DEW Line sites; six in the Inuvialuit Settlement Region and two in the Inuit Settlement Region. Clean-up is on-going at six sites located in the Nunavut Settlement Region.

The DEW Line of radar sites across the Arctic coastline was established in the late 1950s to provide early warning of airborne attack. Of the 63 sites, 42 were located on Canadian territory. In the early 1960s, 21 sites were decommissioned and became the responsibility of the Department of Indian Affairs and Northern Development. DND operated the remaining 21 sites until the line ceased operating in 1993.

The project has been subject to stringent clean-up standards developed specifically for the Arctic environment by federal government departments and by DND's Environmental Science Group at the Royal Military College.

With these successes have been challenges. The costs associated with environmental remediation in remote areas of Canada's North are significant and the scope of work has increased dramatically. Costs have also been impacted by more stringent environmental requirements for the transportation, storage and disposal of demolition waste.
Source: http://www.forces.gc.ca/site/Feature_Story/2004/jun04/23_f_e.asp

In particular, we note hat this project is an excellent example of how Governments can achieve the objectives of Article 24. In the RFP for work, DND stipulate Inuit employment and training as a mandatory requirement. We understand from our interviews that Inuit employment may be as high as 70%.

National Parks IIBA

National Parks IIBAs have been concluded and implementation appears to be ongoing. Although there has been no agreement on funding, and the park-specific agreements have not been developed, an umbrella IIBA for the Territorial Parks has been negotiated.

NTI has noted that the process of concluding the National Park IIBAs has gone very well. They credit this largely to Parks Canada's efforts, even before the NLCA was signed, to acknowledge their responsibilities here and proactively negotiate with INAC.

GN NNI and Monitoring

GN developed the first Nunavummi Nangminiqaqtunik Ikajuuti (NNI) Policy in 2000 and further revised it in 2005 (Ref 16.13), in collaboration with NTI. This policy is designed to ensure it meets each of the objectives and obligations of Article 24. With a few exceptions, this policy addresses all of the objectives and obligations in Article 24. The GN produces an annual report with information on contract awards and

Inuit employment within contractors. They also have, at times, conducted evaluations of the implementation of the NNI policy.

Community Based Management

"*Community-based management*" refers to a system of wildlife management characterized to date by a removal of formal annual quotas and a transfer of initial management responsibility away from the NWMB and Government, directly to a community. Under this system, which is supervised by the NWMB and Government, the community Hunters and Trappers Organization (HTO) must establish and enforce appropriate by-laws and hunting rules to control harvesting by members. The HTO must also develop - in collaboration with Government - a reporting system to accurately record harvesting information, such as the number of animals struck, landed and lost.

The concept of community-based management is firmly rooted in several fundamental principles and objectives underlying Article 5 of the *Nunavut Land Claims Agreement* (NLCA). Essentially, this evolving system attempts to serve and promote the interests and efficiency of Inuit harvesters, and to encourage both their confidence and their participation in the Nunavut wildlife management system, by providing those harvesters with enhanced opportunities to be directly involved in responsible management decisions. At the same time, community-based management is intended to operate within the principles of conservation that govern all wildlife management under the NLCA."

Nunavut Trust

The Nunavut Trust has been successful in preserving the capital, and has outperformed many similar types of funds. It is also important to report that two of the four staff are Inuit. The Nunavut Trust reported that their strong performance has encouraged other land claim interest groups to look to the Trust for advice and support over the last couple years.

It is also important to report that in addition to having the required Inuit involvement (through the Trustees), and achieving sound market performance, Nunavut Trust has sought to respect the broader goals of the NLCA. Two of the four employees are Inuit (even though there is no requirement for this). In addition, Trustees and one of the Inuit, Inuktitut-speaking staff members travel throughout the communities. They speak at the schools, with the goal of raising awareness about: the mandate and the performance of the Trust, the importance of managing money properly, and the skills required to perform the job of the Trust. They strive to visit about two communities in each of the three regions each year (expecting to visit all communities over a five year period). Despite the cost of travel in the north, they do not see this as a costly activity. They keep costs down by just having one staff member and Trustees closest to the communities go, and by tagging these events along with other events.

Successful collaboration on Nunavut Resource Management Act

The working group on the Nunavut Resource Management Act is an example of a highly inclusive process of legislative drafting, involving NTI, GN, GC and the IPGs. Being inclusive and collaborative takes a great deal more time than working in isolation, and this is part of the reason the work on the NRMA has taken four years to get to the point of drafting. The guiding principles of the NRMA working group are referenced repeatedly by NTI and GN as a good model for collaboration on implementation issues. While the process has been time-consuming, this is because it has also been highly collaborative and inclusive.

Muskeg Lake Urban Reserve Negotiations

The following box presents a model of negotiations from http://www.ainc-inac.gc.ca that has gone well.

Muskeg Lake Urban Reserve Negotiations: A Precedent for First Nations/Municipal Relations

The Muskeg Lake Cree Nation and the City of Saskatoon forged into uncharted territory when they negotiated the details for their urban reserve. While reserves in urban areas, such as Musqueam in Vancouver and St. Mary's in Fredericton-Nashwaaksis are not unique, they became urban because cities expanded around them. The establishment of a new reserve on land previously under municipal jurisdiction was precedent-setting.
The First Nation wanted a reserve within city limits for economic and commercial development. Going into negotiations, both parties had real fears and concerns: the Muskeg Lake Cree Nation needed to have a good working relationship with the city in order to obtain city services such as water and sewer hookup, snow removal, and garbage pickup; the city needed to have a good working relationship because whatever happened on an independent reserve located in their midst could have major impacts, for better or worse, on the city, its citizens, and its businesses.

Muskeg Lake and Saskatoon both knew that the manner in which they negotiated would be critical. For their part, the Muskeg Lake Cree Nation developed an effective negotiating approach characterized by: (1) clear, well-developed goals; (2) a willingness to be flexible on arrangements; (3) a determination to conduct the negotiations patiently and from a "business" point of view; and (4) developing and employing the expertise required to manage the negotiations themselves.

Background

The Muskeg Lake Cree Nation has approximately 1 200 members. Most of them live away from the main reserve, located 93 kilometers north of Saskatoon. The Muskeg Lake Cree Nation wanted to spark economic development to benefit its members both on-and off-reserve. It saw an opportunity, under Treaty Land Entitlement (TLE), to acquire an urban reserve land base for the development of a commercial property under its control.

One of the properties available under TLE was a 14-hectare (35-acre) parcel of land on the eastern edge of Saskatoon which was on the Crown Asset Disposal List. It had originally been purchased by the federal government to build a federal institution. The government eventually built in another location and the land became surplus Crown land and available for selection by First Nations with land claims. In 1984, the Muskeg Lake Cree Nation commissioned a study to investigate the potential uses of the property and examine its development and investment options. The study suggested that the site offered substantial economic benefit.

With this in mind, they began planning a negotiation strategy well before Chief Wallace Tawpisin walked into the office of Cliff Wright, Mayor of the City of Saskatoon, in November 1984 to begin discussions. The negotiations evolved slowly over a period of years before an agreement on the establishment of the reserve was reached in 1988, and one on the delivery of municipal services in 1993.

Negotiation Strategy

The Muskeg Lake Cree Nation based their negotiations around clear goals. Their bottom line was to reach agreements with the City of Saskatoon to achieve:

- economic stability and growth through diversification,

- long-term revenue sources to support self-sufficiency and autonomy,
- new business and employment opportunities, and
- new management expertise in support of self-government initiatives.

They were prepared to be flexible and open as to the contents of an agreement, as long as final arrangements were consistent with these goals. This gave both parties room to negotiate. The Muskeg Lake Cree Nation knew that stereotypes of Aboriginal peoples would be an obstacle to negotiations. They felt that they would achieve best results if they gave the city's representatives an opportunity to get to know them and develop mutual respect.

In August 1984, Muskeg Lake placed a claim on the land with the federal government. The Muskeg Lake Cree Nation approached the City of Saskatoon in November 1984. The purpose of a face-to-face meeting with Mayor Cliff Wright was two-fold: as a courtesy, the Muskeg Lake Committee (made up of Chief Tawpisin; Lester Lafond, a First Nation member and Treaty Land Entitlement consultant; and Dal McCloy, a management consultant from Winnipeg) wanted to notify city officials of their claim on the undeveloped land; they also wanted to see whether their claim would be met positively or negatively.

The First Nation ensured it had the expertise required to manage the negotiations: Lester Lafond developed expertise in financing, land claims, taxation issues, and other areas required to manage the negotiations, and the committee hired Mr. McCloy and Lorne Larson, of McKercher, McKercher, Laing and Whitmore in Saskatoon, for legal expertise.

Key Players

Successful negotiations often depend on personalities as well as strategy. Throughout this process, there were a number of key players:

- Mayor Cliff Wright and Theresa Dust of the City Solicitor's Office, who has written a book on this process, were a party to the negotiations;
- Lester Lafond, who oversaw the negotiations from start to finish;
- Dal McCloy, who provided financial expertise throughout;
- many federal government departments, such as the Department of Indian Affairs and Northern Development and the Department of Justice, were supportive; and
- Chief Tawpisin and a stable, knowledgeable First Nations council.

Results

Negotiations carried on for more than 3 1/2 years. During this time, issues such as jurisdiction, servicing, and taxation were ironed out.

There were five major elements to the 1988 agreement between Muskeg Lake and Saskatoon:

- the federal government would set apart the parcel of land for Muskeg Lake and transfer it to reserve status in partial fulfillment of Muskeg Lake's Treaty Land Entitlement (TLE);
- Muskeg Lake would lease the land to a development company (owned entirely by the Muskeg Lake Cree First Nation) to build a development similar to an industrial park;
- First Nation members would, in accordance with the *Indian Act*, agree by way of vote to any sub-leasing of the land;
- the city would provide the installation of services and the reserve would be connected to the city's infrastructure system; and

- development on the reserve would at all times be in accordance with laws of Saskatchewan and the bylaws of Saskatoon.

One of Saskatoon's primary concerns throughout negotiations was the Muskeg Lake Cree Nation's use of city services. To meet with city development standards, Muskeg Lake and Saskatoon arranged the Municipal Services Agreement in August 1993. Under the deal, which took two years to negotiate, the city would provide services such as garbage pick-up, water, sewer, and fire protection. Taxation for these services was a big issue as it is a First Nation's right to collect taxes on their property. Muskeg Lake recognized that they couldn't ask for these services for free. Therefore the First Nation agreed to collect taxes on the property and pay the municipal service fee from that money. The service fee amounts to what the city would have received in taxes, had the land been under their jurisdiction. The Muskeg Lake Cree Nation obtained the authority to collect property tax under Section 83 of the *Indian Act* in April 1991.

These agreements are already helping the Muskeg Lake Cree Nation reach their goals and the respect developed in these early negotiations is now paving the way for future developments.

One of Muskeg Lake's primary goals for their new community was development. The McKnight Commercial Centre (Asimaknieseekan Askiy) is the main structure on the reserve. The 4 680 square metre (52 000 square foot) building houses tenants such as Peace Hills Trust, the Saskatchewan Indian Equity Foundation, and the Federation of Saskatchewan Indian Nations. The Saskatoon Tribal Council has also built its own office complex on a section of reserve land, and has it leased out for 35 years. The First Nation plans to develop a strip mall within the next year to include five to six retail stores and a gas station.

Through effective negotiation practices, the Muskeg Lake Cree Nation has developed a relationship with the city based on mutual respect. Through communication they have come to understand each other's goals and concerns. Their negotiation strategy has contributed to the disappearance of old, negative stereotypes. The city has come to know First Nations people as bankers, business people, politicians, lawyers, and developers, and the Muskeg Lake Cree Nation as a partner in development.

Summary

Muskeg Lake Cree Nation developed and implemented a successful negotiation strategy based on clear goals, flexibility, patience, respect, expertise, and a business approach. They have shown that it is indeed possible to negotiate the details of an urban reserve with municipal governments and they are well on the way to realizing their goals for economic development and self-government.

Miawpukek: Reaching Self-Sufficiency

The following box presents an example of how the Miawpuke are reaching self-sufficiency

Miawpukek: Reaching Self-Sufficiency Through Economic Development Guided by Traditional Values

In 1986 the Miawpukek First Nation of Conne River, Newfoundland received recognition under the *Indian Act*. Today, a decade later, they are a dynamic First Nation on the road to self-sufficiency. With a population of 614, the Miawpukek community is located on the southern coast of Newfoundland approximately 560 kilometers from St. John's. Its Council has a clear mandate to pursue economic development and fight dependency on social programs. The community is achieving these goals by implementing an effective link of economic activities and traditional values.

Background/Objectives

When Newfoundland and Labrador (NFLD) joined Confederation in 1949, its Aboriginal people were not distinctly recognized but were accorded the same status as other Newfoundlanders. But in 1986, the Miawpukek First Nation finally received recognition under the *Indian Act.*

Since then, the Miawpukek First Nation Council has undertaken a mandate to turn the community into an economically self-sufficient one. They wanted to create an economic development based on traditional values.

Over the past several years, the Miawpukek First Nation has placed increased emphasis on its cultural and traditional heritage. Chief M'isel Joe provides spiritual direction for the Council and community members. The community's economic development activities, its concern for environmental issues and its drive to have the Micmac language taught in its school have contributed to a renewed pride in the Micmac culture.

The First Nation strives to inter-relate all programs and practices rather than isolate them: for example, they promote education and training, which is a step to long economic development and employment, which is a step closer to future sustainability and in turn to a higher quality of life.

The Miawpukek First Nation has an Alternative Funding Arrangement (AFA) which enables them to define their own priorities and allocate funds according to community objectives. The arrangement calls for the delivery of public safety, land management, and education to its community members. But the Miawpukek have the flexibility to implement these programs according to their community's needs and channel any unexpended funds to other community priorities.

Linking Economic Activities

The Miawpukek are focusing primarily on employment and economic development as they strive for sustainability and a higher quality of life for the future. A number of linked economic development activities are contributing to this goal.

Miawpukek Aquaculture

The flexibility of Miawpukek's AFA enabled them to develop an aquaculture program. The program, established in 1985, is owned and operated by community members. The manager attended the Marine Institute of the Memorial University of Newfoundland and the University of Maine for an advanced diploma in aquaculture.

Miawpukek Aquaculture produces 200 tons of steelhead trout per year and is expanding its production to 800 tons. The community will market its products internationally through S.C.B. fisheries, the largest salmonoid fishery in the province.

Miawpukek Aquaculture is an example of how the First Nation identified an economic opportunity relating to their traditional knowledge of the sea and made it a successful venture.

Housing

Housing is a major priority for the Miawpukek First Nation Council. They have allocated funding to four housing programs:

1. *New Construction* - There is a priority list for new housing. With new housing programs, the community has reduced the number of new housing units from six to four per year at an approximate cost of $252,000 including labour and materials.
2. *New Home Builder Grant* - They use a portion of their housing funds for 10 yearly grants of $6,000. Individuals who receive these grants are not eligible for First Nations housing. The purpose of this program is to give community members the incentive and opportunity to finance a house on their own. A portion of the money also stays in the community through materials purchased from the Miawpukek building supplies store.
3. *Funding Equity* - The Miawpukek purchase three mortgages to build three new houses per year. First Nations members rent these houses until the mortgage is paid in full.
4. *Homeowner Construction Assistance* - The Miawpukek offer free labour to homeowners for repairs and renovations. The homeowner buys the material.

All four housing programs enable the Miawpukek to use their own tradespeople, including electricians and carpenters. Money and benefits stay in the community. These programs also reflect traditional life: they build on community pride and enable members to profit from their own resources.

Education

The Council allocates school funding according to the community's educational needs. The school offers both child and adult education.

In the past year, they upgraded the school's computers. A teacher did research on the Internet and made an agreement with CanCom from Ontario to set up a satellite connection terminal in Conne River. This will not only provide Conne River with Internet access, but all subscribers in the Baie d'Espoir area. The Council projects that revenues from subscribers outside the Miawpukek community will subsidize its cost and help pay for equipment. This program provides Miawpukek youth with a link to the future.

Social Assistance/Job Creation

The Miawpukek developed creative approaches to employ individuals using funds allotted for social assistance. Employable applicants are referred to the Job Creation Program, funded by monies allocated to social assistance.

The type of work ranges from community development to aquaculture programs. These programs prepare individuals for future employment in areas where growth is expected in the community.

The above are only a few of the economic development strategies initiated by the Miawpukek. Others are: agriculture, sawmill, silviculture, Christmas tree culture, marina, cablevision, and tourism.

Results

As they strive for sustainability and a higher quality of life in the future, the Miawpukek First Nation has stressed the importance of adequate housing and job creation as a means of taking people off social assistance.

The community is reaching this goal using linked programs and activities. This approach works because of the commitment of community members to work together.

The economic initiatives respect the environment and minimize cultural disruption on the community. They have shown to be successful and benefit all:

- The aquaculture program presently employs 11 community members and is expected to create 19 new jobs with its planned expansion. The Council says that with every job directly created by the aquaculture program, another 1.5 jobs are created in the service sector.
- Thanks to new housing programs, there are now 189 houses in the community as opposed to 123 in 1990.
- Owning an Internet company will not only provide the community with revenues but also computer education.
- Through education and training opportunities about 90 percent of all administrative staff and those in health services, social services, and the school system are community members. According to a survey, there are 294 community members employed full-time, part-time and/or seasonally. Twenty members are employed in capital works projects such as housing construction and road reconstruction.
- The social assistance/job creation program gives Miawpukek members the opportunity to earn a higher income than they would on social assistance. It also brings services to the community and a work ethic to its members.

The economic development activities are intertwined with traditional values to provide a road for sustainability and higher quality life for Miawpukek's future.

5.44 Conclusion

The following table summarizes the status, barriers and recommendations for each Article.

Articles	Addressed/Being addressed/No action required	Needs most work	Barrier	Recommendations
1	Designations of the government were being done	None	None	None
2	Consulting with DIO on legislation was being done	Ensuring Inuit can access programs offered to other Aboriginals and Canadians more generally	Lack of awareness	Enable coordination through SCDD in the publication of a biannual report
3	Selection of the NSA was completed (pre NLCA)	None	None	None
4	Establishment of the GN was completed (1999)	None	None	None
5	Enacted the *Wildlife Act*, completed the Harvest Study. Work with HTOs, consultation with every community, and publication of information on NWMB in English, Inuktitut and French	HTOs were heavily consulted, but other beneficiaries, in particular elders, were not being consulted enough. Greater integration of IQ required in all areas	Aligning and managing expectations Differences in expectations about what consultation involves Resource constraints Concern over future growth	Align expectations Examine resource constraints Agree on interpretation of expectations Ensure process for involving IQ is effective and transparent Conduct work in Inuktitut
6	Claims against developers for harm caused to wildlife just beginning to be filed.	Ensure awareness of fund as per 6.2.3	Lack of awareness	Raise awareness
7	Inuit have not requested new outpost camps	None	Lack of beneficiary awareness of Inuit rights Dwindling base of hunters	Increase beneficiary awareness
8	Creation of National and Territorial Park IIBAs	Funding agreement for Territorial Park IIBAs must be reached Park specific appendices must either be developed or their must be agreement that they do not need to be developed	Lack of resolution on funding agreement	Resolve funding issue Agree on timing and process for finalization of PSAs
9	Study to determine need for	Conclusion of Conservation	Lack of agreement on	Resolve funding disputes and

Articles	Addressed/Being addressed/No action required	Needs most work	Barrier	Recommendations
	new legislation to designate and manage Conservation Areas completed	Area IIBAs Implementation of Article in a timely manner	financial resources	develop timeline for completion of all IIBAs Resolve dispute over appropriate level of Government to negotiate Thelon Wildlife Sanctuary IIBA and Management Plan IIBA
10	Enactment of legislation for NWB, and NSRT	Enactment of legislation for NPC and NIRB	Slow progress due to resource/capacity constraints	Enact legislation governing NPC and NIRB Parties should identify and examine each element of the appointment process to shorten it
11	Land use plans were done for two regions (Keewatin and North Baffin)	Land use plans have not been done for other regions, or for Nunavut as a hold Disputes over "involvement" of GN persist Legislation has not been enacted for NPC	Finalization of NPC legislation resource/capacity constraints Delays in board appointments Lack of agreement on roles and responsibilities	Enact NPC legislation Improve communications and cooperation between involved parties Board member recommendations and appointment completed in a more timely manner NIP to provide governance support
12	Reviewed development proposals, consulted with stakeholders such as NPC, GN, GC, NTI, other jurisdictions, and the public, screened proposals, advised on whether a review is required, assessed the proposal and advised on	None	Sometimes not enough consultation with other stakeholders Resource constraints.	Develop a concrete process for communication Enact legislation NIP to provide governance support

Articles	Addressed/Being addressed/No action required	Needs most work	Barrier	Recommendations
	terms and conditions.			
13	Legislation has been passed Language requirements are being met Inuit customs, knowledge and culture is being taken into account	Consultation with NPC	Land use plans still in progress NWB financial resources to consult with NPC, NIRB and other jurisdictions	Review funding needs
14	Municipal lands have been conveyed, administered and controlled by the Commissioner	Remedial surveys have not been done by GN Some lands have not been transferred due to ongoing contamination issues	Lack of progress has been attributed to lack of resources and communication difficulties	Undertake remedial survey and decontamination of land
15	Identification of wildlife research requirements and deficiencies by NWMB	Fulfillment of Section 15.3.7 depending on interpretation	Lack of agreement on the objective and interpretation of Article 15	Agree on commonly accepted interpretation of Article 15 (15.3.7)
16	Inuit have the right to use open waters in the Outer Land Fast Ice Zone Fisheries are managed so as not to deplete marine mammal populations	None	None	None
17	Purpose of Inuit Owned Lands was defined (pre-NLCA)	None	None	None
18	Principles to guide the Identification of Inuit Owned lands were defined (pre-NLCA)	None	None	None
19	Inuit have held full title to Inuit Owned Lands	Surveys have not been registered	Mapping should be done	Surveys should be registered Mapping should be done
20	Water rights have been respected and compensation agreements have been	Information on water flowing into Kitikmeot (Coppermine River) needs	Lack of information on monitoring and enforcement	Monitoring information to be provided to RIA's of regions affected by development

Articles	Addressed/Being addressed/No action required	Needs most work	Barrier	Recommendations
	negotiated by the RIAs where appropriate	to be tested and a compensation agreement developed if necessary		activity outside their region
21	Rights of Inuit, the public, the Government and researchers have all been respected	Concerns in regards to non-Inuit spending leisure or recreational time on IOLs without having obtained permits	Lack of awareness of public about requirement for non-Inuit to have a permit to enter onto Inuit owned lands Difficulty enforcing access restrictions	Raise awareness of beneficiaries and non-beneficiaries about the requirement for non-beneficiaries to have a permit to enter onto IOLs
22	Taxes are being levied as per the NLCA	Only half of taxes are being collected The cost of collecting taxes exceeded the amount collected	High costs and low collection rates of taxes Lack of understanding among beneficiaries	Examine ways to improve efficiency and reduce collection rates Raise awareness among beneficiaries
23	Not covered	Not covered	Not covered	Not covered
24	Policies and processes have been developed and implemented by GN, and monitoring and evaluation were being done For GC, only sporadic information on what was being done was provided	GN was generally meeting its obligations, but needs to do more data collection to better meet objectives GC must provide monitoring and periodic evaluation and demonstrate how it is meeting the obligations and objectives of this Article	Lack of evaluation and periodic monitoring Differences in perceptions regarding the intent of various Sections Lack of knowledge and awareness of NLCA within Federal Government Lack of funding for training in Nunavut communities	Evaluate and periodically monitor Agreement on intent of objectives and obligations Better communications between parties
25	Obligations to pay were being met	The Government has not been providing information to illustrate how the royalty payment was calculated	GC is prevented from sharing obligations of this nature due to confidentiality agreement	Auditor General should conduct an audit of royalty payments, taking into account obligations associated with this Article
26	While there had only been one IIBA concluded within the review period, there have	Beneficiaries have indicated that greater consultation is required	Lack of experience of RIA's Lack of knowledge among	Develop models and guidelines, and an inventory of best practices and examples of

Articles	Addressed/Being addressed/No action required	Needs most work	Barrier	Recommendations
	been a host of new developments RIA's are reaching out to each other and NTI to identify best practices		beneficiaries	common packages of benefits Raise awareness amongst and empower Inuit
27	GN has notified the DIO and provided opportunity for it to present and to discuss its views prior to the opening of lands in the NSA for petroleum exploration	None	None	None
28	GN has included representatives of the Tungavik in the Territorial Government team to develop and to implement northern energy and minerals accords with GC	None	None	Parties must continue to work together
29	Obligations to transfer capital were being met	None	None	None
30	Taxation rules were being applied as appropriate	None	None	None
31	Success in preservation of capital and out performance of similar funds Trust deeds, constituting documents and annual reports are available to all Inuit	None	Annual spending by NTI is outpacing current distribution levels	Caution about NTI spending
32	NTI revoked NSDC's status as a DIO in 2002, and established a department (SCDD) within NTI	Inuit are not involved as they would like to be in the development of social and cultural policies	Insufficient interaction between SCDD, GN, and GC General insufficient	Production of biannual reports with more statistics and monitoring information SCDD should focus on

Articles	Addressed/Being addressed/No action required	Needs most work	Barrier	Recommendations
	Since 2002, there has been more dialogue with GN and GC	SCDD has not had the resources to fully support the objective of ensuring that Inuit have the right to participate in the development of social and cultural policies	involvement of Inuit Lack of monitoring	facilitating Inuit involvement and identifying key priorities More communication among GN, NTI, and GC
33	Archaeological records were being kept and sites were being respected. The Trust had authority for archaeology-related issues and there was ongoing collaboration with GN and most documents were being translated into Inuktitut.	Improvements are required in hiring of Inuit contractors, identifying place names and establishing a cultural centre.	Lack of a cultural centre Lack of qualified Inuit Archaeologists and Qualified Assistants Losing traditional knowledge about place names and geography in the NSA	Build a Cultural Centre Training program for Archaeologist through the Arctic College GN and ITK to provide IHT the opportunity to sit on the Federal board that makes decisions that fall within the mandate of IHT
34	Given that a cultural centre has not yet been established in Nunavut, there has been no opportunity to implement these obligations.	All obligations still to be implemented	Lack of Cultural Centre	Obtain funding to Construct Cultural Centre to house ethnographic objects and archival materials
35	All obligations regarding Enrolment have been met	None	None	None
36	The NLCA was ratified by Inuit prior to coming into existence	None	None	None
37	Funding has been provided for hearings, IPGs, and implementation	Monitoring and resolution of problems was not being done	Lack of trust, differences in interpretation, taking of “positions” rather than working collaboratively towards solutions, refusal to meet	Improve communications Implement issue identification and dispute resolution process.
38	The Arbitration Board was	As the terms of all board	GC refused to bring matters	New approach to Arbitration is

Articles	Addressed/Being addressed/No action required	Needs most work	Barrier	Recommendations
	established in the past but ceases to meet as terms of members have lapsed	member have expired, most Sections of Article 38 cannot be met	to the Arbitration Board	required. Mediation should be used with Arbitration as a final option
39	Obligations of Article 39 are being met	None	None	None
40	Inuit and Dene are in agreement with the use of each others land to meet basic needs	GC began to negotiate a claim with the Dene for land in the NSA following the signing of the NSA. Initially GN and NTI were not involved but now they are	Different interpretations of Article 40 Overlapping claims regarding land ownership Involvement of lawyers in leading negotiations	Inuit and Dene should settle the issue themselves, and then involve government and lawyers.
41	Contwoyto Lake Lands were granted to the DIO in 1999	None	None	None
42	To date all the obligations in regards to Manitoba under this Article were being met		None	None

Appendix A: Focus Group and Interview Guides

Initial Contact Protocol, Interview Guide & Focus Group Guide

The following document outlines the protocol for the interviews and focus groups, as well as the interview and focus group guides.

Initial Phone Contact – Interviews with employees of NTI, GN, GC and IPG

James will contact all Inuit (to be identified by James) in order to make our first approach in Inuktitut. Anthony will contact all others, and make approach in English or French.

To be completed by interviewer for each person contacted:

Contact made by: _____
Date of contact: _____

Interviewee Name:_____
Contact information: _____

- ❑ Hello, my name is [**name of interviewer**] from [**affiliation/organization**]. We have been contracted by the Nunavut Implementation Panel to conduct the second independent review of the implementation of the Nunavut Land Claim Agreement. The study will look at the implementation of the NLCA during the period of 1999 to July 2005. We're interested in what you think about the challenges that have come up in the implementation of the NLCA and some of the successes. We are also looking for suggestions about how to improve implementation in the future. We are asking for your views based on your experience in your current and previously held jobs. We want your opinion and are not asking you to speak as a representative of your current organization.
- ❑ As part of this review, we will be conducting approximately 80 interviews throughout Nunavut and the Federal government. The interview should take approximately 45 to 60 minutes. Focus groups have also been planned.
- ❑ Just so you are aware, the information you provide will be confidential. Your name will not be associated with your comments in interview summaries, or in the published review.
- ❑ For the interview, would you prefer to be interviewed in Inuktitut, English or French?
    - o *If the person answers English:*
        - ▪ We may have two interviewers present, an Inuk and a non-Inuk, would that be ok with you? YES ☐ NO ☐
    - o *If the person answers Inuktitut:* Continue…
    - o *If the person answers French:* Continue

- ❑ We will be in **[place]** in the week of **[date]** and would like to schedule time for an interview that week. Is there a date and time would be best for you during that week?
    - o DATE: _____
    - o TIME: _____
    - o LOCATION: _____

If not available during that week, ask: When would be a good time to do the interview over the phone?

- o DATE: _____
- o TIME: _____
- o PHONE NUMBER: _____

- ❑ We will provide you with a copy of the interview questions and a reminder of the time and place of the interview one week before. How should we send the information?
    - ❑ By e-mail? E-MAIL: _____
    - ❑ By fax? NUMBER:_____
    - ❑ Or by courier: ADDRESS: _____
- ❑ Thank you for your time today. Do you have any questions about the project or the interview?

Cover Note - Interviews

Dear [name],

PwC has been contracted by the Nunavut Implementation Panel to conduct the second independent year review review of the implementation of the Nunavut Land Claim Agreement. The study will look at the implementation of the NLCA during the period of 1999 to July 2005. As part of this review, we will be conducting approximately 80 interviews throughout Nunavut with representatives of government, private business people and Desiginated Inuit Organizations (DIOs) and Institutions of Public Government (IPGs). There will also be interviews the federal government and key representatives in Ottawa. The interviews should take approximately 45 to 60 minutes.

We are interested in what you think about the challenges that have come up in the implementation of the NLCA and some of the successes. We are also looking for suggestions on how to improve implementation in the future. Your input would be greatly appreciated, as it is important to hear from a wide variety of people involved with/associated with the NLCA.

Please be assured that your responses will remain confidential. The information will be presented in general terms without any names attached to them. We will send you the interview notes summarizing the interview to confirm with you that we have captured all your feedback. The report will be finalized by March 31, 2006, and translated into Inuktitut, Innuinaqtun, and French, and made available to the public, thereafter.

If you have any questions, please do not hesitate to contact myself at PwC by phone or by e-mail or James T. Arreak [contact info to be added]

Sincerely,

PricewaterhouseCoopers

Interview Guides

Introduction

Thank you for taking the time today to talk about the Nunavut Land Claims Agreement. I would like to remind you that your responses will remain confidential.

We would like to tape our session today in order to be able to complete our notes when we go to write-up the interview. Would that be ok with you?

We will be sending a summary of our interview to you when we have completed all our interviews and have compiled them.

Do you have any questions before we begin?

Interview Start

1. **We would like to ask you about your thoughts on whether the objectives have been achieved. There are [x] elements – I will read them first and ask you what you think about their status.**

   - ❑ Fully achieved
   - ❑ Mostly achieved
   - ❑ Few achieved
   - ❑ Not achieved at all
   - ❑ Not sure
   - ❑ Not familiar

Example:
Preamble

- The overriding objectives of the NLCA are:
  - to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore
  - to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting
  - to provide Inuit with financial compensation and means of participating in economic opportunities
  - to encourage self-reliance and the cultural and social well-being of Inuit

Can you provide some specific examples to illustrate what has and/or hasn't been achieved?

2. **What do you think are some of the barriers or challenges to successfully implementing this part of the NLCA?**

3. **What are some of the ways that these barriers could be overcome?**

4. Effectiveness of the implementation agencies

Questions for people being interviewed in regards to Article 37

How would you rate the effectiveness of NIP?

- Highly effective
- Mostly effective
- Mostly ineffective
- Totally ineffective
- Not sure

Can you please provide me with some specific examples?

How would you rate the effectiveness of the Arbitration Board?

- Highly effective
- Mostly effective
- Mostly ineffective
- Totally ineffective
- Not sure

Can you please provide me with some specific examples?

How would you rate the effectiveness of NIP's Support Group?

- Highly effective
- Mostly effective
- Mostly ineffective
- Totally ineffective
- Not sure

Can you please provide me with some specific examples?

How would you rate the effectiveness of the Annual Report as an information tool?

- Highly effective
- Mostly effective
- Mostly ineffective
- Totally ineffective
- Not sure

Can you please provide me with some specific examples?

Overall, how effective do you feel the implementation of the NLCA has been?

- Highly effective
- Mostly effective
- Mostly ineffective
- Totally ineffective
- Not sure

Question for all other people (i.e. not associated with Article 37)

Overall, how effective do you feel the implementation of the NLCA has been?

- Highly effective
- Mostly effective
- Mostly ineffective
- Totally ineffective
- Not sure

5. How would you rate the effectiveness of the Institutions of Public Government (IPGs) (ex. Nunavut Planning commission, Nunavut Water Board) and Designated Inuit Organizations (DIOs) (ex. Nunavut Tunngavik, Qikiqtani Inuit Association, Kivalliq Inuit Association) have been?

- Highly effective
- Mostly effective
- Mostly ineffective
- Totally ineffective
- Not sure

6. What have been some of the successes and best practices in Nunavut related to achieving the goals of the NLCA? What are some successes and best practices from other Land Claim areas, in or outside of Canada?

7. Do you have any recommendations for improving implementation?

We may want to provide a few prompt areas, such as:

- cost effectiveness?
- communication?
- benefits/impact?
- Participation in decision-making?

8. If we require any further information, may we contact you and what is the best method to do so?

End. Thank you for your time. We will be sending you a copy of the summary notes for your review.

Focus Groups – General Information

Here is some basic information to be aware of:

There will be three types of focus groups:

1. Nunavut community members
2. Business and government stakeholders in Nunavut
3. Stakeholders from Nunavut Sivuniksavut

Initial Contact – Focus Groups with Nunavut Community Members

- ❑ James will provide us with a write-up on how he plans on contacting and selecting community members for the focus groups and how facilities for the focus groups will be arranged.
- ❑ James will engage community leaders and establish a contact person. He will try to work through the Community Liaison Officer (CLO) as a local contact.
- ❑ James is in charge of scheduling the focus groups in Nunavut and will proceed as necessary
- ❑ James will organize the groups so that the communities are given at least 3 to 4 weeks notice

Focus Group Guide – Community Members

- ❑ We will have light refreshments available at the focus groups
- ❑ $50 honoraria will be provided to Nunavut community participants
- ❑ The sessions will take about 2 hours

At the session Moderator records:

Location:_____

Date: _____ Time:_____

Number of Participants: Male _____ Female: _____

Approximate age ranges of participants: _____

Roles or categories (e.g. community members, federal government, NTI etc.

_____

Introduction

Thank you for taking the time today to talk about the Nunavut Land Claims Agreement. There are no 'right' or 'wrong' answers; participants are encouraged to offer their opinions, either positive or negative. Differences of opinion are perfectly acceptable (and encourage).

I would also like to remind you that your responses will remain confidential. Your name will not be associated with any of your comments today.

We would like people to be able to communicate in the language of his or her preference. If there are some people who would rather speak Inktitut and another group who would like to speak in English, we will form two groups. If there is just one group of people who would like to speak in Inuktitut, then [James] will run the group and **[name]** will observe the group and James will fill him/her in right after the session.

We would like to tape our session today in order to be able to complete our notes when we go to write-up the focus group. Is that ok with everyone?

Do you have any questions before we begin?

The moderator goes around the table asking each participant to introduce themselves and then provides an opportunity for any initial questions before the session begins.

Begin Session

1. I would like to begin by asking you if there is a particular article or issue (such as wildlife, Inuit impact benefit agreements, etc.) that is of particular interest to you? If so, which one is it and how does it affect you?

2. We would like to ask you about your thoughts on whether the objectives of the Nunavut Land Claim Agreement, and these articles or issues have been achieved (obtain rating for each).

- ❑ Fully achieved
- ❑ Mostly achieved
- ❑ Few achieved
- ❑ Not achieved at all
- ❑ Not sure
- ❑ Not familiar

3. What do you think are some of the barriers or challenges to successfully implementing the NLCA and is there a part that is of particular interest to you and/or your community?

What are some of the ways that these barriers could be overcome?

4. Overall, how effective do you feel the implementation of the NLCA has been?

- ❑ Highly effective
- ❑ Mostly effective
- ❑ Mostly ineffective
- ❑ Totally ineffective
- ❑ Not sure
- ❑ Not familiar

Can you please give us some examples?

5. Overall, how effective do you feel the Institutions of Public Government (IPGs) (ex. Nunavut Planning commission, Nunavut Water Board) and Designated Inuit Organizations (DIOs) (ex. Nunavut Tunngavik, Qikiqtani Inuit Association, Kivalliq Inuit Association) have been?

- ❑ Highly effective
- ❑ Mostly effective
- ❑ Mostly ineffective
- ❑ Totally ineffective
- ❑ Not sure
- ❑ Not familiar

Can you please give us some examples?

6. What have been some of the successes and best practices in Nunavut related to achieving the goals of the NLCA? What are some successes and best practices from other Land Claims?

What article or expectation of the NLCA have you been most disappointed and how has it affected you and/or your community?

7. Do you have any recommendations for improving implementation?

We may want to provide a few prompt areas, such as:

- ❑ cost effectiveness?
- ❑ communication?
- ❑ benefits/impact?
- ❑ Participation in decision-making

8. Is ownership of your land a key issue to you and if so, does it affect your view of how successfully the NLCA is implemented?

9. Do you have any other comments on implementation of the NLCA?

10. If we require any further information, may we contact you and what is the best method to do so?

End

Thank you for your time. We will be sending you a copy of the summary notes for your review.

Initial Phone Contact – Business / Government Participants

James will contact all participants except those associated with the Nunavut Sivuniksavut (Anthony will contact them). He will set up a date for the focus group with the most senior person at each organization. He will then call each of the members of the Board or organization and invite them to the meeting.

To be completed by interviewer for each person contacted:

Contact made by: _____
Date of contact: _____

Participant's Name:_____
Contact information: _____

- ❑ Hello, my name is [**name**] from [**affiliation/organization**]. We have been contracted by the Nunavut Implementation Panel to conduct the second independent review of the implementation of the Nunavut Land Claim Agreement. The study will look at the implementation of the NLCA during the period of July 1998 to July 2005. We're interested in what you think about the challenges that have come up in the implementation of the NLCA and some of the successes. We are also looking for suggestions about how to improve implementation in the future. We are asking for your views based on your experience in your current and previously held jobs. We want your opinion and are not asking you to speak as a representative of your current organization.
- ❑ As part of this review, we will be conducting approximately 16-20 focus groups throughout Nunavut and in Ottawa. The focus group should take approximately 2 hours.
- ❑ Just so you are aware, the information you provide will be confidential. Your name will not be associated with your comments in interview summaries or in the published review.
- ❑ For the focus group, would you prefer to speak Inuktitut or English?
- ❑ We will be in **[place]** in the week of **[date].** What is your preference for a time with your organization?
- ❑ Will you and the others participate:
    - o In-person? □
    - o By phone? □ Phone number: _____
- ❑ We will provide you with a copy of the focus group questions and a reminder of the time and place of the focus group one week before. How should we send the information?
    - ❑ By e-mail? E-MAIL: _____
    - ❑ by fax? NUMBER:_____
    - ❑ by courier Address: _____
- ❑ Thank you for your time today. Do you have any questions about the project or the focus group?

Cover Note – Focus Groups with Business/Government Participants

Dear [name],

PwC has been contracted by the Nunavut Implementation Panel to conduct the second independent review of the implementation of the Nunavut Land Claim Agreement. The study will look at the implementation of the NLCA during the period from 1999 to July 2005. As part of this review, we will be conducting approximately 16-18 focus groups throughout Nunavut and Ottawa. The focus groups should take approximately 2 hours. We will be conducting a focus group in **[place]** on **[date].** Participants can be involved in the focus group by attending in-person or by phone.

We are interested in what you think about the challenges that have come up in the implementation of the NLCA and some of the successes. We are also looking for suggestions on how to improve implementation in the future. Your input would be greatly appreciated, as it is important to hear from a wide variety of people involved with/associated with the NLCA.

Please be assured that your responses will remain confidential. The information will be presented in general terms without any names attached to them. We will send you the focus group notes summarizing the session to confirm with you that we have captured everyone's feedback. The final report will be made available in Spring 2006.

If you have any questions, please do not hesitate to contact Joanne Johnson at PwC by phone or by e-mail or James T. Arreak [contact info to be added]

Sincerely,

PricewaterhouseCoopers

Focus Group Guide – Business/Government Participants

- ❑ We will have light refreshments available at the focus groups
- ❑ The sessions should take about 2 hours
- ❑ Focus groups will be composed of people together in a room and some people by phone

At the session Moderator records:

Location:_____

Date: _____ Time:_____

Number of Participants: Male _____ Female: _____

Approximate age ranges of participants: _____

Roles or categories _____

Introduction

Thank you for taking the time today to talk about the Nunavut Land Claims Agreement. There are no 'right' or 'wrong' answers; participants are encouraged to offer their opinions, either positive or negative. Differences of opinion are perfectly acceptable.

I would also like to remind you that your responses will remain confidential. Your name will not be associated with any of your comments today.

We would like people to be able to communicate in the language of his or her preference. If there are some people who would rather speak Inktitut and another group who would like to speak in English, we will form two groups. If there is just one group of people who would like to speak in Inuktitut, then [James] will run the group and **[name]** will observe the group and James will fill him/her in right after the session.

We would like to tape our session today in order to be able to complete our notes when we go to write-up the focus group. Is that ok with everyone?

Do you have any questions before we begin?

The moderator goes around the table asking each participant to introduce themselves and then provides an opportunity for any initial questions before the session begins.

Begin Session

1. We would like to ask you about your thoughts on whether the objectives have been achieved. There are **[x]** elements – I will read them first and ask you what you think about their status.

- ❑ Fully achieved
- ❑ Mostly achieved
- ❑ Few achieved
- ❑ Not achieved at all
- ❑ Not sure
- ❑ Not familiar

Example:
Preamble

- The overriding objectives of the NLCA are:
  - to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore
  - to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting
  - to provide Inuit with financial compensation and means of participating in economic opportunities
  - to encourage self-reliance and the cultural and social well-being of Inuit

Can you provide some specific examples to illustrate what has and/or hasn't been achieved?

2. What do you think are some of the barriers or challenges to successfully implementing this part of the NLCA?

3. What are some of the ways that these barriers could be overcome?

4. Overall, how effective do you feel the implementation of the NLCA has been?

- ❑ Highly effective
- ❑ Mostly effective
- ❑ Mostly ineffective
- ❑ Totally ineffective
- ❑ Not sure

Can you please give us some examples?

5. Overall, how effective do you feel the Institutions of Public Government (IPGs) (ex. Nunavut Planning commission, Nunavut Water Board) and Designated Inuit Organizations (DIOs) (Nunavut Tunngavik, Qikiqtani Inuit Association, Kivalliq Inuit Association) have been?

- ❑ Highly effective
- ❑ Mostly effective
- ❑ Mostly ineffective
- ❑ Totally ineffective
- ❑ Not sure

Can you please give us some examples?

6. What have been some of the successes and best practices in Nunavut related to achieving the goals of the NLCA? What are some successes and best practices from other Land Claim areas?

7. Do you have any recommendations for improving implementation?

We may want to provide a few prompt areas, such as:

- ❑ cost effectiveness?
- ❑ communication?
- ❑ benefits/impact?
- ❑ rate of efficiency i.e., how effective for you and/or your community

8. Do you have any other comments on implementation of the NLCA?

9. If we require any further information, may we contact you?

End

Thank you for your time. We will be sending you a copy of the summary notes for your approval.

Appendix B: List of Interviewee Organizations

NTI
Department of Liaison Office
Lands and Resources Department
Wildlife Department
Baffin Fisheries Coalition
Implementation
Economic and Social Initiatives
Business and Economic Development
Implementation Panel
Implementation Department

GC
Environment Canada
Fisheries and Oceans
Treasury Board
Parks Canada Agency
INAC, Implementation
INAC, Environment
Natural Resources Canada
INAC, Comprehensive Claims Branch
Human Resources Development
INAC, Northern Program HQ
INAC, Lands Administration
INAC, Water Resources
INAC, NRO
INAC, Inter governmental Affairs and Inuit Relations

GN
DCGS
Department of Culture, Language, Elders and Youth
Department of Environment
Economic Development and Transportation
Education Department
Executive Intergovernmental Affairs
HR Department

Other
Nunavut Federal Council
Nunavut Arbitration Board
Nunavut Impact Review Board
Nunavut Planning Commission
Nunavut Water Management Board
Inuit Heritage Trust
Kitikmeot Inuit Association
Kivalliq Inuit Association
Manitoba Dene Overlap
Nunavut Wildlife Management Board

Appendix C: Definitions and Acronyms

Agreement - The Nunavut Land Claims Agreement

The Agreements - The NLCA and the Contract

CEAA - Canadian Environmental Assessment Agency

CMC - Canadian Museum of Civilization

Contract - Implementation Contract- (a.k.a. The Implementation Plan)

CWS - Canadian Wildlife Service

DEW - Distant Early Warning

DFO - Department of Fisheries and Oceans

DIAND - Department of Indian and Northern Affairs

DIO - Designated Inuit Organization

DMP - Descriptive Map Plans

DND - Department of National Defence

EARP - Environmental Assessment and Review Process (or Panel)

EC - Environment Canada

EC&E - Education, Culture and Employment

FEAR0 - Federal Environmental Assessment and Review Office

FMBS - Financial Management Board Secretariat

GC - Government of Canada

GN - Government of Nunavut

GNWT - Government of the Northwest Territories

H&SS - Health and Social Services

Housing - Northwest Territories Housing Corporation
HRDC - Human Resources Development Canada

HRSDC – Human Resources and Skills Development Canada

HTO - Hunters and Trappers Organization

IEP - Inuit Employment Plan

INAC – Indian and Northern Affairs Canada

MT - Inuit Heritage Trust

IIBA - Inuit Impact and Benefit Agreement

IOL - Inuit Owned Land

IP G - Institution of Public Government

Justice - Department of Justice

KitIA - Kitikmeot Inuit Association

KivIA - Kivalliq Inuit Association

LUP - Land Use Plan

MAA - Ministry of Aboriginal Affairs

MACA - Municipal and Community Affairs

MOU – Memorandum of Understanding

NFA - Nunavut Final Agreement

NIP - Nunavut Implementation Panel

NIRB - Nunavut Impact Review Board

NlRBTT - Nunavut Impact Review Board Transition Team

NITC - Nunavut Implementation Training Committee

NLCA - Nunavut Land Claims Agreement

NPA - Nunavut Political Accord

NPC - Nunavut Planning Commission
NPCTT - Nunavut Planning Commission Transition Team

NRCAN - Natural Resources Canada

NSA - Nunavut Settlement Area

NSDC - Nunavut Social Development Council

NSOWG – Nunavut Senior Officials Working Group

NTI - Nunavut Tunngavik Incorporated

NUHRDS - Nunavut Unified Human Resource Development Strategy

NWB - Nunavut Water Board

NWBTT - Nunavut Water Board Transition Team

NWMB - Nunavut Wildlife Management Board

NWT - Northwest Territories

NRO – Nunavut Regional Office (of INAC)

OTJ - On The Job

Panel - Nunavut Implementation Panel

Party/Parties - NTI and the Federal Government, and in the context of the those bodies having responsibility for implementing obligations under the Agreements

PTP - Pre-Employment Training Plan

PWS - Public Works and Services, GNWT

PWGS - Public Works and Government Services, Federal Government

QIA - Qikiqtani Inuit Association

RCMP - Royal Canadian Mounted Police

Review - Implementation of the Nunavut Land Claim Agreement: An Independent 5 Year Review, 1993 - 1998
(a.k.a. 5 Year Review)

RIA - Regional Inuit Association

RWED - Resources, Wildlife and Economic Development

RWO- Regional Wildlife Organization

SCDD- Social and Culture Development Department

South- Canada excluding the Territories

SRT- Surface Rights Tribunal

TBS – Treasury Board Secretariat

Contract, NTI, the Federal and Territorial Governments

REFERENCES

#	File Name	Title
1	National Policy	NLCA
1.1	National Policy	Statement Made by The Honourable Jean Chretien Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People
1.2	National Policy	Comprehensive Land Claims Policy
1.3	National Policy	Section IV. Aboriginal Peoples of Canada's Performance - Annual Report to Parliament 2004
1.4a	National Policy	Land claims obligation database sheets
1.4b	National Policy	Status of Implementation Obligations (Federal) (Action Plan)
1.5	National Policy	Inuit Impact and Benefit Agreement for Auyuittuq, Quttinirpaaq and Sirmilik National Parks
1.6	National Policy	"Gathering Strength", the Government of Canada's key policy toward Aboriginal peoples
1.7	National Policy	An Inuit Impact and Benefit Agreement for Ukkusiksalik National Park of Canada
1.8		NNI Policy - moved to 16.13 with rest of Article 24
1.9	National Policy	www.chrc-ccdp.ca/discrimination/federally_regulated-en.asp
2.1	Negotiation Process	Status of Negotiations to Update the Implementation Contract for the Nunavut Land Claims Agreement (NLCA)
2.2	Negotiation Process	Nunavut Land Claims Agreement Implementation Contract Negotiations for the Second Planning Period 2003-2013: Conciliator's Interim Report
2.3	Negotiation Process	Petition to Auditor General from NTI
3.1	Review	Report of the Auditor General to the House of Commons - November 2003
3.2	Review	5 Year Review: 1993 to 1998. Implementation of the Nunavut Land Claims Agreement.
3.4	Review	2005 Nunavut Economic Outlook: Update on Five Years of Progress
3.5	Review	Taking Stock: A review of the First Five Years of Implementing the Nunavut Land Claims Agreement
3.7	Review	Marc Stevenson's study "Inuit, Nunavut, and government" prepared for the Royal Commission on Aboriginal Peoples.
3.8	Review	"The Clyde River Protocol", which governs working relations between the Government of Nunavut and the Nunavut Tunngavik Incorporated
3.9	Review	Inuit Participation in Wildlife Management in Nunavut: Structural Issues and Options
3.10	Review	Keith Sero - Summary of Information to be Gathered (Suggested questions from the first five year review file)
3.11	Review	INAC - Development of Non-Renewable Resources in the Northwest Territories
3.12	Review	The Clyde River Protocol

#	File Name	Title
4.1	Articles 10 & 11	Report from a Management Review of Nunavut Planning Commission Governance Policies and Procedures
5.1	Training	NITC Briefing for the Nunavut Implementation Panel. Nunavut Implementation Training Committee
5.2	Training	Nunavut Implementation Training Committee Annual Report: 2003/2004
5.3	Training	Memo to Nunavut Implementation Panel Regarding: Nunavut Implementation Training Committee (NITC).
5.4	Training	Five Year Review of the Nunavut Implementation Training Committee - Final Report
5.5	Training	
6.1	Implementation	Implementation of Comprehensive Land Claim and Self-Government Agreements: A handbook for the use of federal officials.
6.2	Implementation	Submissions to the Implementation Panel Working Group on Updating the Implementation Contract
6.3	Implementation	Footprints in New Snow
6.4	Implementation	Footprints 2
6.5	Implementation	Annual reports by Nunavut Tunngavik Inccorporated (NTI), which provide a review of all the progress on implementing articles of the NLCA.
6.6	Implementation	Updating of the Nunavut Implementation Contract (August 23, 2004)
6.7	Implementation	Nunavut Tunngavik Inc 1997 report entitled “Response to the recommendations of the Nunavut Implementation Commission on establishment of the Nunavut government presented in 'Footprints 2' and in 'Nunavut's legislature, Premier and first election”,.
6.8	Implementation	The March 24, 2004 discussion paper on the implementation of comprehensive land claim agreements, prepared by the Land Claims Agreements Coalition
6.9	Implementation	Nunavut Implementation Panel Minutes and Records of Decision
6.9	Implementation	Letter to Nunavut Surface Rights Tribunal by Auditor General’s Office
6.10	Implementation	“On Our Own Terms” produced by the Nunavut Social Development Council,
6.11	Implementation	An Annual Report on the State of Inuit Culture and Society (2002-2003)
6.12	Implementation	NSDC Annual Reports '95-'96, '97-'98, 2000, '02-'03
6.13	Implementation	Iqqanaijaqatigiit
6.14	Implementation	NIP Procedural Workshop Summary Report
6.15	Implementation	Letters regarding Article 23 commitments
6.16	Implementation	Letters regarding funding
6.17	Implementation	Self-Assessment of Panel Support Group
6.18	Implementation	An Analysis of the Negotiations to Update the Nunavut Implementation Contract
6.19	Implementation	Nunavut Implementation Panel Workshop, December 8, 1998, Ottawa, Ontario, Summary Report
6.20	Implementation	NTI-INAC Letters in regards to Article 23, May/June 2003 and October 2004

#	File Name	Title
6.21	Implementation	Federal Implmentation Monitoring Database
6.22	Implementation	Joint Action Plan
6.23	Implementation	A contract relating to the Implmentation of the Nunavut Final Agreement
6.24	Implementation	Minutes of NSOWG meetings
6.25	Implementation	IPG legislatin Guiding Principles
6.26	Implementation	Nunavut Senior Officials' Working Group Meeting March 30, 2000 - Minutes
7.1	IPG's	Draft Outline - NITC Clients Manual
7.2	IPG's	Inuit Participation in Wildlife Management in Nunavut: Structural Issues and Options
7.3	IPG's	Letter regarding West Kitikmeot Land Use Plan
7.4	IPG's	Agreement on IPG funding
7.5	IPG's	Article 40 Letter to Chiefs Feb.4 2002
7.6	IPG's	Naniiliqpita: Spring 2005
7.7	IPG's	Naniiliqpita: Winter 2005
7.8	IPG's	Guidelines regarding financing of IPGs, Amended 2001
8.1	NIP Annual Reports	The Implementation of the Nunavut Land Claims Agreement: Annual Report 2000 - 2001
8.2	NIP Annual Reports	The Implementation of the Nunavut Land Claims Agreement: Annual Report 1999 - 2000
8.3	NIP Annual Reports	The Implementation of the Nunavut Land Claims Agreement: Annual Report 1998 - 1999
8.4	NIP Annual Reports	Draft: Annual Report for 2001-2004: The Implementation of the Nunavut Land Claims Agreement
9.1	Article 31 - Nunavut Trust	Nunavut Trust Annual Report 2001
9.2	Article 31 - Nunavut Trust	Nunavut Trust Annual Report 2000
10.1	Article 39	How to become a DIO
11.1	Article 23	*The Cost of Not Successfully Implementing Article 23:* (2003) PricewaterhouseCoopers
12.1	IQ	First Annual Report of the Inuit Qaujimajatuqangit (IQ) Task Force, 2002, by the Inuit Qaujimajatuqangit Task Force,
12.2	IQ	Annual reports, plans, status reports, correspondence and other documents as required, such as some or all of Inuit Tapiriit Kanatami's (ITK's) annual reports.
13.1	Article 32	*Pinasuaqtavut*, 2004-2009
13.2	Article 32	NLCA Report on PCH Activities for '04-'05 Fiscal Year
14.2	IIBA	Umbrella Inuit Impact and Benefit Agreement for Territorial Parks in the Nunavut Settlement Area
14.3	IIBA	Inuit Impact Benefit Agreement for Tahera
14.4	IIBA	An Inuit Impact and Benefit Agreement for Ukkusiksalik National Park of Canada
14.5	IIBA	Inuit Impact and Benefit Agreement for Auyuittuq, Quttinirpaaq and Sirmilik National Parks

#	File Name	Title
14.6	IIBA	IIBA between Tahera and the Kitikmeot Inuit Association
14.7	IIBA	Tahera Diamond Corporation Scholarship Program (poster)
14.8	IIBA	Tahera Diamond Corporation Scholarship Program (terms of reference)
14.9	IIBA	Tahera Diamond Corporation Scholarship Program (application)
14.10	IIBA	Culture and Community Development Fund (poster)
14.11	IIBA	Culture and Community Development Fund (application for assistance)
14.12	IIBA	Management Scoping Plan Prior to National Park
14.13	IIBA	The Northwest Blockage
15.1	NTI Annual Reports	NTI Annual Report: 1998
15.2	NTI Annual Reports	NTI Annual Report: 1999
15.3	NTI Annual Reports	NTI Annual Report: 2001
15.4	NTI Annual Reports	NTI Annual Report: 2002
15.5	NTI Annual Reports	NTI Annual Report: 2004
15.6	NTI Annual Reports	NTI Annual Report: 2005
15.7	NTI Annual Reports	NTI Annual Report: 2000
15.8	NTI	Contriubtion Agreement for CLOs
16.1	Article 24	Communications in regards to shared services travel initiative
16.2	Article 24	GoC Article 24 proposal
16.3	Article 24	Government of Nunavut Annual Contract Data Report Fiscal Year 2001/2002
16.4	Article 24	Government of Nunavut Annual Contract Data Report Fiscal Year 2004/2005
16.5	Article 24	Total Value of Contracts awarded ('01-'04)
16.6	Article 24	Government of Nunavut Annual Contract Data Report Fiscal Year 2002/2003
16.7	Article 24	Letters between NTI and GN on Article 24
16.2	article 24	http://www.gov.nu.ca/Nunavut/English/business/nnipolicy.pdf
16.10	article 24	http://www.tbs-sct.gc.ca/Pubs_pol/dcgpubs/ContPolNotices/siglist_e.asp
16.11	Aricle 24	Judgement on NNI policy
16.12	Aricle 24	http://www.tbs-sct.gc.ca/Pubs_pol/dcgpubs/ContPolNotices/97-8_e.asp
16.13	Article 24	NNI Policy
16.14	Article 24	NNI Policy, First Comprehensive Review
16.15	Article 24	Annual Contract Data Report, Fiscal Year 2004/05
16.16	Article 24	http://www.pwgsc.gc.ca/acquisitions/text/pns/pn27-e.html
16.17	Article 24	Agreement between NTI and Her Majesty In The Right Of Canada, Represented By The Minister Of National Defence With Respect To Economic Benefits For Inuit In The Clean-Up And Restoration Of

#	File Name	Title
		Distant Early Warning Sites Within The Nunavut Settlement Area
16.18	Article 24	Email from INAC with comments from Treasury Board Secretariat (TBS) on the Article 24 report, March 27, 2006
16.19	Article 24	Payments to Suppliers by PWGSC for Fiscal Year 2002/2003
17.1	Fisheries	Nunavut Fisheries Strategy, March 2005
18.1	Wildllife	letter from the NWMB to the DFO Minister in 2002
18.2	Wildllife	Community-Based Management Review Summary
18.3	Wildllife	Questions on wildlife issues
18.4	Wildllife	Terrestrial Mammals of Nunavut
19.1	DIOS	NTI litigation summary
20.1	DIOS	CLO contribution Agreement
21.1	Arbitration	Letters on Arbitration
22.1	GN	Government of Nunavut, Main Estimates and Business Plans 2001 – 2004
22.2	GN	GN
23.1	NPC	Nunatsiaq News - Bloodletting ends at Nunavut Planning Commission
24.1	Nunavut Trust	Information on Nunavut Trust
24.2	Nunavut Trust	Nunavut Trust Annual Report 2004
25.1	Article 8	Parks Contract Working Group Summary
25.2	Article 8	Review of Nunavut Parks Contracts - 2003/2004
26.1	Teamwork	Peter M. Senge, The Fifth Discipline, 1990, Currency Doubleday
27.1	Outpost Camps	Application for a new outpost camp
28.1	Archaeology	Inuit art finally gets respect it deserves
29.1	GN	Auditor General Slams Nunavut's bookkeeping
29.2	GN	Financial controls still lacking in Nunavut: Fraser
29.3	GN	Nunavut budget seeks means to growth
30.1	Success stories	Miawpukek: Reaching Self-Sufficiency Through Economic Development Guided by Traditional Values
30.2	Success stories	Muskeg Lake Urban Reserve Negotiations: A Precedent for First Nations/Municipal Relations